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# HAITIAN ASYLUM-SEEKERS

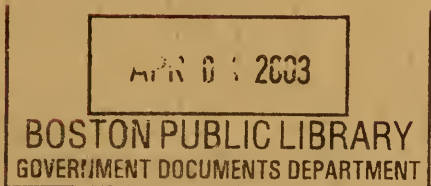
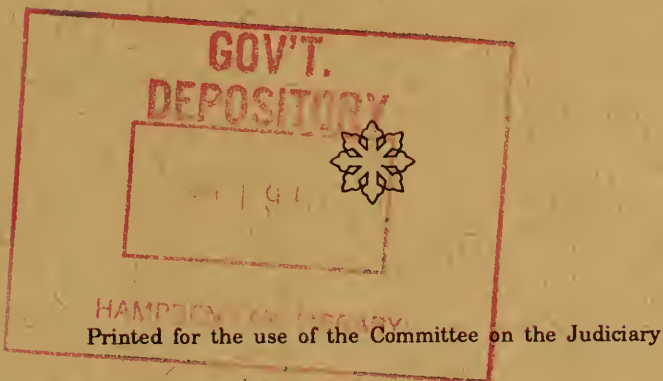
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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON INTERNATIONAL LAW,  
IMMIGRATION, AND REFUGEES  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRD CONGRESS  
SECOND SESSION  
ON  
**H.R. 3663, H.R. 4114, and H.R. 4264**

—  
JUNE 15, 1994  
—

**Serial No. 43**



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Printed for the use of the Committee on the Judiciary

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# CONTENTS

## HEARING DATE

June 15, 1994 .....	Page 1
---------------------	-----------

## TEXTS OF BILLS

H.R. 3663 .....	2
H.R. 4114 .....	11
H.R. 4264 .....	23

## OPENING STATEMENT

Mazzoli, Hon. Romano L., a Representative in Congress from the State of Kentucky, and chairman, Subcommittee on International Law, Immigration, and Refugees .....	1
--	---

## WITNESSES

Brown, Hon. Corrine, a Representative in Congress from the State of Florida .....	66
Conyers, Hon. John, Jr., a Representative in Congress from the State of Michigan .....	53
Diaz-Balart, Hon. Lincoln, a Representative in Congress from the State of Florida .....	48
Goss, Hon. Porter J., a Representative in Congress from the State of Florida ..	55
Forester, Steven, supervising attorney, Haitian Refugee Center, Miami, FL ....	156
McCalla, Jocelyn, executive director, National Coalition for Haitian Refugees .	186
McKinley, Hon. Brunson, Acting Director, Bureau of Population, Refugees, and Migration, U.S. Department of State .....	105
Meek, Hon. Carrie P., a Representative in Congress from the State of Florida .....	33
Owens, Hon. Major R., a Representative in Congress from the State of New York .....	64
Rangel, Hon. Charles B., a Representative in Congress from the State of New York .....	51
Ryscavage, Rev. Richard, director, migration and refugee services, U.S. Catholic Conference .....	195
Sale, Chris, Deputy Commissioner, Immigration and Naturalization Service, U.S. Department of Justice, accompanied by T. Alexander Aleinikoff, General Counsel .....	117
Stein, Dan, executive director, Federation for American Immigration Reform ..	219
Swartz, Rick, Esq., Swartz & Associates, Washington, DC .....	265

## LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Brown, Hon. Corrine, a Representative in Congress from the State of Florida: Prepared statement .....	68
Diaz-Balart, Hon. Lincoln, a Representative in Congress from the State of Florida: Prepared statement .....	49
Forester, Steven, supervising attorney, Haitian Refugee Center, Miami, FL: Prepared statement .....	161
Goss, Hon. Porter J., a Representative in Congress from the State of Florida: Prepared statement .....	58
McCalla, Jocelyn, executive director, National Coalition for Haitian Refugees: Prepared statement .....	190

IV

	Page
McKinley, Hon. Brunson, Acting Director, Bureau of Population, Refugees, and Migration, U.S. Department of State: Prepared statement .....	109
MEEK, Hon. Carrie P., a Representative in Congress from the State of Florida: Prepared statement .....	36
Ryscavage, Rev. Richard, director, migration and refugee services, U.S. Catholic Conference: Prepared statement .....	198
Sale, Chris, Deputy Commissioner, Immigration and Naturalization Service, U.S. Department of Justice:	
Data concerning Roman(e) Desanges .....	149
Information concerning the In-Country Refugee Processing Program .....	156
Prepared statement .....	122
Stein, Dan, executive director, Federation for American Immigration Reform: Prepared statement .....	223
Swartz, Rick, Esq., Swartz & Associates, Washington, DC: Prepared statement .....	268

APPENDIXES

Appendix 1.—Letter to Hon. Carrie Meek from Rene van Rooyen, Representative, United Nations High Commissioner for Refugees, dated February 4, 1994, with attachment, news clipping from Newsday, April 14, 1993, entitled, "Scars Attest to Haitian Brutality" .....	293
Appendix 2.—Statement of Hon. Ronald V. Dellums, a Representative in Congress from the State of California .....	298
Appendix 3.—Statement of Hon. Eliot L. Engel, a Representative in Congress from the State of New York .....	351
Appendix 4.—Statement of Hon. Bobby L. Rush, a Representative in Congress from the State of Illinois .....	353
Appendix 5.—Draft letter of understanding with UNHCR from Stephanie Marks, Esq., coordinator, asylum program, and Scott Stofel, Esq., staff attorney, Washington office of the Lawyers Committee for Human Rights ...	354
Appendix 6.—Statement of Lucas Guttentag, director, American Civil Liberties Union Immigrants' Rights' Project and Laura Murphy Lee, director, American Civil Liberties Union, Washington office .....	357
Appendix 7.—Statement of Dr. Elizabeth G. Ferris, director, immigration and refugee program, Church World Service .....	361
Appendix 8.—Joint statement of Washington Association of Churches, Northwest Immigrant Rights Project, and Washington Refugee Resettlement .....	370
Appendix 9.—CRS report: Cuban Adjustment Act of 1966 .....	376
Appendix 10.—Steven Forester, Esq., supervising attorney, Haitian Refugee Center, miscellaneous materials .....	380
Appendix 11.—Report from Human Rights Watch/Americas Watch and the National Coalition for Haitian Refugees .....	409
Appendix 12.—Letter from the American Immigration Lawyers Association to Hon. Romano L. Mazzoli, chairman, Subcommittee on International Law, Immigration, and Refugees, dated June 14, 1994 .....	490
Appendix 13.—Letter from the American Bar Association to Hon. Romano L. Mazzoli, chairman, Subcommittee on International Law, Immigration, and Refugees, dated June 13, 1994 .....	492
Appendix 14.—Statement of Cheryl Little, co-chair, Forum for Haitian Justice and Florida Rural Legal Services, Inc .....	495

# HAITIAN ASYLUM-SEEKERS

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WEDNESDAY, JUNE 15, 1994

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON INTERNATIONAL LAW,  
IMMIGRATION, AND REFUGEES,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9 a.m., in room 2237, Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Romano L. Mazzoli, John Bryant, George E. Sangmeister, Jerrold Nadler, Xavier Becerra, Bill McCollum, Lamar S. Smith, and Charles T. Canady.

Also present: Eugene Pugliese, counsel; Leslie L. Megyeri, assistant counsel; Judy Knott, secretary; Lizzie Daniels, secretary; and Peter Levinson, minority counsel.

## OPENING STATEMENT OF CHAIRMAN MAZZOLI

Mr. MAZZOLI. We have called this hearing today because the current situation in Haiti poses a fundamental dilemma to the United States and to foreign policymakers: How can we protect the lives of Haitians who are being victimized by the current military leaders? How can we prevent problems at sea of the Haitians who have left their country? And, at the same time, how can we prevent what some would call an uncontrollable exodus of Haitians to the United States?

We have before us three bills concerning Haitian asylum-seekers, H.R. 3663 by Mrs. Meek, H.R. 4114 by Mr. Dellums, and H.R. 4264 by Mr. Conyers, Members who have been in the forefront of efforts to protect Haitian asylum-seekers, and I see in the room also the gentleman from New York, Mr. Rangel who has been active in that effort as well.

[The bills, H.R. 3663, H.R. 4114, and H.R. 4264, follow:]

103D CONGRESS  
1ST SESSION

# H. R. 3663

To reaffirm the obligation of the United States to refrain from the involuntary return of refugees outside the United States, designate Haiti under Temporary Protected Status, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Mrs. MEEK (for herself, Mr. GILMAN, Ms. BROWN of Florida, Mr. OWENS, Mr. MFUME, Mr. TOWNS, Mr. RUSH, Mrs. CLAYTON, Mr. SCOTT, Mr. LEWIS of Georgia, Mr. WATT, Mr. HILLIARD, Mr. ROMERO-BARCELÓ, Miss COLLINS of Michigan, Mr. FLAKE, Mr. TUCKER, Ms. WATERS, Mr. JEFFERSON, Mr. PAYNE of New Jersey, Mr. RANGEL, Ms. PELOSI, Mr. WYNN, Mr. JACOBS, Mr. FRANK of Massachusetts, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. CONYERS, Mr. HASTINGS, Mr. FOGLIETTA, Ms. MCKINNEY, Mr. SERRANO, Mr. WASHINGTON, Mr. DE LUGO, Mr. CLYBURN, Mr. ENGEL, and Mr. DELLUMS) introduced the following bill; which was referred jointly to the Committees on Foreign Affairs and the Judiciary

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## A BILL

To reaffirm the obligation of the United States to refrain from the involuntary return of refugees outside the United States, designate Haiti under Temporary Protected Status, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*



1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Haitian Refugee Fair-  
3 ness Act".

4 **SEC. 2. ADHERENCE TO INTERNATIONAL LAW REQUIRE-**  
5 **MENT OF NONREFOULEMENT.**

6 (a) CONGRESSIONAL STATEMENT.—It is the sense of  
7 the Congress that Article 33 of the Convention Relating  
8 to the Status of Refugees (done at Geneva, July 28,  
9 1951), as applied under Article I of the Protocol Relating  
10 to the Status of Refugees (done at New York, January  
11 31, 1967), imposes an obligation upon states which are  
12 party to the Protocol that applies wherever the states act  
13 and without territorial limitation, and Congress reaffirms  
14 that this Article 33 obligation applies to actions of the  
15 United States with respect to individuals within and with-  
16 out the territorial boundaries of the United States.

17 (b) OBLIGATIONS OUTSIDE THE UNITED STATES.—  
18 The United States Government shall not return, cause to  
19 be returned, or affect the movement in any manner which  
20 results in returning, a national or habitual resident of a  
21 country, who is outside the territorial boundaries of the  
22 country of nationality or residence to the territory where  
23 the individual's life or freedom would be threatened, and  
24 no funds may be expended without respect to any such  
25 return, unless the United States Government first deter-  
26 mines in a manner that incorporates procedural safe-

1 guards consistent with internationally endorsed standards  
2 and guidelines that such individual is not a refugee of such  
3 country under Article 1 of the Convention Relating to the  
4 Status of Refugees (done at Geneva July 28, 1951) as  
5 applied under Article I of the United Nations Protocol Re-  
6 lating to the Status of Refugees (done at New York, Janu-  
7 ary 31, 1967) or a person designated under Article 33  
8 of the Convention Relating to the Status of Refugees.

9 (c) OBLIGATIONS WITHIN THE TERRITORIAL WA-  
10 TERS OF ANOTHER COUNTRY.—The United States Gov-  
11 ernment shall not return, cause to be returned, or affect  
12 the movement in any manner which results in returning,  
13 a national or habitual resident of a country, who is within  
14 the territorial waters of his or her country of nationality  
15 or habitual residence, to the land frontier or territorial  
16 land of the country of nationality or residence where the  
17 individual's life or freedom would be threatened, and no  
18 funds may be expended with respect to any such return,  
19 unless the United States Government first determines in  
20 a manner that incorporates procedural safeguards consist-  
21 ent with internationally endorsed standards and guidelines  
22 that if that individual were outside the territory of the  
23 country of nationality or habitual residence such individ-  
24 ual would not be a refugee of such country under Article  
25 I of the Convention Relating to the Status of Refugees

1 (done at Geneva, July 28, 1951) as applied under Article  
2 I of the United National Protocol Relating to the Status  
3 of Refugees (done at New York), January 31, 1967) or  
4 a person designated under Article 33 of the Convention  
5 Relating to the Status of Refugees. This subsection shall  
6 not constitute authority for conducting operations by the  
7 United States Government within the territorial waters of  
8 another country.

9 (d) LIMITATIONS.—The provisions of this section do  
10 not apply to an individual if—

11 (1) such individual ordered, incited, assisted, or  
12 otherwise participated in the persecution of any per-  
13 son on account of race, religion, nationality, mem-  
14 bership in a particular social group or political opin-  
15 ion; or

16 (2) such individual, having been convicted by a  
17 final judgment of an aggravated felony (as defined  
18 in section 101(a)(43) of the Immigration and Na-  
19 tionality Act), constitutes a danger to the commu-  
20 nity of the United States.

21 (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
22 tion shall be construed to impose new obligations on the  
23 Government of the United States in its treatment of na-  
24 tionals and habitual residents of a country at United  
25 States diplomatic and consular missions in that country.

1 **SEC. 3. TEMPORARY PROTECTED STATUS FOR HAITIANS.**

2 (a) **DESIGNATION.**—

3 (1) **IN GENERAL.**—Haiti is hereby designated  
4 under section 244A(b) of the Immigration and Na-  
5 tionality Act (8 U.S.C. 1254a(b)), subject to the  
6 provisions of this section.

7 (2) **PERIOD OF DESIGNATION.**—Such designa-  
8 tion shall take effect on the date of the enactment  
9 of this Act and shall remain in effect for a period  
10 of 24 months from the date of enactment of this Act  
11 or until such time as the President certifies to Con-  
12 gress that a democratically elected government is se-  
13 curely in place in Haiti, whichever occurs later.

14 (b) **ALIENS ELIGIBLE.**—In applying section 244A of  
15 the Immigration and Nationality Act pursuant to the des-  
16 ignation under this section, subject to section 244A(c)(3)  
17 of such Act, an alien who is a national of Haiti meets  
18 the requirement of section 244A(c)(1) of such Act only  
19 if—

20 (1) the alien has been continuously physically  
21 present in the United States since November 17,  
22 1993;

23 (2) the alien is admissible as an immigrant, ex-  
24 cept as otherwise provided under section  
25 244A(c)(2)(A) of such Act and is not ineligible for

1 temporary protected status under section  
2 244A(c)(2)(B) of such Act; and

3 (3) the alien registers for temporary protected  
4 status in a manner which the Attorney General shall  
5 establish.

6 (c) **REGISTRATION FEE.**—Subject to section  
7 244A(c)(3) of the Immigration and Nationality Act, the  
8 Attorney General may provide for the payment of a fee  
9 as a condition of registering an alien under subsection (b)  
10 of this section.

11 **SEC. 4. REIMBURSEMENT FOR STATE AND LOCAL GOVERN-**  
12 **MENT COSTS.**

13 Notwithstanding any other provision of law, the At-  
14 torney General shall reimburse from funds authorized  
15 under section 404(b)(1) of the Immigration and National-  
16 ity Act, State and local governments for incremental costs  
17 associated with Haitian nationals who are paroled into the  
18 United States by the Immigration and Naturalization  
19 Service under section 212(d)(5) of the Immigration and  
20 Nationality Act.

1 **SEC. 5. FUNDING FOR COMMUNITY RELATIONS SERVICE OF**  
2 **THE UNITED STATES DEPARTMENT OF JUSTICE AND CUBAN/HAITIAN PRIMARY SECOND-**  
3 **TICE AND CUBAN/HAITIAN PRIMARY SECOND-**  
4 **ARY MIGRATION PROGRAM FOR FISCAL**  
5 **YEARS 1994, 1995 AND 1996.**

6 (a) **COMMUNITY RELATIONS SERVICE.**—Of the funds  
7 appropriated for the United States Department of Justice  
8 for fiscal years 1994, 1995, and 1996, not less than  
9 \$27,000,000 shall be made available in each fiscal year  
10 to the Community Relations Service.

11 (b) **CUBAN/HAITIAN PRIMARY SECONDARY MIGRA-**  
12 **TION PROGRAM.**—Of the funds referred to in subsection  
13 (a), not less than \$6,000,000 in each of fiscal years 1994,  
14 1995, and 1996 shall be used to provide primary and sec-  
15 ondary resettlement services for Cubans and Haitians pa-  
16 roled into the United States by the Immigration and Nat-  
17 uralization Service under section 212(d)(5) of the Immi-  
18 gration and Nationality Act.

19 **SEC. 6. CUBAN/HAITIAN ENTRANT EMERGENCY FUND.**

20 Section 404 of the Immigration and Nationality Act  
21 (8 U.S.C. 1101, note.) is amended by adding at the end  
22 the following new subsection:

23 “(c) **CUBAN/HAITIAN ENTRANT EMERGENCY FUND.**

24 “(1) **AUTHORIZATION OF APPROPRIATIONS.**—

25 There are authorized to be appropriated for fiscal  
26 year 1994 and any subsequent fiscal year to a

1 Cuban/Haitian Entrant Emergency Fund to be es-  
2 tablished in the Treasury, an amount sufficient to  
3 provide for a balance of \$5,000,000 in such fund, to  
4 be used to carry out the purposes described in para-  
5 graph (3).

6 “(2) CONDITIONS FOR USE OF FUND.—Funds  
7 which are authorized to be appropriated by para-  
8 graph (1) shall be available whenever—

9 “(A) the number of Cubans and Haitians  
10 paroled into the United States by the Immigra-  
11 tion and Naturalization Service under section  
12 212(d)5 of the Immigration and Nationality  
13 Act in a single fiscal year has exceeded the esti-  
14 mate made by the Attorney General as required  
15 in paragraph (4), and

16 “(B) funds appropriated for the Cuban/  
17 Haitian Primary/Secondary Resettlement Pro-  
18 gram are inadequate to provide primary and  
19 secondary resettlement services at the fiscal  
20 year 1993 funding and service level.

21 “(3) \_\_\_\_\_. Funds which are authorized to be  
22 appropriated by paragraph (1) shall be available  
23 solely for the purpose of assisting with the process-  
24 ing, placement and reception of Cubans and Hai-  
25 tians paroled into the United States by the Immigra-

1           tion and Naturalization Service under section  
2           212(d)(5) of the Immigration and Nationality Act.

3           “(4) ANNUAL ESTIMATION OF CUBAN AND HAI-  
4           TIAN PAROLEES.

5           “(A) The Attorney General of the United  
6           States shall submit each year, concurrent with  
7           the President’s annual budget request, an esti-  
8           mate of the number of Cubans and Haitians  
9           who are expected to be paroled into the United  
10          States under section 212(d)(5) of the Immigra-  
11          tion and Nationality Act in the next fiscal year.  
12          Such estimate shall be made independently  
13          from the budget request for any programs for  
14          Cuban and Haitian parolees.

15          “(B) In determining the estimate required  
16          by paragraph (4)(A), the Attorney General shall  
17          take into consideration a number of factors, in-  
18          cluding but not limited to—

19                  “(i) previous experience and current  
20                  trends in the number of Cubans and Hai-  
21                  tians paroled into the United States under  
22                  section 212(d)(5) of the Immigration and  
23                  Nationality Act, and

24                  “(ii) political circumstances and  
25                  trends in Cuba and Haiti.”.

○



103D CONGRESS  
2D SESSION

# H. R. 4114

To provide for sanctions against Haiti, to halt the interdiction and return of Haitian refugees, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1994

Mr. DELLUMS (for himself, Mr. PAYNE of New Jersey, Mr. OWENS, Mr. RANGEL, Mr. MFUME, Mr. FRANKS of Connecticut, Ms. BROWN of Florida, Mr. CONYERS, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. MEEK, Mr. BISHOP, Mr. BLACKWELL, Mr. CLAY, Mrs. CLAYTON, Mr. CLYBURN, Miss COLLINS of Michigan, Mrs. COLLINS of Illinois, Mr. DIXON, Mr. FIELDS of Louisiana, Mr. FLAKE, Mr. FORD of Tennessee, Mr. HILLIARD, Mr. HASTINGS, Mr. JEFFERSON, Mr. LEWIS of Georgia, Ms. MCKINNEY, Ms. NORTON, Mr. REYNOLDS, Mr. RUSH, Mr. SCOTT, Mr. STOKES, Mr. THOMPSON of Mississippi, Mr. TOWNS, Mr. TUCKER, Mr. WASHINGTON, Ms. WATERS, Mr. WATT, Mr. WHEAT, and Mr. WYNN) introduced the following bill; which was referred jointly to the Committees on Ways and Means, Foreign Affairs, Public Works and Transportation, the Judiciary, and Banking, Finance and Urban Affairs

---

## A BILL

To provide for sanctions against Haiti, to halt the interdiction and return of Haitian refugees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Governors Island Rein-  
3 forcement Act of 1994".

4 **SEC. 2. SANCTIONS AGAINST HAITI.**

5 (a) **PROHIBITING TRADE AND CERTAIN TRANS-**  
6 **ACTIONS INVOLVING HAITI.**—The following are prohib-  
7 ited:

8 (1) The import into the United States of any  
9 goods or services of Haitian origin, other than publi-  
10 cations and material imported for news publications  
11 or news broadcast dissemination.

12 (2) The export to Haiti of any goods, tech-  
13 nology (including technical data or other informa-  
14 tion) or services from the United States, except pub-  
15 lications, food, medicine, and medical supplies and  
16 donations of articles intended to relieve human suf-  
17 fering, such as clothing and temporary housing.

18 (3) The purchase by any United States person  
19 of any goods for export from Haiti to any country.

20 (4) The performance by any United States per-  
21 son of any contract in support of an industrial or  
22 other commercial or governmental project in Haiti.

23 (5) The grant or extension of credits or loans  
24 by any United States person to the unelected mili-  
25 tary rulers of Haiti, its instrumentalities and con-  
26 trolled entities.

1 (b) PROHIBITION OF CERTAIN AIR TRANSPORT IN-  
2 VOLVING HAITI.—The following is prohibited:

3 (1) Any transaction by a United States person  
4 relating to air transportation to or from Haiti.

5 (2) The provision of transportation to or from  
6 the United States by aircraft of Haitian registration.

7 (3) The sale in the United States by any person  
8 holding authority under the Federal Aviation Act of  
9 any transportation by air which includes any stop in  
10 Haiti.

11 (c) SANCTIONS AGAINST OTHER NATIONS.—

12 (1) If the President determines that a foreign  
13 country is not cooperating with United States sanc-  
14 tions against Haiti under this Act or with applicable  
15 sanctions against Haiti imposed by the United Na-  
16 tions and the Organization of American States, ef-  
17 fective 60 days after such determination no United  
18 States assistance may be provided to such foreign  
19 country.

20 (2) If the President makes a determination  
21 under paragraph (1)—

22 (A) the President shall impose at least one  
23 other penalty or sanction which the President  
24 considers to be appropriate under the Inter-  
25 national Emergency Economic Powers Act; and

1           (B) the President may impose such other  
2           sanctions and penalties under the International  
3           Emergency Economic Powers Act as the Presi-  
4           dent considers appropriate.

5           (3) For the purpose of this subsection, the term  
6           “United States assistance” means assistance of any  
7           kind which is provided by grant, sale, loan, lease,  
8           credit, guaranty, or insurance, or by any other  
9           means, by any agency or instrumentality of the  
10          United States Government, including—

11           (A) assistance under the Foreign Assist-  
12          ance Act of 1961; and

13           (B) sales, credits, and guaranties under  
14          the Arms Export Control Act.

15          (d) SANCTIONS BY OTHER COUNTRIES.—The Presi-  
16          dent shall direct the United States Ambassador to the  
17          United Nations to assume a leadership role within the  
18          United Nations Security Council to ensure that sanctions  
19          against Haiti unilaterally imposed by the United States  
20          under this Act are adopted by the international commu-  
21          nity.

22          (e) TERMINATION OF SANCTIONS.—The provisions of  
23          this section shall cease to have effect on the date the Presi-  
24          dent certifies to the Congress that the democratically-  
25          elected President of Haiti has been reinstated and Haiti's

1 military high command has met its obligations under the  
2 Governors Island Agreement.

3 **SEC. 3. CONGRESSIONAL STATEMENT.**

4 (a) **HUMAN RIGHTS OBSERVERS.**—The Congress  
5 strongly urges the President to take such steps as are nec-  
6 essary to facilitate the return to Haiti of a full contingent  
7 of human rights observers under the auspices of the  
8 United Nations and/or the Organization of American  
9 States.

10 (b) **MULTINATIONAL BORDER PATROL.**—Subject to  
11 the request of the democratically-elected President of  
12 Haiti Jean-Bertrand Aristide, the Congress strongly urges  
13 President Clinton to take all available measures to effect  
14 the deployment of a multinational border patrol between  
15 the Dominican Republic and Haiti which will be fully  
16 equipped in terms of personnel and equipment to halt  
17 cross-border violations of sanctions against Haiti imposed  
18 by the United States and other countries.

19 (c) **MULTILATERAL SOCIOECONOMIC AND PEACE-**  
20 **KEEPING ASSISTANCE.**—The Congress reaffirms the un-  
21 wavering commitment of the United States to support  
22 multilateral socioeconomic and peacekeeping assistance to  
23 Haiti upon the return to power of the democratically-elect-  
24 ed President of Haiti and the removal of Haiti's military  
25 high command.

## 6

1 **SEC. 4. SANCTITY OF GOVERNORS ISLAND AGREEMENT.**

2 (a) **IN GENERAL.**—Subject to subsection (b) and not-  
3 withstanding any other provision of law, no officer or em-  
4 ployee of the United States shall attempt, directly or indi-  
5 rectly, to amend, reinterpret, or nullify the Governors Is-  
6 land Agreement.

7 (b) **EXCEPTION.**—Subsection (a) shall not apply to  
8 the October 30, 1993, deadline for the return to power  
9 of the democratically-elected President of Haiti, Jean-  
10 Bertrand Aristide.

11 **SEC. 5. TERMINATION OF BILATERAL MIGRANT INTERDIC-**  
12 **TION AGREEMENT.**

13 The President shall notify the Government of Haiti  
14 immediately of the intention of the United States Govern-  
15 ment to terminate the agreement between the United  
16 States and Haiti relating to migrant interdiction (effected  
17 by the exchange of notes signed at Port-au-Prince on Sep-  
18 tember 23, 1981; 33 UST 3559, TIAS 6577).

19 **SEC. 6. ADHERENCE TO INTERNATIONAL LAW REQUIRE-**  
20 **MENT OF NONREFOULEMENT WITH RESPECT**  
21 **TO HAITI.**

22 (a) **OBLIGATIONS OUTSIDE THE UNITED STATES.**—  
23 The United States Government shall not return, cause to  
24 be returned, or affect the movement in any manner which  
25 results in returning, to Haiti a national or habitual resi-  
26 dent of Haiti, who is outside the territorial boundaries of

1 Haiti, and no funds may be expended with respect to any  
2 such return, unless the United States Government first  
3 determines in a manner that incorporates procedural safe-  
4 guards consistent with internationally endorsed standards  
5 and guidelines that such individual is not a refugee of  
6 Haiti under Article 1 of the Convention Relating to the  
7 Status of Refugees (done at Geneva July 28, 1951) as  
8 applied under Article I of the United Nations Protocol Re-  
9 lating to the Status of Refugees (done at New York, Janu-  
10 ary 31, 1967) or a person designated under Article 33  
11 of the Convention Relating to the Status of Refugees.

12 (b) OBLIGATIONS WITHIN THE TERRITORIAL WA-  
13 TERS OF HAITI.—The United States Government shall  
14 not return, cause to be returned, or affect the movement  
15 in any manner which results in returning, to Haiti a na-  
16 tional or habitual resident of Haiti, who is within the terri-  
17 torial waters of Haiti, and no funds may be expended with  
18 respect to any such return, unless the United States Gov-  
19 ernment first determines in a manner that incorporates  
20 procedural safeguards consistent with internationally en-  
21 dorsed standards and guidelines that if that individual  
22 were outside the territorial boundaries of Haiti such indi-  
23 vidual would not be a refugee of Haiti under Article I of  
24 the Convention Relating to the Status of Refugees (done  
25 at Geneva, July 28, 1951) as applied under Article I of

1 the United National Protocol Relating to the Status of  
2 Refugees (done at New York, January 31, 1967) or a per-  
3 son designated under Article 33 of the Convention Relat-  
4 ing to the Status of Refugees. This subsection shall not  
5 constitute authority for conducting operations by the  
6 United States Government within the territorial waters of  
7 Haiti or any other country.

8 (c) LIMITATIONS.—The provisions of this section do  
9 not apply to an individual if—

10 (1) such individual ordered, incited, assisted, or  
11 otherwise participated in the persecution of any per-  
12 son on account of race, religion, nationality, mem-  
13 bership in a particular social group or political opin-  
14 ion; or

15 (2) such individual, having been convicted by a  
16 final judgment of an aggravated felony (as defined  
17 in section 101(a)(43) of the Immigration and Na-  
18 tionality Act), constitutes a danger to the commu-  
19 nity of the United States.

20 (d) RULE OF CONSTRUCTION.—Nothing in this sec-  
21 tion shall be construed to impose new obligations on the  
22 Government of the United States in its treatment of na-  
23 tionals and habitual residents of a country at United  
24 States diplomatic and consular missions in that country.



1 **SEC. 7. TEMPORARY PROTECTED STATUS FOR HAITIANS.**

2 (a) **DESIGNATION.**—During the period specified in  
3 subsection (c) of this section, Haiti is hereby designated  
4 under section 244A(b)(1) of the Immigration and Nation-  
5 ality Act (relating to temporary protected status).

6 (b) **ELIGIBLE HAITIANS.**—Any alien—

7 (1) who is a national of Haiti and is present in  
8 the United States or in the custody or control of the  
9 United States (including Guantanamo Bay, Cuba,  
10 and any other vessel or facility of the United States  
11 Government) at any time during the period de-  
12 scribed in subsection (c) of this section,

13 (2) who is not an alien designated under section  
14 8(b) or 9(b) of this Act,

15 (3) who meets the requirements of section  
16 244A(c)(1)(A)(iii) of the Immigration and National-  
17 ity Act, and

18 (4) who, during the period described in sub-  
19 section (c) of this section, registers for temporary  
20 protected status to the extent and in a manner  
21 which the Attorney General establishes,

22 shall be granted temporary protected status for the dura-  
23 tion of that period and section 244A(a)(1) of the Immigra-  
24 tion and Nationality Act shall apply with respect to such  
25 alien.

1 (c) PERIOD OF DESIGNATION.—The designation pur-  
2 suant to subsection (a) shall be in effect during the period  
3 beginning on the date of enactment of this Act and ending  
4 on the date on which the President certifies to the Con-  
5 gress that the democratically-elected President of Haiti  
6 has been reinstated and Haiti's military high command  
7 has met its obligations under the Governors Island Agree-  
8 ment. Subsections (b)(2) and (b)(3) of section 244A of  
9 the Immigration and Nationality Act do not apply with  
10 respect to the designation pursuant to subsection (a) of  
11 this section.

12 **SEC. 8. CERTAIN HAITIANS INELIGIBLE TO RECEIVE VISAS**  
13 **AND EXCLUDED FROM ADMISSION.**

14 (a) EXCLUSION.—During the period specified in sub-  
15 section (c), an alien designated under subsection (b) shall  
16 be ineligible to receive any visa and shall be excluded from  
17 admission into the United States.

18 (b) DESIGNATED ALIEN.—An alien designated under  
19 this subsection is any alien who—

- 20 (1) is a national of Haiti; and  
21 (2)(A) is a member of the Haitian military;  
22 (B) provided financial or other material support  
23 for, or directly assisted, the military coup of Septem-  
24 ber 30, 1991, which overthrew the democratically

1 elected Haitian Government of President Jean-  
2 Bertrand Aristide;

3 (C) provided financial or other material support  
4 for, or directly participated in, terrorist acts against  
5 the Haitian people during any period after such  
6 coup; or

7 (D) contributed to the obstruction of United  
8 Nations resolutions 841 and 843, the Governors Is-  
9 land Agreement, or the activities of the United Na-  
10 tions Mission in Haiti.

11 (c) PERIOD OF EXCLUSION.—The period of exclusion  
12 specified in this subsection begins on the date of the enact-  
13 ment of this Act and ends on the date on which the Presi-  
14 dent certifies to the Congress that the democratically-  
15 elected President of Haiti has been reinstated and Haiti's  
16 military high command has met its obligations under the  
17 Governors Island Agreement.

18 **SEC. 9. BLOCKING OF ASSETS OF CERTAIN HAITIANS.**

19 (a) BLOCKING OF ASSETS.—During the period speci-  
20 fied in subsection (c), all property and interests in prop-  
21 erty of aliens designated under subsection (b) that are in  
22 the United States, that hereafter come within the United  
23 States, or that are or hereafter come within the possession  
24 or control of United States persons (including overseas  
25 branches of United States persons), are blocked.

1 (b) DESIGNATED ALIEN.—An alien designated under  
2 this subsection is any alien who—

3 (1) is a national of Haiti; and

4 (2)(A) is a member of the Haitian military;

5 (B) provided financial or other material support  
6 for, or directly assisted, the military coup of Septem-  
7 ber 30, 1991, which overthrew the democratically-  
8 elected Haitian Government of President Jean-  
9 Bertrand Aristide;

10 (C) provided financial or other material support  
11 for, or directly participated in, terrorist acts against  
12 the Haitian people during any period after such  
13 coup; or

14 (D) contributed to the obstruction of United  
15 Nations resolutions 841 and 843, the Governors Is-  
16 land Agreement, or the activities of the United Na-  
17 tions Mission in Haiti.

18 (c) PERIOD OF EXCLUSION.—The period of exclusion  
19 specified in subsection (a) begins on the date of the enact-  
20 ment of this Act and ends on the date on which the Presi-  
21 dent certifies to the Congress that the democratically-  
22 elected President of Haiti has been reinstated and Haiti's  
23 military high command has met its obligations under the  
24 Governors Island Agreement.

○

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4264

To express United States policy regarding the restoration of democratic constitutional government in Haiti, to grant temporary protected status to Haitians until such a government is restored, and to terminate the migrant interdiction agreement between the United States and Haiti.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 20, 1994

Mr. CONYERS introduced the following bill; which was referred jointly to the Committees on Foreign Affairs and the Judiciary

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## A BILL

To express United States policy regarding the restoration of democratic constitutional government in Haiti, to grant temporary protected status to Haitians until such a government is restored, and to terminate the migrant interdiction agreement between the United States and Haiti.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. FINDINGS.**

4 The Congress finds that—

5 (1) Jean-Bertrand Aristide was elected Presi-  
6 dent of Haiti in a landslide victory on December 16,

1 1990, in the first free and fair election in Haiti's  
2 186 year history; and

3 (2) the unconstitutional seizure of power by the  
4 Haitian military is repugnant to all democratic na-  
5 tions, and represents an affront to all who believe in  
6 democracy.

7 **SEC. 2. UNITED STATES POLICY.**

8 It shall be the policy of the United States that—

9 (1) President Aristide should be allowed to re-  
10 turn to Haiti immediately and be reinstated as the  
11 constitutional President of Haiti;

12 (2) the United States will work in close coordi-  
13 nation with the Organization of American States  
14 and the United Nations to implement any applicable  
15 trade embargo against Haiti;

16 (3) until President Aristide is returned to his  
17 constitutional place in Haiti, the United States will  
18 extend emergency humanitarian assistance to Hai-  
19 tians fleeing the oppression of military dictatorship  
20 in Haiti; and

21 (4) the United States Coast Guard should con-  
22 tinue search and rescue measures in the inter-  
23 national waters surrounding Haiti, but shall cease  
24 any activities to forcibly return Haitians against

1       their will to Haiti so long as the military dictator-  
2       ship remains in power.

3 **SEC. 3. TEMPORARY PROTECTED STATUS FOR HAITIANS.**

4       (a) **DESIGNATION.**—During the period specified in  
5 subsection (c) of this section, Haiti shall be deemed to  
6 have been designated under section 244A(b)(1) of the Im-  
7 migration and Nationality Act (relating to temporary pro-  
8 tected status).

9       (b) **ELIGIBLE HAITIANS.**—Any alien—

10           (1) who is a national of Haiti who is present in  
11 the United States at any time during the period de-  
12 scribed in subsection (c) of this section,

13           (2) who meets the requirements of section  
14 244A(c)(1)(A)(iii) of the Immigration and National-  
15 ity Act, and

16           (3) who, during the period described in sub-  
17 section (c) of this section, registers for temporary  
18 protected status to the extent and in a manner  
19 which the Attorney General establishes,

20 shall be granted temporary protected status for the dura-  
21 tion of that period and section 244A(a)(1) of the Immigra-  
22 tion and Nationality Act shall apply with respect to such  
23 alien.

24       (c) **PERIOD OF DESIGNATION.**—The designation pur-  
25 suant to subsection (a) shall be in effect during the period

1 beginning on the date of enactment of this Act and ending  
2 on the date on which the President certifies to the Con-  
3 gress that democratically elected government has been re-  
4 stored in Haiti consistent with the Haitian Constitution.  
5 Subsections (b)(2) and (b)(3) of section 244A of the Im-  
6 migration and Nationality Act do not apply with respect  
7 to the designation pursuant to subsection (a) of this  
8 section.

9 **SEC. 4. TERMINATION OF BILATERAL MIGRANT INTERDIC-**  
10 **TION AGREEMENT.**

11 The President shall notify the Government of Haiti  
12 immediately of the intention of the United States Govern-  
13 ment to terminate the agreement between the United  
14 States and Haiti relating to migrant interdiction (effected  
15 by the exchange of notes signed at Port-au-Prince on Sep-  
16 tember 23, 1981; 33 UST 3559, TIAS 6577); and the  
17 United States shall not take any actions pursuant to that  
18 agreement after the date of enactment of this Act.

○



Mr. MAZZOLI. President Clinton's recent announcement that he will reverse the Bush administration's policy of interdicting and summarily returning all Haitian asylum-seekers is certainly welcome news. For the past 2 years, all interdicted Haitians have been returned to Haiti without hearing on their claims of persecution. I commend the administration for reversing this policy and for expanding Haitian refugee processing eventually to Jamaica and the Turks and Caicos Islands, particularly the Grand Turk Island. It certainly remains to be seen, however, how this policy will work, and we intend to ask the Government this morning questions about that policy.

An asylum-seeker, under international law, is entitled to a case-by-case determination, regardless of the person's country of origin, whether that country be Haiti, Sweden, Russia, or any other nation, if that individual is asserting a claim of persecution. Nonetheless, on May 24, 1992, President Bush issued an Executive order directing that Haitian boat people interdicted in international waters by the U.S. Coast Guard would no longer be permitted to advance their claims for what is called nonrefoulement or nonreturn. They would be returned without being questioned to Haiti and to whatever harm, peril, or nonharm and nonperil awaited them there. This policy, until recent changes, was the policy of the current administration.

It is clear from the many hearings which this subcommittee and others have held on this issue that the majority of the Haitian boat people who have sought refuge in the United States are running from economic pressures and grinding poverty, not persecution. They are thus not entitled to invoke the principles of nonrefoulement.

The challenge is, however, to quickly yet fairly identify those who are entitled to nonrefoulement because they are, in fact, fleeing persecution and those who could be returned home safely because they are not entitled to nonrefoulement, and then, which of the people, even though not to be returned, should be granted temporary safe haven of one sort or another until conditions in the sending country improve.

The decision of President Clinton to reinstate for Haitian boat people the right to an individual determination of their claims of persecution is a welcome first step, as I said. However, to discourage flight by boat, in-country refugee processing of Haitian nationals should be expanded so more Haitians can be processed in Haiti. Currently, I understand, at Port-au-Prince, Lake Cayes, and Cape Haitian, Haitians may go forward with their refugee claims. The current refugee quota, which I understand is 1,500, is not sufficient, it seems to me, to handle all who might seek that avenue within their own country.

Beyond that expansion, the United States needs to reform, I believe, its domestic asylum laws to cut away the numerous avenues of appeal and review which backlog the system and which allow frivolous claims to go on interminably. Once a case has been fully and fairly decided and relief denied, deportation should be swift and sure, and a bill which has been introduced by the gentleman from New York, by the gentleman from Florida and by me, I think, would certainly go in that direction.

I think, frankly, the reason we have the problems with Haiti and other countries and leads to even things like interdiction is because we have no confidence in the current asylum policy to work swiftly and fairly.

I think the Cuban Adjustment Act should be reexamined and eventually repealed, because there appears to be a disparate treatment of people coming from Cuba and people coming here from Haiti.

We need to recognize that our enforcement resources are finite. A Coast Guard cutter ordered to interdict asylum-seekers in the Windward Passage is one more boat that cannot interdict drug smugglers or do the other activity of protecting the United States, an INS asylum officer sent to Jamaica is one who is not reviewing cases at JFK Airport in New York City. So we need to know what these decisions are costing and whether the benefits gained from them outweigh the costs in shortages in other areas of enforcement.

Our faltering economy does not permit the United States to accept all or even a large part of the world's people of some 20 million refugees. We, at the same time, are a fair and proud Nation with a long heritage of succor and relief to people who need it, and so these are the competing interests that we have to somehow reconcile, and today's hearing is a start in that direction.

I yield to the gentleman from Florida.

Mr. McCOLLUM. Thank you very much, Mr. Chairman, and I join you in looking forward to this hearing today. It is a very important subject. It relates to the concern all of us have with the suffering of the people of Haiti and the way that we handle our refugee situation with regard to those people.

The recent changes in the U.S. refugee policy with regard to Haiti is something that I am really interested in hearing the administration discuss today, not to mention some of our congressional colleagues. I have had a much greater degree of skepticism than, I think, you have expressed in your opening statement about the way we have gone about changing this policy—and whether or not it can be effective, and whether or not it can be a better policy than the one of returning those who were leaving in these rickety boats to Haiti for processing actually on the land there.

But as I have said many times before, if we can truly wind up with a country that is nearby, willing to let us do land processing of those folks, I think that that is probably the best solution. It is something which was tried previously and so far hasn't been successful, but I understand there is a good deal of optimism about that possibility.

But I am greatly concerned about the idea of processing them aboard ship and trying to make that work—and the huge problems that can be created, at least as I can foresee, as a result of that. So I will be curious to hear what folks have to say about this processing procedure today.

As we implement our procedures to adjudicate Haitian refugee claims outside of Haiti, I don't think we should lose sight of the importance of the INS in-country processing that will continue to go on. Our subcommittee must continue to monitor the INS operations within Haiti, fostering expeditious mechanisms for identifying and resettling Haitians in greatest danger.

Refugee resettlement is not simply a U.S. responsibility, but rather an international obligation that the United States appropriately can expect other countries to share. This hearing affords us, additionally, an opportunity to learn more about how the United States and the United Nations High Commissioner for Refugees are going to involve other nations, particularly in this hemisphere, in responding to the humanitarian dimension of the crisis in Haiti.

As we examine the American response to Haitian asylum-seekers, we must be mindful of the need to expedite asylum adjudications conducted within the United States. As you, Chairman Mazzoli, have just noted, you and I and Congressman Schumer have a bill—which came out of this subcommittee—that we thought was a very good bipartisan product but has yet to be moved by the full committee chairman. This is disappointing in light of the fact that asylum is such an important issue and straightening it out, making it work better, certainly would be served, I think, by the legislative proposal that we all put together—but it has not yet happened, and it is getting late in this term of Congress.

I am also pleased today that Congressman Porter Goss of my State will be one of the panelists. At least he is listed as being and I assume he will be. Porter has offered some innovative suggestions to this Congress and to the administration on how we might do the entire processing differently, how we might handle the foreign policy initiative with regard to Haiti differently. As far as I know, Porter is the only one that has come up with a really creative alternative to some of the time-honored methods of trying to deal with this problem, and I would certainly relish the opportunity to hear from him. I also look forward to hearing from our other colleagues who are going to offer their ideas today.

Thank you, Mr. Chairman.

Mr. MAZZOLI. I thank my friend.

Does the gentleman from Illinois have an opening statement?

Mr. SANGMEISTER. Just that I want to compliment the chairman also for putting this hearing together. Obviously, there is nothing more important than what is happening in the way of immigration as far as Haiti is concerned, and if this committee can be of help in working with or guiding the administration in getting an answer to that problem, this is going to be well worth our time and effort.

I see through looking through my file that a number of our colleagues have bills. I am interested in hearing as to which one of those thinks that they have got the right idea, and you have got INS here, you have got everybody that needs to put together a good hearing, and thank you for putting it together, and let's proceed with the witnesses.

Mr. MAZZOLI. I thank my friend.

The gentleman from Florida, Canady.

Mr. CANADY. Thank you, Mr. Chairman.

I am pleased to be here at this hearing today and appreciate the opportunity to address this very important issue.

The one point I would make is that I think we have to proceed with great caution when we are considering any policy changes that could precipitate a mass exodus of people from Haiti. I am concerned that such policy changes would end up actually harming

the very people they are designed to help, and I think that is a perspective that we must bear in mind as we proceed with this issue.

Thank you.

Mr. MAZZOLI. I thank the gentleman.

The gentleman from New York.

Mr. NADLER. Thank you, Mr. Chairman. I, too join in thanking the chairman for holding this hearing.

My opening statement is going to be very brief. I am going to be asking one question throughout this hearing. The law of the United States, as well as international law, requires that we grant asylum to people who have fled their homeland with a well-founded fear of persecution, and apparently, as one can see from this photo of someone whom we sent back to Haiti because we determined that he did not have a well-founded fear of persecution, this is a photo of what is left of his head after the authorities in Haiti finished with him, after the United States sent him back to Haiti. He apparently did have a well-founded fear of persecution, if one can define being hacked to death as being persecuted.

[The photo follows:]



Mr. NADLER. So my question is going to be to every official of the INS and everybody here today: What can we do? How can we, now that we know that the Haitian junta does this to people that we send back, how can we have joined them in being complicit in this and joined them in having blood on our hands?

Mr. MAZZOLI. I thank the gentleman for the statement, but I believe the gentleman may be drawing conclusions from his opening statement that may not be valid. I think it is impossible to aver or prove that everyone sent back is treated as this gentleman was shamefully treated, and I don't use the word—I don't think the gentleman meant to use the word "complicit" in the sense that the United States is associating itself with miserable and mean-spirited and inhuman activities such as that.

But at the same time the gentleman is correct, we have to ask some very tough questions as to why it seems to be that we make different distinctions between how we treat Haitians and how we treat people from Cuba, how we treat people from Russia, we treat people from other parts of the world.

Mr. NADLER. Well, I—

Mr. MAZZOLI. Yes? Certainly.

Mr. NADLER. I would simply say that it is self-evident that in the case of Mr. Desanges here, the United States, which sent him back, should not have sent him back, that he had a well-founded fear of persecution. That may not be the case in every case, but it is certainly the case in many cases where we are sending people back to their deaths.

Mr. MAZZOLI. And I think we should certainly get into those exact questions.

The gentleman from Texas, do you have any opening statement?

Mr. BRYANT. Mr. Chairman I don't have an opening statement except to say that I think the overriding—well, I guess perhaps not the overriding concern but certainly an important one for me is how we justify treating Cubans differently than we treat Haitians. I don't understand it. That doesn't necessarily mean that we need to treat the Haitians like we treat the Cubans, but maybe we need to treat the Cubans different. I just think it is totally inconsistent and is obviously based on the fact that everybody is scared to death of the Cuban-American population, afraid that they will vote against them in the elections, I guess.

But we need to confront that as a people. It is wrong to continue this. The Haitian people are just as good as the Cuban people, and they obviously right now have a much greater fear of being persecuted than somebody even in Cuba does. So we have to resolve that if we are going to have any integrity in this policy, and I hope we have some light shed on that.

Mr. MAZZOLI. Well, the gentleman makes a very important point. I alluded to that in my statement, and I think the gentleman is right on.

We now would invite forth our congressional colleagues, the gentlelady from Florida, Mrs. Meek; the gentleman from Michigan, Mr. Conyers; the gentleman from New York, my colleague and classmate, the gentleman, Mr. Rangel; and also the gentleman from Florida, Mr. Goss.

So if you four Members—we appreciate very much your attending.

I understand gentleman, if it is OK, Mrs. Meek is participating in a markup of her subcommittee at 9:30. Would it be too discommoding to the gentleman that she go first?

Mr. CONYERS. Not at all.

Mr. MAZZOLI. In addition, the fact that she is much more attractive than the total of all of you together would make it also a natural choice.

The gentlewoman from Florida is recognized, and I might say that all statements will be made a part of the record.

The gentlewoman from Florida.

#### STATEMENT OF HON. CARRIE P. MEEK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mrs. MEEK. Thank you, Mr. Chairman, and thanks to the committee. I am very grateful for getting this opportunity to come before you today. I also want to commend the chairman for the work he had done in the past toward fairness and justice for Haitians.

First of all, of all the things you have heard and read, I come to you today with certain basic assumptions that must be talked about before I talk about the bill that I have sponsored for fairness for Haitians. Why did I sponsor a bill to get fairness for Haitians? Number one, the basic assumption is that Haitians are not treated fairly. They are treated impressively racist, they are treated impressively different, they are treated impressively wrong, and of course you can imagine my emotion, coming from Miami, FL, when every day the people I represent see hundreds of Cubans coming in by boat, by plane, or whatever convenience and welcomed onto the shores without any interdiction, without any hearing, and immediately they are absorbed into the Miami community.

Then, on the other hand, I see Haitian refugees trying to make it to these shores, our shores which represent freedom and justice for all, and they are turned back at sea, they are treated unfairly, many of them are placed in chains, and many of them are treated in the mode we treated slaves a long time ago.

Those assumptions, members of this committee, are not unfair assumptions, they are based on facts and empirical observation. The world is looking at us because they see this unfair measure of freedom and fairness. That is why I chose to introduce the Haitian Refugee Fairness Act.

There is an assumption that Haitians can receive fair and safe haven some place other than on the island. It is an erroneous assumption and a specious kind of assumption that Haitians can live freely and fairly on another island, a plantation-like island, away from their native island; an island that does not have the facilities or infrastructure to treat them. Haitians cannot continue to suffer under the kinds of double standards which we have them enduring.

So it is a moral kind of thing, Mr. Chairman. Our country has opened its doors to all other refugees and treated them fairly. That is why I chose to enter the Haitian Refugee Fairness Act.

What this bill does, Mr. Chairman, is to try in some way to make it fairer for Haitians. H.R. 3663 seeks to address three specific refugee problems. One is nonrefoulement or forced repatriation, sec-

ond, the status of Haitian nationals in the United States, and the third, to provide Federal funds to lessen the impact to State and local governments.

You have heard so many complaints from Florida, from California, and so many other States where they have had to receive the economic burden of Haitians coming to this country without any type of compensation to their State and local governments. This bill seeks to provide that kind of compensation or reimbursement to them. H.R. 3663 would also lessen the impact on State and local government in terms of providing Federal funds.

Mr. Chairman, we cannot forget that U.S. citizens and legal permanent residents who reside in New York, Miami, New Jersey, and other places throughout our wonderful country have children in Haiti who are suffering at the hands of the attachés and the military coup leaders. They are suffering. They are over there separated from their parents.

Because of the goodness of Chairman Rangel, I was able to go to Haiti and to see firsthand what is going on there with the children there. It is a terrible and a desperate situation, certainly disparate from the way we are treating children from other countries, again the reason for the Haitian Refugee Fairness Act.

Mr. Chairman, it is important that we can look at some way of leveling the playing field and make the situation fairer for Haitians. Anyone who looks at this situation and who looks at it with an air of fairness would know that it is wrong and should be corrected.

So, I introduced this bill because of the atrocities of stories I have heard from my constituents in Miami in an area called Little Haiti and what the administration has very slowly acknowledged.

This Congress addressed this issue a long time ago. You were not able to get it addressed in both bodies, but we do need now an administrative policy which is consistent and equally done and quickly done, to straighten out the killing field in Haiti.

A young woman appeared before NOW and the Women's Caucus whose face has been just clearly decimated by a machete, and it has ruined her. One of her arms has been cut off. She is an example of what happens for someone in that country who supports President Aristide.

But that is not what my bill is all about. My colleagues will tell you more specifically the political climate in Haiti, but I want this committee to understand, Haitians are not fleeing from economic persecution, they are fleeing from political prosecution. When there is a military coup, when there are people there who hate the return of Aristide and who are bent on being sure that he does not come back as the elected leader of the people, they kill or maim or terrify those who are there and support him. So men and women and children are being tortured and murdered, and this is commonplace for the Haitian people.

One week after my visit to Haiti with Chairman Rangel, Guy Mallory was killed on the streets of Haiti, and he was the person there who was the heart of the Cabinet of President Aristide—just wantonly killed.



All you have got to do is look at your newspaper. You see the native boys and girls bathing in water that is filled with sewage, no one worried about pollution, no one worried about contamination.

I come here this morning to seek your human qualities, your humanitarian qualities, and your understanding. What we are doing in this country is unfairly treating some of God's children, and it is up to us to do something about it.

I would like to submit for the record, Mr. Chairman, my complete testimony. My reason for coming before you this morning is to ask you to pass the Haitian Fairness Act which tries to do a very simple thing, to be sure that we follow what is fairly done for refugees fleeing from other countries, that whatever economic burden there is on States and local governments, that the Federal Government pay some of that back. That is the clarion call you will hear from Florida's Governor and you hear from many other Governors throughout this country. I didn't hear it, however, when the Cubans were coming in.

So I want you to understand my position. I am not anti-Cuban, I am not antianybody, I am for people who are seeking freedom and justice, and that is what the Haitian Refugee Fairness Act is all about.

There is a lot more I can say, but we want temporary protective status, Mr. Chairman. You asked for this, and you were able to get it through this Congress on the House side, to protect the Haitians that are currently in the United States and to keep them from returning to Haiti, where there is a very strong human rights crisis.

In summary, I beg this committee to listen to the voices of our colleagues here. I certainly am not in favor of any safe haven for Haitians on an island, I am certainly not in favor of isolating them from their progeny at all. So I beg this committee to consider this, and I thank you, and I want to thank my colleagues also.

Mr. MAZZOLI. Thank you very much, Mrs. Meek.

[The prepared statement of Mrs. Meek follows:]

**PREPARED STATEMENT OF HON. CARRIE P. MEEK, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. Chairman and members of the subcommittee, thank you for your invitation to testify this morning on behalf of my legislation, H.R. 3663, the Haitian Refugee Fairness Act.

I am particularly pleased to be testifying before you because of the leadership you and the Subcommittee have shown on behalf of Haitian refugees since the September 1991 coup. Your work and reputation for fairness has been a beacon of hope for Haitians both in Haiti and in the United States, and an inspiration for all of us who have been fighting on their behalf.

I note, Mr. Chairman, that right after the coup of 1991, you held the first congressional hearing on the treatment of Haitian refugees. Shortly after that hearing you introduced H.R. 3844, comprehensive and far-reaching legislation that sought to protect Haitian refugees from forced repatriation to Haiti, and to provide Temporary Protected Status (TPS) for Haitian refugees here in the United States. I also would like to thank you, Mr. Chairman, and your subcommittee for fighting to get that legislation to the House floor, where an amended form of it passed the full House of Representatives in 1992.

I would also like to acknowledge the support for the Haitian refugees by Members of the Subcommittee. Several Members, including Mr. Nadler and Mr. Becerra, are among the more than 80 cosponsors of H.R. 3663. And Mr. Schumer has been a strong supporter of Haitian refugees for many years.

Finally, Mr. Chairman, I would like to acknowledge my colleagues who are testifying with me today. I am a cosponsor of Mr. Dellums' bill, H.R. 4114, and Mr. Conyers, of Michigan is second to none in both the length and depth of his commitment to this issue.

I will testify today about the specific provisions of H.R. 3663. But before I begin, let me mention the other bills that I have introduced on Haitian refugees.

I introduced H.R. 3364, legislation which would allow the children of legal U.S. residents to adjust their status here in the U.S. The need for the bill is more critical now than when I introduced it in November.

Current law requires that the children of legal U.S. residents, who are living with families and going to school here in the United States, to leave the U.S. in order to adjust their status. Because of this law the children of many of my constituents in Miami -- legal U.S. residents living in Miami -- have to go to Haiti to become legal residents themselves. As a result, children have been stranded in Haiti while waiting to receive their immigrant visas. And during this time there has been continuous, and numerous reports of the terror that the Haitian people must endure under the illegal government there.

These children, all of who have I-130 petitions approved by INS, must appear before a consular officer for a final interview and issuance of a visa. Requiring children of legal U.S. residents to return to this uncontrolled environment of terror and intimidation to adjust status is inhumane and it is an unintended consequence of current law. It results in children being cruelly separated from their parents and forces them to live with strangers or (if they are lucky) with family or friends in an unsafe environment until their cases are resolved. My bill, H.R. 3364 would allow these children to become permanent residents without forcing them to leave their families.

Another bill I introduced, H.R. 986, would allow Haitians who have been in the United States since January 20, 1993 to adjust their status to permanent residency within two years from enactment. Many of the Haitians currently in the United States are fortunate to be alive. After the military coup, they risked their lives at sea primarily to escape political persecution. Many of these same Haitians are now in various stages of immigration processing. This bill would not benefit any Haitian not in the U.S. prior to that date.

The bill I am discussing today, H.R. 3663, seeks to address three specific refugee problems: *nonrefoulement* or forced repatriation; the status of Haitian nationals here in the United States; and federal funds to lessen the impact to state and local governments of admission of Haitian refugees in their states.

### *Nonrefoulement*

On May 24, 1992, the United States put into place a policy of returning to Haiti those Haitians we have encountered on the high seas without first assessing whether they were fleeing persecution at the hands of the military junta that has seized control there. Since that time, these diverted refugees have been routinely fingerprinted, photographed, and interrogated by Haitian authorities upon their return. Human rights observers have reported that a number of returnees have been imprisoned or beaten upon their return. Others have disappeared or have been forced into hiding. Unfortunately, the current administration took repatriation a step further by extending it to Haitians encountered within Haiti's territorial waters. For more than 17 months now, the current Administration has actively searched out, interdicted, and returned all Haitians to Haiti, regardless of their intended destination. For more than 17 months, this Administration, in effect, erected and maintained a floating Berlin Wall around Haiti to keep anyone seeking to flee persecution from escaping from their tormenters.

Mr. Chairman, I introduced H.R. 3663, the Haitian Refugee Fairness Act, as a result of my concern for the injustices and suffering faced by the Haitian people as well as the lack of response and indifference by the U.S. I introduced H.R. 3663 because it is the moral and humanitarian responsibility of the U.S. to protect those Haitians who have sought refuge in this country.

As I have repeatedly heard from my constituents in Miami of the area called "Little Haiti" and as the Administration has finally acknowledged, there is a human rights nightmare -- a holocaust -- a killing field -- occurring in Haiti. It is a consistent campaign of terror against the Haitian people by the ruthless military regime. It is a

campaign of terror against the supporters of President Aristide that has intensified in recent weeks. It is a campaign of terror that is being carried out in all areas of the country, from Port-au-Prince to the remotest hamlet. Yet, we refuse the Haitian people sanctuary.

Men, women, and children are being tortured, murdered, and mutilated. Killings have become commonplace for the Haitian people. Their bodies, disfigured, dismembered and unrecognizable to friends and family, are dumped in the streets to be scavenged by dogs and pigs. Yet, we refuse the Haitian people sanctuary.

Human rights advocates rate Haiti as one of the worst violators of human rights in the world. And the reports confirm that one of the most hideous crimes, the rape of women and young girls, is being committed by the de facto regime.

In Haiti, naked boys are often a common sight -- a way to endure the oppressive heat. But the genitals of girls are covered. Why? Because Haitian culture honors the "birth part" of females as the "pathway of life." This custom once kept rape to a minimum. But now rape is becoming a frequent tool of political repression by the military. The gang rape of women and young girls whose husbands, fathers, brothers and sons are politically active are being reported at an alarming rate. Yet we refuse the Haitian people sanctuary.

I would like to submit for the record the story of Alerte Belance. Miraculously, Ms. Belance survived a machete attack by a pro-military terrorists. "The attack left Ms. Belance with her right arm severed below the elbow. A slash across her face took out her upper palate. A deep gash dents the back of her neck and scars cover her body. Doctors were able to sew back her severed right ear. The front half of her tongue was recovered and reattached." Ms. Belance's story is just one of many of the unmerciful treatment being inflicted on the Haitian people by the military.

As a candidate, President Clinton criticized the previous administration for not giving Haitian refugees an opportunity to apply for political asylum after being

intercepted at sea by U.S. Coast Guard cutters. He hit a responsive cord in many Americans who were appalled at the unfairness of our policy toward Haitians. On May 8, 1994, the President made a step towards fulfilling his promise. However, we must not forget that it is just that, a step.

I applaud the President's decision to interview all Haitian nationals fleeing the brutal regime that is in power in Haiti to determine if they have a legitimate claim for political asylum. However, I am more concerned than ever about those individuals who have been returned to Haiti by the U.S. and are now a of target for the ruthless Haitian military.

Forced repatriation is particularly distressing in light of the announcement that the illegal junta has reinstated enforcement of 1980 Duvalier provisions which make illegal "all irregular trips toward foreign lands" and punish those individuals who have fled by boat and are returned to Haiti by the United States.

Since the May 8th change in Haitian refugee policy, at least 80 of these repatriated refugees have been arrested upon arrival in Port-au-Prince. They have been detained anywhere from several hours to several days. During these repatriations, journalists and human rights observers have been prohibited access to the dock, and U.S. officials routinely have been denied access to detainees by the Haitian army. Given these facts, coupled with the recent attack on the United Nation observers, I ask that the Administration revisit the question as to whether anyone should be returned to the hands of the military-backed government.

As we all know, Mr. Chairman, thousands of refugees have tried to escape the horrors of the increasing human rights abuses in Haiti. They would rather face the danger at sea and try to make it to America where they believe that we "Americans have a respect for human life."

And what is the U.S. doing with the people it is "rescuing?" We are sending them back to the very persecutors we denounce. We are sending them back to the

ruthless military that has now decided that they are the criminals. Mr. Chairman, it is unconscionable that we, a nation of refugees, send these people back to the torture, the rape, the mass murder, the mutilation, the total disregard for human life that is in Haiti.

Section 2 of H.R. 3663 seeks to reverse the Bush/Clinton policy of automatic, forced repatriations of refugees to Haiti. It would make our policy conform to international law by requiring the United States to determine the legitimacy of an individual's claim and prohibiting the United States from returning people to their country of persecution if we determine that they are refugees. For the record, Mr. Chairman, I would like to submit a copy of the letter I received from the United Nations High Commissioner for Refugees regarding the "U.S. practice of interdicting Haitian refugees on the high seas and summarily returning them to their country of origin."

The *nonrefoulement* provision in H.R. 3663 is not Haiti-specific. It would apply to anyone encountered outside U.S. territory or within the territorial waters of another nation.

The Bush/Clinton repatriation policy did not meet this requirement. Under the Bush/Clinton, policy Haitians were held hostage in their own country. This blockade by the U.S. Coast Guard surrounding Haiti was an unprecedented denial to Haitians of the most basic human right, the right to flee persecution in their country in search of safety in a country of first asylum. This policy was not just a violation of international law; it was a violation of the most basic code of humanity. The Administration's announcement on May 8 was clearly an admission that its policy was patently wrong.

While the legislation would prohibit the return of individuals deemed to be refugees to their country of persecution, it would not require that they be brought to the United States.

### Temporary Protected Status

Section 3 of H.R. 3663 would designate Haiti for Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (INA), thereby protecting Haitians currently in the U.S. from return to Haiti while there is a human rights crisis there.

It is imperative now, more than ever, Mr. Chairman, that we provide Temporary Protected Status to Haitian nationals. H.R. 3663 would permit Haitians already in this country as of November 17, 1993 to apply for Temporary Protected Status.

Under the provisions of TPS enacted as part of the Immigration Act of 1990, the Attorney General is authorized to designate any nation or part of a nation under TPS if she finds that there is an ongoing armed conflict within that nation. TPS would allow Haitians to remain in the U.S. until the Attorney General determines that conditions in Haiti are safe for their return. Meanwhile, they would be granted work authorization. By granting Haitians TPS we achieve two objectives: undocumented Haitians can live and work in safety without fear of being deported, and the INS would know where they reside so that it can facilitate their return once conditions in Haiti are safe. Certainly there is ample evidence that Haitians here in the U.S. would be in grave harm if sent back to Haiti under current conditions.

- Roving bands of government-sponsored thugs, known as zenglandoes, are terrorizing and maiming Church officials, political activists, elected and appointed officials loyal to Jean Bertrand Aristide, Haiti's democratically-elected president, and Aristide supporters;
- Officials and activists loyal to the democratically-elected government have been dragged from churches, murdered in the streets, kidnapped from their homes, and jailed;
- Just last week two United Nations and the Organization of American States observer teams were stopped, their possessions were confiscated and they



were threatened imprisonment if U.S. military or multinational forces took action against Haiti.

This Administration's unwillingness to designate TPS for Haitians is inexplicable. During his May 8 announcement of the Administration's change in policy, President Clinton said, "the repression and bloodshed in Haiti have reached alarming proportions. Supporters of President Aristide, and many other Haitians, are being killed and mutilated." On May 3, the President stated "they [the military] have begun to clearly kill more innocent civilians --- people not even directly involved in the political life of the country." These events and the endless number like them, as well as the numerous statements about the generalized violence in Haiti made by the Administration, clearly makes Haiti eligible for TPS.

TPS is a status that has been granted by the Attorney General to nationals of other nations, such as Kuwait, Somalia and Bosnia during conflict in their countries. Under the circumstances, Mr. Chairman, Congress is left with no alternative but to legislate TPS as it did in 1990 when it designated TPS status for El Salvador by an Act of Congress.

I would like to bring to the Subcommittee's attention a technical adjustment that should be made to the TPS section of my bill. I would like to clarify that Haitian parolees who have been resettled in the U.S. through the Community Relations Service of the Department of Justice and who are consequently deemed PRUCOL not lose this status if they avail themselves of TPS. It is my hope that the Subcommittee will adopt this amendment during markup of this legislation.

#### **Impact on State and Local Governments**

Sections 4, 5, and 6 of H.R. 3663 deal with the impact on state government of the federal government's decision to admit Haitians and Cubans into the U.S. More specifically:

Immigration Emergency Fund

Section 4 explicitly permits use of the Immigration Emergency fund created by the Immigration Reform and Control Act of 1986 (IRCA) for this purpose.

Cuban/Haitian Primary/Secondary Migration Program

Section 5 assures adequate funding for the Cuban Haitian Primary Secondary Program, operated by the Community Relations Service (CRS) of the Department of Justice. My bill authorizes \$6 million for that purpose. However, many more Cubans and Haitians have come to the United States in recent months than the Justice Department had originally estimated. I would ask that this amount be increased to \$10.8 million which reflects the latest estimates of the cost of this program, when the Subcommittee marks up this legislation.

The number of Cubans and Haitians who are now expected to reach our shores in the remainder of this and the coming fiscal year is dramatically higher than in recent years and increasing almost every day. Adequate funding for this program is of enormous importance to the state of Florida which has borne the expense of caring for Cubans and Haitians entering the U.S.

Year after year, CRS has been underfunded. With the recent dramatic increase in the number of Cuban and Haitian arrivals needing resettlement, the program needs additional funds from within the Department of Justice to maintain current resettlement operations for the current fiscal year. Moreover, all indications are that in fiscal year 1995, arrivals will far exceed those anticipated by the Department's original request of \$7 million.

The existing Cuban/Haitian Primary Secondary Migration Program's budget is inadequate to resettle anticipated arrivals. In order to avoid the chaos and disruption to the program and local communities that uncertain funding brings, \$10.8 million is needed.

### Cuban/Haitian Entrant Emergency Fund

Section 6 creates an emergency fund of \$5 million to take care of future large, unexpected flows of Cubans and Haitians. The intent of this fund is make funds available to CRS for primary and secondary resettlement of Cubans and Haitians if as in this year, the regularly appropriated funds are insufficient in the face of a large, unexpected flow of Cubans and Haitians. Such a fund would shield CRS from the obligation of scurrying to find funds to provide services for Cubans and Haitians in an emergency situation.

### Conclusion

Mr. Chairman, I am well aware of the fact that the U.S. cannot possibly accept all the people who would like to come here, but we must have a standard that treats all nationality groups equally and procedures that are applied to all with fairness.

No one wishes to provoke a mass exodus of desperate people onto dangerous seas. But we cannot use that concern to justify discrimination and inequity of treatment. We must act in the most just and humane way possible to ensure the safety and well-being of those who seek the protection of our country.

Fifty-five years ago, just before World War II, nearly 1000 German Jewish boat people aboard the ship *St. Louis* were denied refuge by U.S. immigration officials. Not allowed to dock at U.S. ports -- including Miami -- or at ports in any other country, the *St. Louis* returned to Europe, where many of its unwanted and unwelcome passengers died on the killing fields and in the gas chambers of the Third Reich.

Despite the embargo and behind the scenes diplomatic efforts, Haiti remains a very dangerous place for its citizens. As a nation, we refused to protect desperate Jews seeking refuge from Nazi Germany. If we fail to protect Haitians, we will have learned nothing from our mistakes and will be continuing a callous and inhumane policy, repeating mistakes of the past.

Mr. Chairman, the ultimate solution to the problem of refugee flight from Haiti is to restore democracy there. But until that happens, we must correct the injustices of current law and respond to the pleas of the Haitian people. It is imperative that we reform our Haitian refugee policies to remove the blanket presumption that all Haitian asylum seekers are economic refugees. This is our opportunity to regain the moral high ground. We cannot ignore the Haitian people in their time of need.

In closing, Mr. Chairman, thank you for holding this hearing today. I am pleased that your subcommittee is meeting to discuss this very important issue. I look forward to working with you and the Congress in an effort to ensure justice for all who are seeking asylum.

Mr. MAZZOLI. For the record, we have been joined by our colleague from Florida, Lincoln Diaz-Balart, and we will note that his statement will be made a part of the record.

In order to accommodate Mrs. Meek's schedule—she has a 9:30 markup—I think if it is OK with the other panelists, that we do brief questions of the gentlewoman and then move on to the gentlemen. Is that sufficient?

Well, very quickly, Carrie, thank you very much for your testimony and for your leadership here.

Secondly, I think that the term "fairness" is certainly an apt word today because it is an effort—the gentleman from Texas most recently said that we are trying to find some fair and balanced way to handle this thing.

I have several questions, I will not ask them of you, but first, as far as the Haitian children, your position is that the children who are in the United States but who are not U.S. citizens but their parents are permanent residents currently have to go back to Haiti in order to process their papers.

Mrs. MEEK. Yes.

Mr. MAZZOLI. Your thinking would be for a lot of reasons, including the ferment in Haiti, that the children not have to return to Haiti to process their citizenship papers. Is that essentially the issue?

Mrs. MEEK. Yes, it is, Mr. Chairman, that they be processed in the United States, and of course INS has tried to help us in this regard. They have tried to set up a place in the New Mexico wherein the ones who are over here and must go back to Haiti to adjust. But what I am asking is that they be adjusted here in the United States.

Mr. MAZZOLI. We will take that up with the INS, and I am sure that they will be sympathetic to that.

Mrs. Meek, the last question would be the thing that all of us have said, and that is, we want the effort to be as fair and balanced with regard to Haitians without at the same time creating what some would call a magnet or a lure to get people to leave the island who would otherwise stay or to subject themselves to dangerous situations which some would argue is the condition of rickety boats in the Windward Passage.

Do you see the application of temporary protected status or the application of nonrefoulement, which means that the people are not going to be sent back as constituting that kind of a lure that would only worsen the condition even as we are trying to invoke reasonable solutions and trying to have a tighter embargo and trying to precipitate this situation?

Mrs. MEEK. I think that in terms of the U.S. policy toward Haitians, that, as I said, it is unfair. They have not done this for any other refugees. I do think that when they do get the kind of thing that I am asking for, that it might be an incentive for them to come to the United States, yes. The answer is yes.

But I think that with the return, the precipitated return of President Aristide, that we will see fewer and fewer Haitians wanting to come to the United States. The Haitians I represent in south Florida tell me every day that if Aristide were to return to Haiti, that they would want to go back to Haiti even though they are now

in the United States. Naturally, the United States has good conditions here, but they would naturally rather be in their own country than over here. That is the word I get from the Haitians in the United States.

So to answer fairly your question, there is an incentive for coming to the United States for all foreigners, for all immigrants, so there is some incentive for Haitians as well.

Mr. RANGEL. Mr. Chairman, is it possible that I could reschedule or come back? I understand you will be meeting until 2. I, too, have a 9:30 markup.

Mr. MAZZOLI. Certainly. I would be happy to accommodate the gentleman. In fact, for all the Members, I realize the schedules we have. We certainly would accommodate the gentleman.

**STATEMENT OF HON. LINCOLN DIAZ-BALART, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Mr. DIAZ-BALART. Mr. Chairman, if I may, I would request unanimous consent to be able to submit a written statement for the subcommittee's consideration and appreciate very much the opportunity to do so.

Mr. MAZZOLI. Very good.

Mr. DIAZ-BALART. I am here just to state on the record that I support the Meek legislation in support of elemental human decency and fairness with regard to treatment for Haitians.

Thank you, Mr. Chairman, for the ability to submit my statement.

Mr. MAZZOLI. Thank you, my colleague. Thank you very much. [The prepared statement of Mr. Diaz-Balart follows:]

PREPARED STATEMENT OF HON. LINCOLN DIAZ-BALART, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, I commend you for holding today's hearing, and appreciate the opportunity to appear in support of legislation drafted by my good friend Congresswoman Carrie Meek. We in South Florida know of the terrible plight and desperation faced by refugees fleeing oppressive dictatorships better than anyone else in this Congress. I myself am a refugee who fled the totalitarian regime of Fidel Castro, which continues its brutal 35 year effort to squeeze the life from the Cuban people. Mr. Chairman, I am a co-sponsor of H.R. 3663, the Haitian Refugee Fairness Act, because I know first-hand the desperation of people who are driven into exile.

As you know, Haiti is a country where democracy has been abused, and most recently, hijacked by the current military government. Not only that, the Haitian people have been subjected to the empty hope of the Governor's Island Accords, negotiated in July 1993, signed by the current regime and then completely ignored. As a result, there is no democracy in Haiti, and we are faced with a worsening refugee crisis.

Mr. Chairman, I support the efforts of the United States and the international community, and recognize that democracy is the only way to genuinely solve the crisis. However, in the meantime we must not ignore our responsibility to deal with the refugee situation. That is why I have worked closely with my colleague on H.R. 3663 which reaffirms our obligation as a nation to refrain from the involuntary return of refugees outside the country.

H.R. 3663 commits us to determining the legitimacy of Haitian refugee claims, designates Haiti under the Temporary Protected Status program for a period of 24 months, and prohibits repatriation of refugees who are deemed to be fleeing persecution.

Mr. Chairman, there are other aspects of H.R. 3663 which are important to note. For example, H.R. 3663 requires the federal government to reimburse overburdened state and local governments for the costs associated with Haitians paroled into the United States.

H.R. 3663 also earmarks funds for the Cuban and Haitian Primary Secondary Migration Program which is operated by the Department of Justice, Community Relations Service. This bill would also create an emergency fund (Cuban/Haitian Entrant Emergency Fund) for resettlement services necessary should the number of Haitian and Cuban parolees exceed current funding, which they most probably will. This funding is needed not only by those seeking to adjust to their refugee status in the United States, but is desperately needed by my home state, which is the front-line state in this effort.

I urge my colleagues to take a close look at the Haitian Refugee and Fairness Act, and take into account the pain and suffering of those it seeks to help.

Mr. Chairman, as a final word, let me say that I want to do all I can to solve the crisis of dictatorship in the Caribbean. Both the Haitian military and that totalitarian madman in Cuba should wake-up to the inevitable: only true democracy and respect for human rights will satisfy their people. Not negotiations, not gradual economic reform, not cosmetic adjustments, not temporary "openings." The choice is clear: there is only democracy or dictatorship. There is absolutely no excuse for the wanton and indiscriminate abuse of your own people.

Mr. Chairman, I appeal to the international community to do more to solve both the Cuban and Haitian crises.



Mr. MAZZOLI. The gentleman from Texas.

Mr. BRYANT. I don't want to ask questions out of turn. Before everybody gets away, I would like everybody to answer the question: Do you agree we should treat the Haitians exactly like the Cubans, particularly you guys from Florida?

Mr. DIAZ-BALART. If I may—may I Mr. Chairman?

Mr. MAZZOLI. Surely.

Mr. DIAZ-BALART. I think that we need to view the existence of these two dictatorships first as temporary and, secondly, as completely unacceptable, and I think that certainly the Cubans and the Haitians are in a unique situation in this hemisphere. In this era that we are living, dictatorships, I think, are something that not only should be something from the past but our law, our law as well, should recognize that they are unacceptable and they should be treated as unacceptable and especially as temporary, and I think that not only our policy but inter-American policy generally should be focused on the elimination of dictatorships in this hemisphere and in the interim period certainly special treatment should be provided for those fleeing from the scourge of those two dictatorships.

Mr. BRYANT. A very simple question, however: Should we treat the Haitians just like the Cubans?

Mr. DIAZ-BALART. I think they should certainly be allowed—while there is a dictatorship in Haiti, they should be treated as fairly as the Cubans are treated.

Mr. BRYANT. The same law would apply to both?

Mr. DIAZ-BALART. I would support that.

Mrs. MEEK. Mr. Chairman.

Mr. MAZZOLI. Certainly, unless anyone has a question of Mrs. Meek—I think not. The gentlewoman is excused, and thank you very much for your help today.

Mrs. MEEK. Thank you.

Mr. MAZZOLI. We might now possibly go on—the gentleman from New York has the time. Would the gentleman wish to go forward? If other colleagues would defer, we could accommodate the gentleman's schedule.

Mr. CONYERS. The gentleman from New York has assured me he needs only 5 minutes.

#### STATEMENT OF HON. CHARLES B. RANGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. RANGEL. Really, and I really appreciate the courtesy, and I really want to thank this committee for once again bringing the Members together to try to bring about a humane policy for Haitian refugees as you always have as relates to other refugees.

I just want to briefly tell a story. Jerry Nadler and I had a dear friend who was a friend of the House as well, Ted Weiss, and recently in New York when we were refurbishing the Statue of Liberty, we had a great ceremony out there with the fireworks and the choir singing "God Bless America," and the late Ted Weiss was crying, and I felt it was a political affair, I couldn't see why he was so emotional about it. But he reminded me that he and his sister fled Hungary and how great America had been to them, that they were allowed to come into America, and he shared with me that in

the 1930's there were many Jews that were fleeing Europe and in a boat called the *St. Louis*, and at that time the United States did not see fit to open up its heart and its arms, and these Jewish people were returned to Germany and got caught up in the Holocaust, and he was just thanking God that he was not treated that way.

Ever since hearing that story and seeing these poor wretched souls on the boats with the women and children, I could not help but remind myself that this is certainly not what the Statue of Liberty is all about, or our Constitution, and I know that if these people were rich or had oil or came from Europe, that they would be treated differently, that the policy that we have is—as you said, Mr. Chairman, we don't have a foreign policy as relates to Haiti and the racism that exists. It is difficult and embarrassing to talk about, but it is the politics of racism as well.

So when the United States really reaches the point that we believe that, morally and constitutionally and legally, we can seal up a person in their own country because we have decided that it is in their best interests, then we know that we don't want them on television, we don't want Americans to be viewed as being insensitive and that we have no moral right to seal up people in their own country, and, even though that policy has been changed, we have no moral right to go to the high seas and stop people because we know that they are heading for the United States.

As relates to the processing and the screening, I mean we put a cap on how many people can come in, if indeed they are found to have a legitimate cause. The fact of the matter is, the President of the United States already declared that Cedras, the general in charge of the coup, is a murderer, Francois is a murderer.

We know, as people have testified, that individuals have been sought out that supported Aristide and killed, entire communities have been wiped out merely because they support Aristide, and the truth of the matter is, if you are poor and you are black and you are not in the army, you are a supporter of Aristide. The election result clearly pointed out what it is, and those that flee and are returned home are subjected to the type of terrorism and mutilation as we have seen with this dramatic picture that Congressman Nadler brought.

So I know the President has a political problem, and I am just saying that the refugees shouldn't suffer as a result of this lack of policy. Any time you take the military option off the table and you are dealing with bullies, clearly what you are saying is that yes, we signed an agreement with you at Governors Island; yes, we demand that you leave the country; yes, we are coming in with international people there; but don't worry about us, we'll never intervene with military. And so please don't let the President's lack of a foreign policy with Haiti cause so many lives to be lost at sea.

My friend here indicated that dictatorship, whether light or dark, black or white, if there is a standard, then let's apply the standard. If indeed Cedras was a Communist, would it be any different? Would the lives be any different? Would the feeling be any different?

We know what is going on, and I just hope that this committee can find some way, and a humane way, to just protect the refugees until the President can see his way clear to do the right thing.

I thank you and my colleagues.

Mr. MAZZOLI. I thank the gentleman very much, and now we will proceed more or less to regular order, and the regular order is the gentleman from Michigan. We welcome him, and the gentleman from Florida is excused.

Thank you very much.

The gentleman from Michigan.

**STATEMENT OF HON. JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN**

Mr. CONYERS. Thank you, Mr. Chairman.

I am here again as a result of our deep concern about this particular immigration problem. As my seatmate in Judiciary for many years, Chairman Mazzoli, I am highly disappointed that you will not continue in this seat. You have made a very important decision to step down, and I am hoping that this issue will be your last contribution to the tragedy of Haiti policy and one that I think you may be able to do something about.

We have talked about this many times across the years, and I have brought a solution to this committee that we may be able to help the present administration and President Clinton out of the difficulty that he is in, and it would simply be to do among these several things: One, that we terminate the bilateral migrant interdiction agreement that has allowed Duvalier from September 1981 to return Haitian refugees to the United States. That is an unprecedented agreement and is obviously flawed both, morally and legally.

The second is that we would halt the Coast Guard forced repatriation of Haitians. We are not helping them by returning—saving them from drowning by returning them to the dictator that they sought to escape. I mean they had already weighed that decision, and, as tragic a choice as that is, what we might consider doing instead is joining in not only in refurbishing Guantanamo, but the OAS has now come forward, and we have other nations in that area that are suggesting that they would provide a haven for Haitians who are temporarily seeking refuge from the brutality that exists in their country, and so we are making progress. What we now need to do is turn this modest progress into something substantive.

Our former colleague, Bill Gray, has now replaced Larry Pasula as our special envoy to Haiti. We have Randall Robinson's dramatic fast in which he risked his life and is, in a way, responsible for the change in position and tone that our Government has put forward with regard to Haiti, and I want to credit him, Trans-Africa, and the Congressional Black Caucus, the church groups, the artists organizations that have all weighed in to witness what I think I see is a beginning of a turnaround in policy, that this committee is in a unique position with your leadership to make a change.

Now what is the basic underpinning of all of this? Well, it is the simple fact that the military junta does not believe that we are serious about restoring President Aristide and restoring democracy. That is the simple bottom line. Many of us were at Governors Island, and the representatives of the military took us through all kinds of changes. We dotted every I, crossed every T, went through

all kinds of changes. They finally reluctantly agreed to sign and immediately went out and began violating literally every part of the Governors Island accord.

So it is very difficult for us to realize that we cannot negotiate our way through, we cannot even with sanctions force out an illegal government that has now been revealed to be probably facilitating drug trafficking, drugs which, incidentally, are coming directly to the United States, which are involved in money laundering and all manner of activity. There are all kinds of reports about the great wealth being accumulated there illegally under this takeover of the government.

So what we are trying to do here is find a way to do that, and so the President has begun to rattle his saber, the swords are rattling: Well, there might be military intervention, we haven't ruled out anything. We are trying to send these kinds of signals, and this committee could send a legislative signal that could be very important. It is my experience, and it even exists in Haiti's history, that once they understand that the United States really means business, then we are in a position to really get something accomplished, but as long as they believe that we are mouthing democratic platitudes with no sincere conviction about restoring President Aristide as the clock ticks away, I think we are going to be in the situation that it will continue in one form or the other.

So I support temporary protected status. I introduced it in the legislation to the committee in the previous Congress. There are a number of bills, all of which I support, before you that accomplish the same thing. But we have got to make it clear that our policy is different and there is a great benefit that comes about by taking on the immigration question first, because once we make it clear that we mean what we say, the need for increased accommodations for escaping, fleeing Haitians will be dramatically lessened, and it seems to me that that is pretty clear, that we can do the right thing, the humane thing, and at the same time help resolve the political problem.

So I urge that we continue in this vein, move forward as expeditiously as we can, and remember that what we have now is two sets of laws. We have a two-track asylum process and one that applies to Haitians and one that applies to everyone else.

I would say treat the Haitians as the Cubans, but I would say treat the Haitians as we treat everybody else, with the understanding and the tools that are available for us to use under this situation, and TPS is a perfectly reasonable temporary method that I think would take care of the circumstances. So I urge you, in what may be our final mutual attempt to resolve this problem, that you move this kind of legislation forward as soon as you can.

Mr. MAZZOLI. I thank my friend for his statement and thank him for recollecting our long seatmateship, if there is such a word, over the years on Judiciary, and I appreciate his statement.

For the record, we should note that the gentlewoman from Florida, Ms. Brown, has joined us and the gentleman from New York, Mr. Owens, has joined us.

The gentleman from Florida, Mr. Goss.

**STATEMENT OF HON. PORTER GOSS, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF FLORIDA**

Mr. Goss. Thank you very much, Mr. Chairman.

I hope this is not going to be your last contribution. You have made many, and I suspect there will be more, but I surely hope this is an area of success and achievement because it is a very troubling problem, and I congratulate you for taking these efforts and your colleague, Mr. McCollum.

We are talking about, it seems to me, two separate things here. One is the situation in Haiti today as it applies to the suffering that is going on, the refugee situation and the restoration of democratic government; that is one set of issues. Another set of issues is the question of fair treatment, the comparison of the Cuban Adjustment Act situation versus the other people in the world, those being in closer proximity suffering proportionately a greater inequity, and Haiti is of course very close to Cuba in terms of American geography, so that emphasizes that issue.

There have been a lot of solutions suggested. I would just like to briefly say this with regard to the present situation. In terms of suffering, there is no question that the policies of the U.S. Government today are adding to the suffering and the misery in Haiti. That is not denied. We see that for every picture of that type that we see Mr. Nadler has introduced, there are regrettably many more pictures that are much worse of children and women and innocent victims who are on the poor end of the spectrum who are being seriously impacted by the lack of food, lack of nutrition, medical attention, every day as this thing goes on.

I was just informed that we finally got one AGAPE flight from Florida yesterday, but each flight is still being handled on an individual basis. That means they are basically sitting on the runway in Florida. We cannot get medical and foods supplies in. There has been no change in administration policy. Even though Mr. Gray has said he would help us on these flight situations, there is a routine that involves getting about five people to sign off all the way through some U.N. committee and then all the way back down through State again. So every time we send one plane with relief supplies down there, it is a bureaucratic nightmare. The consequence is, people are going hungry, getting diseases, and it is going to be even a worse problem to resolve when we get through. So in terms of suffering, we are not doing ourselves or the Haitians a favor with our present policies.

Secondly, with regard to refugees, I think that right now in this country we have something more than a million Haitian refugees. Florida has a very large percentage of those. I will not stand quietly by and say that we have been in any way inhospitable to Haitians over the years in this country. We have done a magnificent job of putting out the welcome mat and trying to do our best. The fact of the matter is, our retention facilities in Florida are overloaded, they are full. The last batch of Haitians to come in, more than 500 were basically released into society, some with active disease, sadly enough, who will probably not get the right attention because we are full. We have got to provide other facilities if refugees are going to come here.

We are creating an incentive for more refugees, we know that. More pressure makes more suffering, more suffering means more economic hardship, which means more desire to leave the country. We will talk a little bit in a second about the economic/political hardship question.

But thirdly, we have got this situation of more suffering, more refugees, and my feeling is that the situation is so bad in Haiti now that if you say, "Everybody who wishes to come to the United States, please come, we will help you get there," you will find a very large number of refugees coming to the United States, probably millions.

Going to the third question, nourishing democracy, returning Aristide, I am very much in favor of having President Aristide returned to his country and being on his soil. I agree that is a critical part of building up what is our very slight hope for democratic institution building in that country because he is the properly elected President and he should be there in Haiti, being the President of the 70 percent or so of the people who enthusiastically elected him. I was there, and I know that is true.

We have talked a lot about why there is a problem in Haiti. Haitians have been trashing their country and each other for two centuries. That is history. It is a tragedy. We have been trying to provide guidance and help to get them from a condition that is not supportable in terms of our definition of democracy to a condition that is more in keeping with the democracy we aspire to have throughout the Western Hemisphere. We have tried hard and faithfully, and I am proud of the U.S. record on that, and I think we are doing well.

I don't think we need to stand back and say we have caused this problem, we have not, we are trying to provide a solution to a problem where none of those who have ventured before have had great success, either the French or the Venezuelans or the Canadians, or anybody else who has tried. So we are making a good-faith effort.

There is some revisionism going on while we talk about this subject. There are some who say that once you get rid of Cedras or Michel Francois you have solved the problem. How do you know that? We have had a whole history of dictators in Haiti. What is to say there won't be more replacements that will come in and be just as vicious and just as far over, that will have just as much hostility to the masses as those do now because they are afraid? We have traditionally had this breakdown in Haiti of the 10-percent elite versus the 70-percent rest of the country. Just because you get rid of two individuals or three doesn't mean there aren't replacements.

We have polarized the situation in the country, we have created a divide, we have added to hate rather than solution building and bringing the country together to hit a high water mark, as the Aristide election represented 3 years ago.

Secondly, with regard to the economic refugees/political refugees breakdown, everybody who looks at this dispassionately—and it is hard to do—says that about 90 percent or more are economic refugees. These are not true political refugees as we define them, and perhaps that is something your subcommittee needs to address, is what is a real refugee in this kind of a situation.

I think it is very important to point out, though, that if we are going to change the rules and we are going to have different rules now for political asylum, we need to address them on a worldwide basis because it has implications in other countries that are not quite as close as Haiti, where there are people who are also in economic dire straits who would love to come to the United States of America and have more relaxed rules to get here, and if you doubt me, go back and look at the consular statistics through the normal process.

With regard to the issue of drug trafficking, I suggest this is getting to be the great bogus issue to justify some type of military action. There is no evidence whatsoever, that I am aware of—I repeat, no evidence whatsoever that I am aware of—that there is any bubble, any change in drug trafficking that warrants special attention, and if there were, it certainly would not be on a level that the IMSHA report or any of the other normal monitoring programs have reflected to us.

If you are talking about some type of a program now, gee, we have to think about invasion because of a drug threat, we have got to start with three Andean nations before we start talking about little places like Hispaniola where there are some drug overflights going on. So I don't think we ought to fall into the bogus issue of drug trafficking as a justification to get out the U.S. Army, Navy, military, Coast Guard, or whatever.

I agree very much with the testimony that we should have some type of a protective area. I would like to have that. I would like to know what countries my friend, Mr. Conyers, is referring to. There are no other countries, that I am aware of, that are willing to take on, on a full-time basis, the problem of Haitian refugees. Some will allow the temporary processing, some will allow the use of real estate, some will allow us to use some of their facilities, but nobody is saying, "Look, we want to take Haitian refugees and be responsible and absorb them into your society," that is just not happening, and where that has happened in the past, those people who have left Haiti voluntarily, who have not come to the United States but gone to third countries, have returned to Haiti, by and large. Those are the facts.

So when we get talking about this idea of forced repatriation of Haitians, which is important to all of us, the question is: Where do we put them? That is why I have offered the solution I have offered. You are familiar with it; you have accepted my statement into the record; I will not repeat it.

I think that the idea of taking off the sanctions and stopping this ratcheting up of misery, resuming the flights that are going to provide for compassionate relief for these people, and trying to find a solution for where we can process and grant temporary protective status is the right idea. I think those are the things we need to do, and I think we need to encourage in every way President Aristide's return to Haitian soil. I thought my solution did that. If somebody has got a better one, I want to listen to it, but the administration's present policy is not that, it is not better, it is worse; it is worse for America, and it is worse for Haiti.

Thank you very much.

Mr. MAZZOLI. I thank the gentleman from Florida very much. Provocative thinking, and, to say the least, we need some provocative thinking if we are ever going to solve this problem at all.

[The prepared statement of Mr. Goss follows:]

PREPARED STATEMENT OF HON. PORTER GOSS, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman:

Thank you for giving me the opportunity to come before you today to discuss Haitian refugee policy. This is a serious issue and one that desperately needs to be addressed.

Today, we consider approaches to the current Haitian crisis: specifically, H.R. 4114 the Governors Island Enforcement Act, H.R. 3663 the Haitian Refugee Fairness Act and President Clinton's Haiti policy. All are well-intentioned; each raises serious concerns.

By endorsing sanctions and lifting the repatriation policy, H.R. 4114 does nothing to discourage Haitians from taking to the high seas. Rather, it encourages them to do so by driving up their misery index to a point where those who still have the means to do so will get out despite the risks they face on the open sea. It is important to remember that the Haitians who leave are those who still have something left -- if only enough to buy passage and bribe the appropriate officials.

I particularly want to call your attention to the impact of the sanctions, which are central to both H.R. 4114 and the President's Haiti policy. The situation in Haiti has gone from bad to worse in recent weeks -- especially in terms of human misery. The sanctions clearly are missing their mark and punishing those most in need of help. More than 2,000 Haitians have been intercepted leaving Haiti in the past 6 weeks.

In Florida, the AGAPE and MFI humanitarian aid flights are still sitting idle on the runways while U.S. officials await a ruling from the U.N. sanctions board on whether or not they can be cleared. Fuel shortages in Haiti mean that, even if those supplies get through, it will be difficult to distribute them to the outlying regions.

American and other foreign businesses in Haiti are closing up shop, leaving the few Haitians who had jobs unemployed. In a country where one paycheck often feeds ten mouths, the devastating impact of job losses is far-reaching.

According to the humanitarian aid organizations in Haiti, 2 out of 3 Haitian children now suffer from malnutrition and missionaries throughout Haiti report a deepening public health disaster. Diseases, once controlled by a regular flow of



medicines (especially tuberculosis) are now running rampant. In many cases, medicines and aid are simply not getting through. When one looks at the impact of the U.S.-led embargo is it any wonder that Haitians are taking to their boats in record numbers?

Option number two, H.R. 3663, seeks to set up a preferential arrival system for Haitian refugees, along the lines of the Cuban Adjustment Act. The time may have come for that act to be revisited in the context of the changing situation in Cuba. However, by extending the same types of protection to Haitian refugees, we have once again done nothing to help Haitians or Haiti, while encouraging them to come to our shores.

Option 3, the President's approach, is particularly troubling. As noted above, the embargo is missing its mark. The Haitian people are starving while the elite fill their coffers with the proceeds of a black market fed by a porous embargo.

The President's offshore refugee processing plan lacks substance. Although the Jamaicans have agreed to allow the U.S. to anchor ships in their waters, they are still U.S. ships with U.S. personnel processing Haitians for refuge in the U.S. Turks and Caicos have offered us the use of their beaches, for which we will pay them \$12 million and help them repatriate 3,000 Haitians currently living there, but they will not be accepting any refugees nor helping to process them. Finally, we have no answers about many crucial, basic questions (please see the attached list) that should have been answered before this policy was announced.

The President's fall-back plan is a military invasion of Haiti. This option is fraught with difficulties, as I have tried to highlight in my list of questions. I think these issues are particularly relevant in any discussion about putting U.S. soldiers into harm's way in Haiti.

Because of the problems with these three options, I have offered the Administration option number four: the Goss safe haven plan. The House supported this plan and opposed military intervention on May 24, but that vote was recently reversed after some heavy lobbying from the Administration and the Majority leadership. I was very disappointed with this undeniable foreign policy flip-flop, but feel that as events unfold in Haiti U.S. policy-makers will return to constructive options like the Goss safe haven proposal. I have attached a basic outline of the proposal for your attention.

The Goss safe haven plan is a better way for Haiti and for Haitians. Working with the OAS or the U.N. to create a safe haven on the Haitian island of Gonave, we could bring about an immediate end to the punishing economic sanctions, provide an opportunity for the return of the democratically elected Haitian President, reorganize and then expand the badly broken U.S. refugee processing system in Haiti, and provide a workable means

for supplying the humanitarian aid so desperately needed. All of these steps can help to put Haiti back on the path to democracy and a long-term solution to the refugee problem.

Options 1,2 and 3 do nothing to address the long-term refugee problem, a problem that can only be solved by the movement of Haiti toward political stability and economic prosperity. Neither of these goals can be accomplished at the barrel of a gun, by decimating the Haitian economy, by destroying the spirit and hope of the Haitian people. We cannot do anything constructive in Haiti when all that we do is destroy. What we should be doing is helping Haitians to stay and work for a democratic and prosperous future in their homeland.

PORTER GOSS

14TH DISTRICT - FLORIDA

330 CANNON BUILDING  
WASHINGTON DC 20515-0913  
(202) 225-2538

COMMITTEES

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**Congress of the United States**  
**House of Representatives**  
**Washington, DC 20515-0914**

8 JUNE 1994

FOREIGN AFFAIRS -- FULL COMMITTEE

U.S. POLICY IN HAITI

QUESTIONS SUBMITTED FOR WRITTEN RESPONSE

BY PORTER GOSS (FL-14)

DISTRICT OFFICES  
2000 MAIN STREET  
SUITE 303  
FT MYERS FL 33901  
(813) 332-48773301 TAMiami TRAIL EAST  
BUILDING F SUITE 212  
NAPLES, FL 33962  
(813) 774-8080PUNTA GORDA  
(813) 839-0051WITNESSES:WILLIAM GRAY THE PRESIDENT'S SPECIAL  
ADVISOR ON HAITIFREDERICK SMITH PRINCIPAL DEPUTY  
SECRETARY INTERNATIONAL  
SECURITY AFFAIRS,  
DEPARTMENT OF DEFENSE

- 1) WHAT IS THE PROCESS FOR HAITIAN REFUGEES SEEKING PROCESSING TO REACH KINGSTON OR TURKS/CAICOS? DOES THE COAST GUARD SHUTTLE THEM?
- 2) WHAT IS THE CAPACITY OF EACH OF THE PROCESSING CENTERS?
- 3) HOW WILL THE 90-95% OF THOSE WHO ARE NOT DEEMED TO BE POLITICAL REFUGEES RETURN TO HAITI? IF THEY ARE NOT RETURNED TO HAITI, WHERE DO THEY GO?
- 4) HAS THERE BEEN OR WILL THERE BE ANY CHANGE IN THE QUALIFICATIONS FOR GRANTING POLITICAL REFUGEE STATUS?
- 5) WHERE DO THOSE GRANTED ASYLUM GO? HOW DO THEY GET THERE? WHAT HAPPENS TO THEM WHEN THEY GET THERE?
- 6) ARE THE SANCTIONS WORKING? HOW LONG DO YOU ANTICIPATE CEDRAS ET AL TO HOLD OUT? IS THERE A CUT-OFF DATE, A "LEAVE OR ELSE" DEADLINE, INVOLVED?
- 7) ARE THERE ANY EFFORTS, DIRECT OR INDIRECT, TO NEGOTIATE A STEP-DOWN BY CEDRAS ET AL? IF SO, WHAT ARE THE INDUCEMENTS OFFERED? WHAT ARE THE THREATS INVOLVED? ARE THERE RELOCATION AND SUPPORT OFFERS?
- 8) WITH ALL OF THE MEDIA SPECULATION ABOUT OAS (OR MULTINATIONAL) FORCE INVASION, HAVE YOU BEEN ACTIVELY PROMOTING INVASION PLANS OR POLICY IN YOUR TALKS WITH CARIBBEAN LEADERS? IS THE ADMINISTRATION WILLFULLY IGNORING THE SENSE OF THE CONGRESS REJECTING U.S.

## MILITARY INTERVENTION IN HAITI?

- 9) WHAT ARE THE COSTS INVOLVED IN THE ADMINISTRATION'S CURRENT HAITI POLICY? OF ENFORCING SANCTIONS? OF PROVIDING REIMBURSEMENT TO JAMAICA AND TURKS/CAICOS? OF RUNNING PROCESSING CENTERS (AND CRUISE SHIPS)? OF SUSTAINING ARISTIDE'S GOVERNMENT-IN-EXILE IN D.C.? OF HUMANITARIAN RELIEF?
- 10) IN THE EVENT OF AN INVASION, IS THERE A GUARANTEE THAT ARISTIDE WOULD RETURN (ASSUMING THE DEPARTURE OF CEDRAS ET AL)?
- 11) WHO WOULD PROVIDE SECURITY FOR ARISTIDE?
- 12) WOULD U.S. FORCES BE INVOLVED IN PROVIDING FOR THE PERSONAL SECURITY OF ARISTIDE?
- 13) IN THE EVENT OF AN INVASION, WHAT ARE THE PLANNED RULES OF ENGAGEMENT AND DISENGAGEMENT? IS THERE A TIMETABLE? ARE THERE CLEAR RULES ABOUT THE USE OF DEADLY FORCE? BESIDES CEDRAS, MICHEL FRANCOIS, HOW MANY "ELITISTS" HAVE TO BE NEUTRALIZED OR REMOVED?
- 14) MEDIA REPORTS SUGGEST THAT THERE WILL BE NO PEACEKEEPING FORCE SENT TO HAITI UNTIL OR UNLESS CEDRAS ET AL STEP DOWN. IS THAT THE UNDERSTANDING?
- 15) MEDIA REPORTS FURTHER SUGGEST THAT A MULTINATIONAL PEACEKEEPING FORCE WILL NOT BE PUT IN PLACE IF U.S. MILITARY INTERVENTION IS USED TO REMOVE CEDRAS ET AL. IS THIS TRUE?
- 16) DOESN'T THIS EFFECTIVELY RULE OUT UNILATERAL U.S. MILITARY INTERVENTION IN HAITI?

## \* M E M O R A N D U M \*

TO: WHOM IT MAY CONCERN  
 FROM: PORTER J. GOSS  
 RE: SAFE HAVEN PROPOSAL

THE PROPOSAL:

- \* THE ESTABLISHMENT OF A "SAFE HAVEN" ON HAITIAN SOIL

A SECURE AREA FROM WHICH THE LEGITIMATE HAITIAN GOVERNMENT COULD GOVERN, FOR HAITIANS TO SEEK REFUGE FROM ECONOMIC OR POLITICAL HARDSHIP ON THE MAINLAND, FOR THE INTERNATIONAL COMMUNITY TO RENDER HUMANITARIAN AID AND REFUGEE VISA PROCESSING

- \* THE HAVEN WILL BE INTERNATIONALLY ESTABLISHED AND SECURED UNDER THE AUSPICES OF THE OAS OR UN
- \* DAY-TO-DAY ECONOMIC, POLITICAL, INTERNAL SECURITY AND OTHER DECISIONS WILL BE HAITIAN RESPONSIBILITIES

LOGISTICS:

- \* LOCATE THE SAFE HAVEN ON L'ILE DE LA GONAVE
- \* ESTABLISH AND MAINTAIN A PERIMETER AROUND THE ISLAND USING MINIMAL FORCE SUPPORT -- AIR COVERAGE IS UNNECESSARY, ONE OR TWO CUTTERS COULD ADEQUATELY PATROL THE PASSAGE TO MAINLAND HAITI
- \* PROVIDE SUPPORT SERVICES INCLUDING GENERATORS, SHELTER, MEDICAL CARE, BROADCAST SYSTEM AND OTHER NECESSITIES

BENEFITS:

- \* PROVIDES OPPORTUNITY FOR THE RETURN OF THE DEMOCRATICALLY ELECTED LEADER TO HAITIAN SOIL, PROVIDING A MORALE BOOST AND RALLYING POINT FOR HAITIAN PEOPLE
- \* PROVIDES SECURE AREA FROM WHICH THE DULY ELECTED LEADER CAN GOVERN
- \* ENABLES THE PROVISION OF HUMANITARIAN RELIEF, HELPING TO MITIGATE THE EFFECTS OF THE EMBARGO ON HAITI'S POOREST CITIZENS
- \* SHIFTS THE IMMIGRATION MAGNET FROM U.S. SHORES AND BACK TO HAITIAN SOIL, REDUCING THEIR JOURNEY FROM 800 HAZARDOUS MILES OF OPEN SEA TO 15 MILES ACROSS THE GOLFE DE LA GONAVE
- \* MINIMIZES THE AMOUNT OF U.S. MILITARY SUPPORT, INVOLVEMENT AND COST IN HAITI -- ONE COAST GUARD CUTTER, ONE MODEST CONSULAR-TYPE INSTALLATION, A HUMANITARIAN ASSISTANCE STATION
- \* PAVES THE WAY FOR LONG-TERM DEMOCRACY AND ECONOMIC STABILITY IN HAITI-- RALLYING THE PEOPLE AND COALESCING HEMISPHERIC SUPPORT-- CENTERED ON MODERATE GOVERNMENT AND SUBORDINATION OF HAITIAN MILITARY TO CIVILIAN CONTROL.

Mr. MAZZOLI. The gentleman from New York, Mr. Owens.

**STATEMENT OF HON. MAJOR R. OWENS, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF NEW YORK**

Mr. OWENS. Yes, Mr. Chairman, I want to thank you for holding these hearings and commend you for ending the double standard approach to Haitian problems.

You are treating this bill, I hope, like you treat all others and will give it a fair hearing, but there has been a double standard applied in the case of Haiti, and that is the problem. You can't separate the problem of refugees and what happens to refugees from the political problem of democracy in Haiti and the return of President Aristide, and you certainly can't absolve the United States of responsibility here. We encouraged the Haitians to write a constitution, we encouraged them to have elections, we encouraged international observers at that election.

There is no question about that election. The election which elected Jean Bertrand Aristide with 70 percent of the voters was not a close election. People are trying to draw parallels between what is happening now in the Dominican Republic and what happened in Haiti. There was no dispute about the Haitian election. Everybody agreed that it was a fair election, and everybody agreed that Father Aristide won overwhelmingly. So democracy was on course.

During the time that President Aristide was in office, the number of ships interdicted on the high seas by the Coast Guard went down to zero. The facts I have are that no ships were interdicted for that 7-month period. It says a great deal about what the solution is and about whether people are fleeing Haiti for economic reasons or for political reasons.

President Aristide didn't do anything economically, he had no money, he had no great amount of aid from any country, he only restored hope because they expected law and order, they expected a civil government acting like any government, and President Aristide proposed raising the minimum wage to 50 cents an hour, proposed that the rich should pay taxes for a change, ordinary things that any government would do, and of course the army overthrew him.

That army was trained in the United States; the leaders of that army were trained in the United States. The leaders of that army, until less than 2 years ago, some were on the payroll of the CIA. It is not something that we can wash our hands of and say that we are not responsible, we are very much responsible.

And then we proceed to establish a double standard with respect to the way Haitian refugees are treated. We would only recognize their government. We at least were moral enough not to recognize the illegal terrorist government that overthrew Aristide. Other international bodies have joined us in condemning that government.

Amnesty International has said, along with other groups, that terrorists are running the government, that the government of thugs, military thugs, is allowing terrorism, nurturing terrorism. The minister of justice was murdered in cold blood, and other sup-

porters of Aristide are murdered in cold blood in front of everybody, left to bleed on the street.

You know, we have all kinds of examples of what kind of government we are dealing with. If ever there was a fascistic bunch, it is a criminal fascism. They don't even have any kind of totalitarian program that they are offering, they are just using their power to cream off the small amount of resources that exists in that government, and to say that drug trafficking has not increased is to be ridiculous. Of course, when there is no government at all, no attempt at all being made to counteract the drug trafficking. When there is a military government in power which has divided up the country into sectors in terms of certain colonels will take all the graft coming in—they will take the levies that are being placed on goods coming through the ports, others will cream off the money from the state electric power company and/or will cream off the money from the state flour factory, and they have certainly divided up in terms of who will get the proceeds from the drugs, why should we think that they would behave honestly in the case of drug trafficking when they have not behaved honestly in any other way and when they are ordering the murder of justice ministers?

So we have a situation, first of all, that we cannot wash our hands of; we are very much a part of it. The United States has not played a positive role in Haiti in fostering democracy over the last few decades. Only recently did we do that, and then we have backed away, reneged on the bargain.

The only solution to the problem that we as Americans can support as Americans is a return of President Aristide, recognizing the election that elected him, and restoration of democracy in Haiti. Any other solution is un-American. To talk about negotiating between the church and the military and the rich, negotiating a solution, that is un-American. That is some kind of fascism, but it is certainly not democracy. We must stand behind the democratic solution in Haiti. It solves the refugee problem.

You know, I am not going to back away from the practical problem of large numbers of Haitian refugees coming into the country, concentrating in certain area, Florida first; they also concentrate in New York. I think my district has the second largest number of Haitians, Haitian-Americans and Haitian refugees. It is a problem that we don't run away from. The country has 225 million people though. We have absorbed large numbers of people fleeing persecution before. It is not an insurmountable task, but it is a task we don't need to undertake. Solve the problem in the most practical way: Return Aristide to Haiti, return him by any means necessary. We have gone through all the other steps.

We had a Governors Island agreement. It was forced on President Aristide. Even though he was forced to sort of sign an agreement, he lived up to every part of the agreement, it was the military that ran away from it. Now we need to reinforce that agreement by any means necessary. Use all diplomatic means possible, sanctions over a limited period of time.

I agree with the previous speaker, the sanctions impose suffering on innocent people and should be limited. At this point we should be talking about 30 days of sanctions and then move on to something else. I think military intervention, what we call protective

military intervention, is the next step, and by that I mean the Government of Haiti is here in this country. Aristide represents the head of the Government of Haiti. There are other people who were elected in the same election that Aristide was elected in.

We ought to send back enough forces to protect the Government, those who were elected. The Aristide supporters and those who were in opposition to Aristide should be protected by troops, and if anybody attacks those troops, then of course they have to be repelled, but it is not an invasion to protect a democratically elected government. That is a solution to the refugee problem.

In the meantime, I think this committee should assert itself and demonstrate that Congress will not be part of a double standard, and the Haitian Refugee Fairness Act moves in that direction of re-establishing where we should be, the same standard applied to all refugees no matter where they come from.

Thank you very much.

Mr. MAZZOLI. I thank the gentleman from New York for the excellent statement.

I will have to disassociate myself with the part that talks about military intervention. There have been several here who have alluded to that. I do not think that is the answer. Of course, it is not within this subcommittee's purview, but I think we need to do something, but I do not believe military intervention is the answer.

The gentlewoman from Florida.

#### **STATEMENT OF HON. CORRINE BROWN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA**

Ms. BROWN. Thank you, Mr. Chairman and members of the committee. Thank you for giving me the opportunity to testify today about one of the worse human crises in my lifetime.

I would personally like to submit my entire statement for the record, and I just want to make a few comments.

Mr. MAZZOLI. Without objection, the gentlewoman's statement will be made a part of the record.

Ms. BROWN. As a new Member of Congress, I don't know that there is anything as disappointing as how we have not been able to resolve the Haitian situation. For the first time in 120 years, Florida sent African-Americans to Congress, and I truly believe that Congress needed the diversity. I truly believe we needed the diversity in this room that for the first time we have people of color speaking about how the Haitians have been treated, and we close to Florida experience it every day. I was a citizen here in Washington in the Capitol for some reason.

When the Congress first voted on the Cuban and Haitian issue several years ago and we voted to let unlimited Cubans come in this country, and I am not saying there is anything wrong with that, but we voted not one Haitian, and that has been our policy. There have been incidents when Haitians and Cubans have gotten on the boats together, and when the Cubans arrived we welcomed them and the Haitians we sent them back, and it is truly only because they are people of color, and that is a sad indictment on this country, and it is a true indictment.

I have been to Haiti several times. I got away from security and went all up in the mountains and talked to the people. Let me tell



you something, none of us win by 77 percent, none of us. The President of Haiti won by 77 percent of the people, and even though they are being killed, raped, they still have that resolve that they want democracy.

I met with a group of Haitian business people, and I asked them—they were talking to me about, “What is this democracy?” because they didn’t quite understand. They said that Aristide didn’t have the support of the ministers, I said, “Yes, I understand that;” and he didn’t have the support of the business community; I said, “Yes, I understand that too;” and he didn’t have the support of the military, I said, “I truly understand that.” I said, “But you know, he won by 77 percent of the people,” and they said, “Yes, yes, just the masses.” I said that is what counts in a democracy, is what the masses want, and we go all over the world supporting the masses but yet here, right here, less than a hundred miles from our shores, we do not support the people because they are people of color.

The rape that has been going on and all of the things that the Haitian people have had to put up with, one thing we have got to keep in mind, they still want democracy, and as a member of the U.S. Government we should push for restoring democracy to Haiti, and nothing else is acceptable.

Mr. MAZZOLI. I thank the gentlewoman very much for that statement, obviously heartfelt and well delivered.

[The prepared statement of Ms. Brown follows:]

PREPARED STATEMENT OF HON. CORRINE BROWN, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, and Members of the Committee, thank you for giving me the opportunity to testify today about one of the worst human rights crisis in my lifetime.

H.R. 3663, the Haitian Fairness Act is a long overdue bill and I commend my colleague, Carrie Meek for introducing it. For too long Haitian refugees have been treated differently from other refugees, particularly Cuban refugees. The U.S. refugee policy has not been color blind, it has not been a policy we could be proud of. Even since the Administration has announced a new policy, it has not yet been implemented. More than 1,500 asylum seekers have been returned to Haiti since the announced change without any procedure to determine whether they are refugees. I have serious concerns with the Administration's proposal, in particular: (1) that their expected approval rate will be only 1-2% of Haitian asylum seekers -- there should be no pre-determined low rate of approval, (2) the 24 hour turnaround time in deciding refugee claims is not adequate, and (3) there is no independent review of refugee determinations. The questions I would pose to others who will testify today are: (1) will there be lawyers or NGOs (non-governmental organizations) permitted to assist the Haitian asylum seekers during the interview process? (2) who will conduct the interviews, trained asylum officers, or border patrol agents? and (3) what standard of proof will be applied? Another problem that must be addressed is the dilemma of internal refugees in Haiti, those people who have been repatriated or have been forced to flee their homes and are in hiding, searching for safety. We have not adequately addressed this problem.

H.R. 3663 would correct some of the serious problems in our treatment of Haitian refugees, especially regarding establishing Temporary Protected Status to protect Haitians currently in the U.S. from being forced back to a land of violent and deadly persecution. It would be unconscionable to send Haitians back to Haiti in these conditions, which have grown especially dangerous for women.

Rape was hardly ever heard of in Haiti before the coup, and never as a tool of political repression. Rapists have not hesitated to abuse pregnant women and children. One pregnant woman was beaten until she aborted; she died several days later. In fact, children of know democracy supporters have been abused and even abducted, especially in Cite Soliel.

Mr. Chairman, I am very concerned that the U.S. Ambassador to Haiti has expressed doubts that rapes against women is really a serious problem and suggests, perhaps, that there is simply an exaggeration. I must contradict such a notion. Rape in Haiti was largely unknown prior to the coup of September 1991 and had not been a common criminal act. Rape, used specifically as an act of political retaliation, was not documented before the coup. Since the coup, and increasingly as political pressure mounts, rape is being used against women as a tool of oppression. The breakdown of traditional family structures, particularly the absence of men from households, coupled with economic and political insecurity, has left Haitian women as vulnerable victims in a massive political cleansing campaign. Weapons such as guns, machetes and wooden clubs, have been used during the repressive sexual acts, subjugating women with verbal threats warning them that if they refused or fought to defend themselves that they would be killed -- or revisited. Many women victims have been told, during their act, that they were being raped for their own or their family member's participation in democratic activities.

- One strong supporter of President Aristide has been persecuted on many occasions and he tried to flee Haiti on a sailing boat but was intercepted, repatriated, and since then, has been living in hiding. One night, his wife left a prayer vigil and on the way home, she was attacked, beaten and raped by known FRAPH members. She was afraid to press charges because the rapist, a FRAPH member, lives in her neighborhood. She was raped because she was known to FRAPH as the wife of a known Aristide supporter.
- One woman was raped twice, on two different occasions, due to her husband's involvement with democratic activities in their area. On one occasion, she was followed by a military truck, abducted, beaten and raped. Her three month old child was also beaten. Her house was subsequently burned down by the same criminals.
- One woman, who had just given birth and who had a baby in her arms, was forced to witness the rape of her daughter, then she was also raped, even though she had just given birth.
- The most recent reports describe horribly calculated rapes designed to destroy families. Sons have been forced to rape their mothers, fathers have

been forced to rape their daughters, and brothers have been forced to rape sisters in front of other family members. A 15 year old boy was forced to rape his mother after she had been raped by attaches. One young man refused to rape his sister and was immediately shot to death, on the spot, in front of his family.

- Finally, I'd like to bring to your attention a story of horrible cruelty and miraculous recovery. **I must warn you that the materials accompanying my testimony are graphic and disturbing** but one woman's story is too important for me to gloss over. Alerte, a 32 year old Haitian woman was married with three children. Her only crime was that she and her husband exercised their right to vote for the candidate of her choice, Father Aristide. The family survived 2 years of daily fear and harassment since the coup. However their luck ran out on the night of October 16, 1993 when members of the para-military group called FRAPH knocked on her door and proceed to attack her and her children. She was repeatedly hacked with a machete and left for dead in the road. It was only through a miracle that she survived and her tongue was re-attached by doctors. She says the Lord allowed her to survive so that she could tell others of her story. She is living in the United States now but doesn't know how long she will be able to stay.

Mr. Chairman, FRAPH should be condemned as a terrorist organization. It should not be treated as a political organization as U.S. Ambassador Swing has suggested. It is obvious that FRAPH works in concert with the military thugs to kill and terrorize Haitians who have supported democracy. FRAPH's activities have grown more selective and systematic, and more deadly. The international community has the responsibility to condemn FRAPH for the terrorist organization that it is.

Thank you, I would be happy to take any questions the committee may have.

# Haiti



**One Example of Repression and Torture  
Since the Military Coup**

## 1

**First photograph, before the attack**

This young woman is 32 years old. Her name is Alerte. She is married and has three children. She was living at Cote Plage 26 in Carrefour. Her only crime was to have exercised, along with her husband, her right as a citizen to vote for a candidate of her choice on December 16, 1990: Father Jean-Bertrand Aristide. The family was able to survive 2 years and 15 days of daily anxiety and harassment, since the September 30, 1991 coup up until the night of October 16, 1993 when the paramilitary forces of FRAPH came knocking at their door.

**Primera foto, antes de la agresión**

Esta joven mujer tiene 32 años. Se llama Alerte, es casada y tiene tres hijos. Vivía en Cote Plage 26 en Carrefour. Su único crimen fue de haber ejercido, junto con su esposo, su derecho de ciudadana de votar por el candidato de su elección el 16 de diciembre de 1990: el padre Jean-Bertrand Aristide. La familia pudo sobrevivir durante 2 años y 15 días de ansiedad y represión diaria, desde el golpe de estado del 30 de septiembre de 1991 hasta la noche del 16 de octubre pasado cuando las fuerzas paramilitares del FRAPH vinieron a tocar a la puerta de su casa.

**Première photo avant l'agression**

Cette jeune femme a 32 ans. Elle s'appelle Alerte; elle est mariée et a trois enfants. Elle habitait Cote Plage 26 à Carrefour. Son seul crime est d'avoir exercé, avec son mari, son droit de citoyenne à voter pour un candidat de son choix le 16 décembre 1990: le père Jean-Bertrand Aristide. La famille a pu tenir 2 ans et 15 jours dans l'inquiétude et le harcèlement quotidien, depuis le coup d'Etat du 30 septembre 1991 jusque dans la nuit du 16 octobre dernier quand les forces paramilitaires du FRAPH sont venues frapper à sa porte.

**Premye foto**

Jen Ayisyenn sa gen 32 lane, le rele Alerte, li marye, li se manman 3 pitit, li te abite Kòt Plaz Kafou. Li te fè yon sèl "krim", li menm ak mari li yo te vote 16 desanm 1990 Jean Bertrand-Aristide. Depi koudeta 30 septanm 1991 lan kalvè-lkoumanse. Li menm ak fanmi li se maswifè yap moute, chak jou ki jou se lan kè sote lan kache yo viv. Lan lannwit 16 oktòb 1993 pase nèg ak zam an sivil te debake lakay li.



1

# 2

## 2nd photograph

The face hideously devastated by a machete blow, Alerte is one of the thousands of victims thrown in the mass grave of Titanyen. The objective of the de facto regime is to punish the Haitian people for having dared anew--after the November 29, 1987 massacre and after the December 5, 1990 attack which resulted in tens of dead in a crowd of youth in Pétienville--to mobilize with, as their only arm, their voting ballots, and fling open the door of History so as to demand that their rights be respected.

## 2a foto

La cara horriblemente desfigurada por un golpe de machete, Alerte es una de las miles de víctimas echadas en la fosa común de Titanyen. El objetivo del régimen de hecho es de castigar al pueblo haitiano por haberse atrevido nuevamente--después de la masacre del 29 de noviembre de 1987 y después del ataque del 5 de diciembre de 1990 que hizo decenas de muertos en una multitud de jóvenes en Pétienville--a mobilizarse con, por toda arma, su boletín de voto, y forzar la puerta de la Historia para exigir que se respeten sus derechos.

## 2ème photo

Le visage hideusement ravagé par un coup de machette, Alerte est l'une des milliers de victimes jetées dans le charnier de Titanyen. Le but du régime de facto est de punir le peuple haïtien pour avoir osé une nouvelle fois--après le carnage du 29 novembre 1987 et après l'attentat du 5 décembre 1990 qui a fait des dizaines de morts dans une foule de jeunes à Pétienville--se mobiliser avec comme seule arme son bulletin de vote et forcer la porte de l'Histoire pour réclamer ses droits.

## Dezièm foto

Figi-l filange ak kout machèt lan ti tanyen. Poukisa? Fanm sa se youn pami dibita moun yo te al jete lan simityè ti tanyen, pou pini pèp Ayisyen dèske yon fwa ankò, apre masak 29 novanm 1987, malgre 5 desanm 1990, yo te kanpe fèm 16 desanm 1990 avèk bilten vòt yo kòm sèl zam pou reklame dwa yo genyen pou chita tou rebò tab la.





2

# 3A&B

## 3rd photograph

Why this machete blow in the neck and why slash the body of this young woman? Because on that 16th of October 1993, 2 years and 15 days after the coup, the terrible repression has not been able to put an end to the people's resistance, an unarmed resistance, but nevertheless an efficient resistance.

## 3a foto

Porque este machetazo y porque haber acuchillado el cuerpo de esta joven mujer? Porque este 16 de octubre de 1993, 2 años y 15 días después del golpe de estado, la terrible represión no ha podido acabar con la resistencia del pueblo, una resistencia sin armas, pero una resistencia eficaz.

## 3ème photo

Pourquoi ce coup de machette à la nuque et pourquoi avoir lacéré le corps de cette jeune femme? Parce que ce 16 octobre 1993, 2 ans et 15 jours après le coup d'Etat, la terrible répression n'a pu venir à bout de la résistance du peuple, résistance sans armes mais résistance efficace.

## Twazièm foto

De (2) lane apre koudeta-a pouki fanm sa pran kout manchèt sila lan bouda tèt li. Pouki yo filanje yon se bèl po konsa an miyèt moso. Pouki yo depatcha ponyèt li konsa. Se paske 16 oktòb 1993, 2 lane apre koudeta, malgre tren represyon an ap kouri ak tout boulin li pa rive lan bout rezistans pèp la. Rezistans ak detèminasyon pou sa chanje.



3A



3B

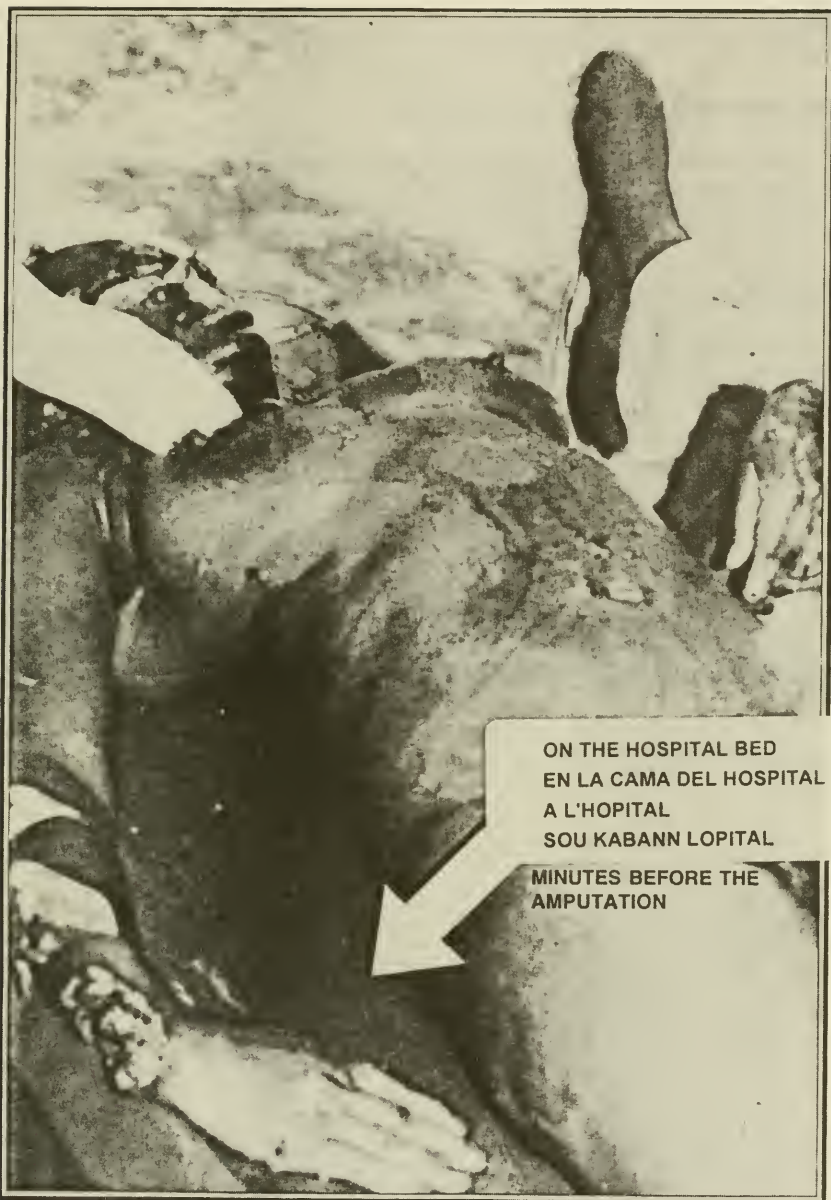
4

***ON THE HOSPITAL BED***

***EN LA CAMA DEL  
HOSPITAL***

***A L'HOPITAL***

***SOU KABANN LOPITAL***



# 5

## 5th Photograph, with her children

Alerte was able to escape from the Titanyen mass grave and she came to the United States to testify about the horror in Haiti. She is currently in New York.

## 5a Foto, con sus niños

Alerte pudo escapar de la fosa común de Titanyen y vino a testificar en los Estados Unidos a cerca del horror en Haití. Ahora se encuentra en Nueva York.

## 5ème Photo, avec ses enfants.

Alerte a pu échapper du charnier de Titanyen et elle est venue témoigner aux Etats-Unis sur l'horreur en Haïti. Elle est actuellement à New York.

## Senkièm Foto, Alerte ak timoun li yo.

Volonte gwan mèt lo te vle li chape vivan lan simityè ti tanyen. Foto sa yo se prèv, temway az sa kap pase lan peyi d' Ayiti jounen jodia.



5

## 6

Fellow citizens, brothers and sisters of all races and religions, you have before your eyes photographs which openly reveal the horror of the Haitian tragedy. Don't let your silence make you an accomplice. Speak up, talk to the leaders of this world. Protest all you can so as to end the repression, so that the United Nations finally make their voice heard concretely and decisively in the Haitian crisis. It is high time that we stop the flow of blood in Haiti.

Compatriotas, hermanos y hermanas de todas razas y religiones, tienen en frente de sus ojos fotos que revelan todo el horror de la tragedia haitiana. No se queden silencios porque serian cómplices. Alzen la voz, hablen a los poderosos de este mundo para que las Naciones Unidas hagan por fin oír su voz de manera concreta y decisiva en la crisis haitiana. Es más que tiempo que paremos el torrente de sangre en Haiti.

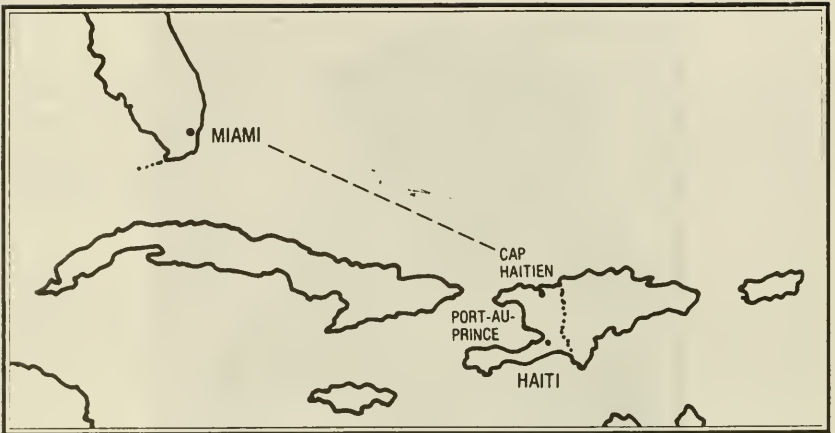
Compatriotes, frères et soeurs de toute race et de toute religion, vous avez sous les yeux des photos qui révèlent à la lumière du jour l'horreur de la tragédie haïtienne. Votre silence serait complice. Elevez la voix, parlez aux grands de ce monde. Protestez de toutes vos forces pour que cesse la répression, pour que les Nations unies fassent enfin entendre leur voix de façon concrète et décisive dans la crise haïtienne. Il est grand temps qu'on arrête le flot de sang en Haïti.

Kompatriyót, nèg ak nègès lakay, piti zantray peyi d'Ayiti, zanmi kanmarad, nou gen devan je nou imaj ki blay i tout mechanste ak tribilasyon pèp Ayisyen. Pa rete san nou pa di kichòy. Rele anmwe, jiskaskè latè tranble. Rele jiskaskè tout nanchon sou latè tande nou. Rele, lite jiskaskè nou fèmen vann san an kap koule twò lontan sou tè d'Ayiti.

**PLEASE HELP  
STOP THE REPRESSION IN HAITI  
AYUDEME POR FAVOR  
AU SECOURS  
ANMWE SOUPLE**







**Haiti, a few miles from the  
United States (Florida).**

**Haïti, à quelques kilomètres des  
Etats-Unis (La Floride).**

**Haiti, a algunos kilómetros de los  
Estados Unidos (Florida).**



Mr. MAZZOLI. Unfortunately, our clock is not working. I will try to keep a little bit of time so we can get some questions in, so I will start with myself for 5 minutes.

Your statement did talk about the dropoff of the outmigration with the time that Father Aristide was elected in the spring of 1991 and its resumption. How do you see the imposition of temporary protective status, and the ceasing of any interdiction? How do you see that as affecting the flow of people and the handling of these people, given the existing asylum laws which in effect say that once anyone touches U.S. soil, the reality is that they never leave?

Mr. OWENS. Well, first of all, I didn't know it was a disputed fact that the number of ships interdicted on the seas by the Coast Guard was zero. I thought that was a fact. It was represented to me as a fact.

Mr. MAZZOLI. That is empirical.

Mr. OWENS. Economic conditions did not improve after Aristide was elected, so obviously the people were not fleeing—the new people were not staying in Haiti because economic conditions had improved, they began to flee because political conditions changed, and we are bound by international standards, and we have always participated in and we have always allowed people fleeing persecution to enter the country, and we have never before asked ourselves the question, how many is enough, In the case of Cuba, and the fact that, you know, two superpowers were still at war with each other in the cold war and it was to our advantage to embarrass the Communists; we placed no limit on it.

The question of limits has never been raised before. We actually sent airplanes to Hungary to bring in the people when the Hungarian revolution took place. They didn't have to find a way to get here, we sent the planes to pick them up.

So I really don't want to answer the question and don't think it is proper to raise it.

Mr. MAZZOLI. All right. I appreciate it. Thank you very much.

The gentleman from Michigan: Just any thoughts on how we harmonize anything we do here with the idea that basically people who come in the country for even temporary protected reasons would gain vested interests and rights to remain.

Mr. CONYERS. Well, I think there are several ways we can look at this. First of all, in our colleagues from Florida, many of their proposals contain provisions for reimbursements to the State for those costs, and I don't think that is unusual or prohibitive. I think that that is one way that we can handle it.

The second is that there are other countries in the area that are negotiating with Bill Gray, literally as we speak, as to land-based processing points for temporarily taking care of the immigration problem. There have also been suggestions of us using some of our naval forces to house people that would be there. But in the end, we have to have one consistent policy.

To think that the kinds of oppression that are going on now are not politically motivated and aren't enough to make a person choose between two horrible decisions: One, to stay there and face the oppression that comes from anybody that might even be suspected of having supported Aristide; and, you know, as the inter-

national climate winds up against the junta, their terror increases, their violence increases; that is the only tool they have. They are not a government's force, they are not trying to set up agencies and departments of government, the only thing they can do is use more force, and so it seems to me very important, Mr. Chairman and my colleagues, that we understand that allowing temporary protective status is something that we should not shy away from. We have done it time after time after time.

Mr. MAZZOLI. You would be in favor—let me say it this way, John: You would not be opposed to temporary protected status in other countries, in regional nations or even in Guantánamo. Would you also favor TPS here in the United States to admit, not for the Haitians already here but to admit those people who can't be sent back because we feel that either they have a legitimate claim, in which case they can come in, but even if they don't have a legitimate claim, we feel like the random violence is such that they can't easily be sent back?

Mr. CONYERS. Right. The answer is yes, because everybody that comes into this country is put to the test under our immigration law. It isn't, as someone has characterized, that, "If you want to come to America, come on;" that is not the law, the law is that you can establish that you have a political reason that would allow you under these laws to be temporarily allowed into the country. So even people coming from Haiti would have to establish that. That happens to be our procedure, and to temporarily allow them into this country or other places in the OAS nations would be perfectly consistent with my view.

Mr. MAZZOLI. The gentleman from Florida.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

Mr. MAZZOLI. Just to finish up this panel.

Mr. MCCOLLUM. Oh, I'm sorry.

Mr. GOSS. I'll be brief, Mr. Chairman, and hit the points exactly, if I can.

In the first place, all immigration is out of control, whether it is political asylum, processing illegal immigration, or legal immigration. There are Haitians who are going through the visa processing process right now in Port-au-Prince; there were; there have been. They are going through a normal orderly process, although the atmosphere there is not as we would like it to be, I am sure, as in other countries where that same process goes on.

The trouble is that there are many more people who want to come to the United States than there are places under our quota systems and so forth. Plus, the consular system is overloaded, as is the political asylum officer review system, as is the illegal immigration system in which we can't even control our borders.

That said, if we continue with the policies we have got now, the Miami magnet will work even more forcibly than it has been drawing the flow of refugees seeking greater economic opportunity, a better quality of life. You can hardly get a worse quality of life than exists in Haiti right now, and consequently any place looks good. Miami looks awfully good, so I think we are going to see that.

With regard to the comparison with the Cuban Adjustment Act, I would say that Fidel's days are numbered, there is no question about that, and I think that the Cuban Adjustment Act is directly

related to Fidel Castro, the Bay of Pigs events of history, and perhaps the missile crisis. I think that chapter is closing, and I think, therefore, that comparison by the time legislation passes out will probably no longer be one we need to worry about.

With regard to the reimbursement that my friend, Mr. Conyers, has mentioned, we would love it in Florida if the Federal Government would indeed reimburse us for the proper costs of the immigration problems we have had because of our geographical location. It is so bad in Florida now that the Governor of Florida, who is a good Democrat, an excellent Democrat Senator of the U.S. Senate, now the Governor of Florida, is suing the Democrat administration of this country for almost \$1 billion overdue for not only Haitians but Cubans as well, as we all know.

With regard to this question of land-based processing points in other countries, I don't know anybody who is willing to deal with this program on a permanent basis. Everybody is talking about yes, we will help you out and process people, but we don't want the people to end up in our country.

The final point is, using more force in Haiti by our sanctions has caused a reaction of more force by the people in power who feel more threat. That is why this polarizing policy that the administration has embarked on is such a terrible idea.

Mr. MAZZOLI. The gentleman from Texas.

Mr. BRYANT. I would just like to interject to this very sudden burst of partisanship, I think, in that last comment in that you said that the Governor of Florida, a Democrat, is suing the Democrat administration—let me finish my question if I may—first of all, our political party is the Democratic Party, number one. Number two, this suit is against the U.S. Government for a history going back many years as being joined by my Governor as well of not repaying all of us who are on the border for failures by the Federal Government to deal with immigration problems, and I just want to take exception to describing it as a suit against the so-called Democratic administration. It is not a suit against the Democratic administration, it is a suit against a U.S. Government.

Mr. GOSS. What I wanted to point out, if the gentleman from Texas will allow me, is that even good working relationships by members of the majority party have not worked to resolve this problem as they usually do in the democratic process. Those have not worked. Consequently, I underscore that by saying we are going to have to do something more deeply if we are going to call for reimbursement.

Mr. MAZZOLI. The gentlewoman from Florida.

Ms. BROWN. I would just like to respond to that last remark because I served in the Florida House of Representatives for 10 years, and clearly talk would not resolve the problem that we have experienced in Florida. We need dollars from the U.S. Government, because it is not a Florida problem, it is a national problem, and it affects people, I understand, in Texas and California. But particularly in the area of health care, we have really had real burdens on our health care system in Florida because we have not got the kind of assistance that we need from the Federal Government.

I think I can just associate my remarks with the first question of the chairman of the task force, Mr. Owens. I support his

position, and I think we really need to go in there and resolve the problem.

In talking to the Haitian people, they don't necessarily want to come to the United States or go to other places, and really we have guide and support from other countries to assist. What we need to do is go in and resolve this problem, and my feeling is, any means necessary.

Mr. MAZZOLI. I appreciate that. The only thing I can say—and I yield to my friend from Florida for such time as he will use—is the fact that we tried that same thing back in 1917. I think we were there until 1934 and we didn't really solve the problem. So I think we have to be extremely chary and circumspect about talking about any force or any means necessary, because that isn't always a guarantee of success.

The gentleman from Florida.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

I just would like to make one distinguishing comment. Though I have a good relationship, I think, with all of my colleagues on the panel, there is one area which I am sensitive to and concerned that I want to be sure is clarified, and that is that I do see a distinction between Cuba and Haiti as far as our asylum processing is concerned, and it isn't race based. I think that distinction needs to be set on the record so that everybody understands at least where this Member comes from.

Historically, the record is pretty clear that anyone who seeks to come to this country, seeks asylum from Cuba, when they are returned to that country is locked up in jail, is persecuted automatically. It is a fact, it does occur. That has not been the pattern in the case of Haiti, although we certainly know there are a substantial number who are persecuted there, which is why we grant asylum. There is a good percentage who are getting that asylum relief through the processing that we are doing and will continue to be doing.

But when somebody has left on the boats or whatever and has returned to Haiti, the history has not been that, as bad as that military government is, they take everybody automatically and persecute them, put them in jail, or do something to them.

So for those reasons, that is the distinction I have seen over the years and why I have not been amenable to those changes.

Mr. OWENS. Would the gentleman yield?

Mr. BECERRA. Would the gentleman yield?

Mr. MCCOLLUM. I would be very glad—who am I yielding to now?

Mr. MAZZOLI. The gentleman from California.

Mr. BECERRA. If I may ask the gentleman from Florida a quick question.

Mr. MCCOLLUM. Sure.

Mr. BECERRA. To the degree that the gentleman makes the distinction between the Cuban situation and the Haitian situation, if in fact the gentleman learned that the Haitian military had a policy of incarcerating those who left on boats and were subsequently returned, would that change the gentleman's position?

Mr. MCCOLLUM. If there were a flat policy that that indeed occurred and that they were persecuted just the same as the Cubans, yes, it certainly would.

Mr. BECERRA. Well, persecuted the same way as the Cubans—I am not certain if we can get the full details on how Cubans may or may not be persecuted once they return to Cuba.

Mr. MCCOLLUM. Well, I am not trying to fudge anything. If you are treated essentially the same way, I am certainly going to change my view, but my understanding is that is not so. That is not what the INS or the State Department has told this subcommittee in the past, but I am willing to be open minded—of course I am—about it. That is my whole point. That is the reason for the distinction.

Mr. BECERRA. I thank the gentleman.

Mr. OWENS. Can the gentleman tell us how many thousand Cubans have been returned by the U.S. Government?

Mr. MCCOLLUM. I can't tell you how many we have returned, but I know there are quite a number who have returned either of their own volition or have not made it over here and been locked up.

Mr. OWENS. We have never returned them en masse to the Cuban Government, have we?

Mr. MCCOLLUM. No, we have not returned them en masse. That is precisely the reason. The reason we haven't is for the same reason that I just described to you, because we know what happens to them when they are returned. When you do return them to Haiti, we also know what happens because we certainly return them en masse. So I think the answer is pretty clear, Congressman Owens.

I want to ask you something though, while we are talking here. On temporary protected status, do you believe that if we granted that kind of status and let Haitians stay here, that at some point in time in the future if Aristide were returned to power, they would all voluntarily return—or a high percentage? What is going to happen if, say, 3 or 4 or 5 years were to go by and we didn't have the thing come out the way we wanted in Haiti, we didn't have a change? What would happen—to these folks who came here—when it eventually did occur that the Government changed?

Mr. OWENS. Solzhenitsyn has returned to Russia. I don't know how many of the Hungarians who were brought here during the Hungarian revolution against the Soviet Union would be returning. Those are questions I can't answer, and, you know, it is a complicated world, and I don't think we should try doing simple answers.

I do know one thing, when one clear thing: When Aristide was elected, thousands of Haitians from all over the world, Haitians in France, in Canada, and the United States, and from my district, they returned to Haiti because there was hope. Some went to set up businesses, schools, et cetera.

The way to get people to return is to restore democracy. A large percentage will return, some who were not even refugees but Haitian—Americans who are citizens.

Mr. MCCOLLUM. Well, I don't doubt for a minute that a good number would return, but I only ask the question to raise the point that there will be a substantial number who won't.



Mr. NADLER. Would the gentleman yield?

Mr. MCCOLLUM. In a moment, please.

But the overall numbers of those who do not return, if we grant temporary protected status, are going to be very, very large. I would presume a very good percentage of folks are going to come on out. It would encourage more people to come out, would it not?

Mr. OWENS. I recognize the practical problem, and certainly the gentleman from Florida, you are on the firing line, you are right in the heart of the problem. Solve the problem. Solve the problem by returning President Aristide, restoring democracy. Then we don't have the numbers to worry about.

Mr. MCCOLLUM. But the only way I know how to do that, other than through Mr. Goss' suggestion, is direct military intervention. The sanctions don't appear to be working. Have you got any other suggestions how we do that?

Mr. OWENS. Albert Einstein was a pacifist who changed his mind about Hitler and said the pacifists will ultimately endure, they would win, if you had enough of them, but the way Hitler operated, they would all be dead before they could win. You are dealing with criminals, not just a regular government, you are dealing with a criminal government. You don't meet criminals with negotiations. Once they demonstrate that they are criminals, they can only be dealt with as criminals. That is what we have to do. It will take force to dislodge criminals.

Mr. MCCOLLUM. Well, let me ask you this question, Congressman Owens. How do you envision it going after we intervene? How do we, as Congressman Mazzoli suggested, after a history of seeing so many years of our having to be there—how will police protection and civil protection be provided without the U.S. troops having to stay there?

Mr. OWENS. Very simple. We should do what we did not do before when we occupied Haiti. We should train the army and the police, not an overwhelming army, but the police force, to respect democracy. We trained large numbers of Haitian officers at Fort Benning, GA. We didn't do a good job in terms of training them to respect democracy. Aristide supporters, people who voted in that election, people who want democracy in Haiti, outnumber overwhelmingly those who want fascism and totalitarianism. Train those people to be the police. Train them to be the army, and you will have people who respect democracy, and democracy will go forward like any other democracy, with problems, but they would go forward without having an army.

The people with the guns interrupt the process because they have the guns and the majority don't have the guns.

Mr. MCCOLLUM. I am going to end because my time is running out by asking Congressman Goss if he could comment on the viewpoint we have heard today.

Mr. GOSS. Well, I don't take the position that the Governors Island accord is of no account because it was negotiated with criminals, which seems to be the suggestion that has been made here. I suggest that what has happened is that those people who have controlled things in Haiti for almost 200 years one way or the other have been very concerned that in their attempt toward accommodating the middle of the road with the election of Aristide, which

they did recognize and work with to try to form what I will call a "multiparty" or a "pluralistic" government, that the Aristide regime was clumsy in its handling of that. The end result was that there was a feeling among a great number of people that it was now their turn, and, regrettably, some retribution began to steal into the daily activities of the governance. It ended perhaps in September when the necklacing events took place. I think that was the beginning of the repolarization in Haiti. I think it wiped out the opportunity for the moderates who are trying to make the government work with the concept of loyal opposition, with the concept of the military being subject to civil order.

All of those things were sort of thrown out, and that high water mark was retreated from, and people went back to brute force, and I think that is the situation we are at today. The Aristide people were clumsy, they couldn't help out as well as we hoped they could by reaching across the aisle, as it were. We tried to help them do that. They did not succeed.

Mr. OWENS. They could not make miracles in 7 months. They only gave us 7 months.

Mr. MAZZOLI. The gentlewoman's time has expired.

Ms. BROWN. I just want to briefly respond to my colleague from— that we share part of the district from, Orlando.

I would just want to ask you this question: How many of the Cubans do you think are going back from Miami?

Mr. MCCOLLUM. Well, not very many are going back.

Ms. BROWN. Probably none.

Mr. MCCOLLUM. And that is a good point.

Mr. MAZZOLI. The time of the gentleman has expired.

The gentleman from Texas.

Mr. BRYANT. Thank you.

I regret Mr. Owens had to leave because I think he made a lot of sense.

Mr. GOSS, do you think that our position should not be to restore Aristide to power?

Mr. GOSS. Oh, I think it should be, affirmative, to restore Aristide to power, absolutely, to give him the opportunity. I think the morale boost for the followers, whether, as Ms. Brown has said, it is 77 percent or my understanding it was 67 percent, doesn't matter, it is two out of three Haitians who voted, and they were pretty darn good elections.

Mr. BRYANT. Then the question is, if he clearly would be governing legitimately, and it is very clear to me he would be, if it is obvious that he can't be restored to power through some agreements with people who have consistently not kept them, their agreements, then we have no alternative, it seems to me, but to use military force, I would hope in coordination with the Organization of American States, to bring him back.

Mr. GOSS. I would like to say that that is, in my view, an option, but it is the worst of all the options that are out there. I think there are many other options, including mine, which I know you don't agree with.

Mr. BRYANT. I am not sure what your option is.

Mr. GOSS. My option is to assist Mr. Aristide get back to Haitian soil that is, in effect, a protected, safe haven area for Aristide loyal-

ists to operate from. The geography of the country favors such a course. There is a place called the Ile de la Gonave, if you have been following the debate. I think it would work very well at virtually no cost. We don't have to hire any cruise ships or anything else. I think that this is an area where you can begin the process of nation building again, and that is what this is about. We don't disagree on that.

Mr. BRYANT. It is very clear, though, that the guys in charge are not going to tolerate Aristide coming back to power.

Mr. GOSS. There is a whole bunch of guys in charge right now who are pushed to an extreme position.

Mr. BRYANT. By who?

Mr. GOSS. By the U.S. policies, in part. We are never going to resolve this problem by saying one side or the other side is going to get it all, and that is what the mood is.

Mr. BRYANT. You know, we kind of get a disjinder, the guy won the election.

Mr. GOSS. That was absolutely right.

Mr. BRYANT. He gets it all because he won the election.

Mr. GOSS. No, he doesn't get it all. That is exactly the point. He still has to govern for 100 percent of the nation. That is the majority. When the majority thinking says we only represent the majority—

Mr. BRYANT. The problem is this, that you still are holding—I think you and those who agree with you—still are holding out some feeling that somehow it is the military, the bad guys down there—and I think they are very bad guys, no question about it—deserve to have some role in governing the country, and it is clear to me that the people who won the election ought to govern the country, and if they don't do it all correctly, that is too bad, but that is the way democracies operate.

Mr. GOSS. Well, that is what happened.

Mr. BRYANT. If every time that happened in any democratic country in the world, we then said it is OK for the guys who were offended to take over, where would we be?

Mr. GOSS. Well, the question I would ask you, Mr. Bryant: Suppose every time in the history of the globe we have a situation where that does happen, do we send troops and restore democracy at the barrel of a gun? And, if so, why aren't we in Rwanda? Why aren't we in Bosnia? Why aren't we in a whole bunch of places?

Mr. BRYANT. Good question. Because Haiti is right off our coast and people can get in boats and float in the ocean to get here, that is why, and it affects our national interest. That is the difference.

Mr. GOSS. It doesn't affect our national interest at all. It affects our problem of delivery of services in Florida and Texas and some places like that, but there is no national security threat.

Mr. BRYANT. Well, I am disappointed you have excluded Florida and Texas from the Nation by saying there is no national interest involved.

Mr. GOSS. I think you have mischaracterized what I have said, but—

Mr. BRYANT. Well, if we are not going to use military force to restore this government, and if clearly it is not going to happen any time soon that he is going to be restored and therefore people are

going to continue coming here from where they are, and it is very clear when they get sent back that bad things happen to them and that they have no freedom of speech there and they have economic problems as well, then why don't we change the Cuban Adjustment Act to include the Haitians as well?

Mr. GOSS. I think that is a question that you need to ask the committee of jurisdiction.

Mr. BRYANT. I am asking you. We are the committee. I am asking you.

Mr. GOSS. I am not on that committee.

Mr. BRYANT. We are the committee.

Mr. GOSS. Oh, my view is, as I have testified on the Cuban Adjustment Act, I believe the reasons for the Cuban Adjustment Act as pointed out by Mr. McCollum, in addition to the practical realities of today that he underlined. This is a period that is beginning to wind down. I think the days of Fidel are numbered.

Mr. BRYANT. But we don't know when they might wind down. We are here, we could meet, we could mark up or change the Cuban Adjustment Act right now to treat the Haitians just—

Mr. GOSS. Well, if you would like to mark up the Cuban Adjustment Act, that is a prerogative that your committee has.

Mr. BRYANT. No. I am asking you a question. Do you think we should change the Cuban Adjustment Act so that we treat Haitians just like Cubans? Yes or no?

Mr. GOSS. I believe that we should change the Cuban Adjustment Act after Fidel Castro allows free elections or releases himself from power.

Mr. BRYANT. OK, but that may be a long time from now. We are dealing with Haitians today.

Mr. GOSS. That is the answer to the question, Mr. Bryant.

Mr. BRYANT. Shouldn't we treat the Haitians just like the Cubans?

Mr. GOSS. We treat the Haitians exactly the way we treat everybody else in the world except the Cubans because the Cubans are the only people who have an Adjustment Act because of the historical circumstances involving Fidel Castro and a clear and present danger to the United States of America, including Texas and Florida, through the missile crisis and the installation of a Marxist regime that was—

Mr. BRYANT. It is empirical, I think, to everyone listening, though, that you are not directly confronting my question. We allow Cubans when they arrive here to stay no matter what, because of the fact that they do not have freedom at home, and we sanction their leaving, and we say, "Welcome to our shores." The same is true in Haiti.

So I am asking you, should we or should we not treat the Haitians just like the Cubans?

Mr. GOSS. We should treat the Haitians the way we treat all other immigrants.

Mr. BRYANT. But not like the Cubans, is that right?

Mr. GOSS. The Cubans have a special privileged status under the Cuban Adjustment Act. I am just telling you what the facts are.

Mr. BRYANT. Perhaps if there were 800,000 Cubans in my State and I was a politician, I would be saying no this morning as well, but I would leave here feeling very bad about having said no.

I yield back.

Mr. MAZZOLI. There is another way to adjust it, and that is to get rid of it for the Cubans, and then we also have a flat playing field, either way.

The gentleman from Texas.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Goss, I happen to think you have answered the question very well, and I appreciate your being candid and honest.

Let me ask you about the proposal that you have made—I have heard you talk about it a number of times—and that is that the United States establish a temporary safe haven on an island very close to Haiti's mainland, which the administration has chosen not to do. Don't you feel, as compared to the current administration's proposals, that if we did such a thing, that would reduce the number of Haitians fleeing in boats, it would make it a lot easier to process the applications, and it would certainly be a better alternative to having the Coast Guard vessels waiting to pick up boat people off the coast?

Mr. GOSS. Obviously I do, and I thank you for the question.

The Ile de la Gonave, which is in the middle of the Bay of Haiti, as it were surrounded, by Haitian mainland, about 15 to 20 miles offshore generally from the mainland station, is a 280-square-mile island. It is big. It is big as or comparable with some of our States or large areas in some of our States. It has got about 85,000 people on it right now, Haitians, living on Haitian soil actually. It has some amenities but not a lot.

It is a fairly primitive agricultural subsistence type area. It does not have many military on it. The military that are there basically are just like everybody else, they don't have a lot going for them. The military on the mainland actually does not have the capability to get across that water because they have no boats or planes or any other way to do it, and, frankly, most of them would be scared to go out there on an aggressive mission because they would run into some hostile, what I would call agrarian level workers.

I think it offers an opportunity, without a confrontation, to deal with the total problem of providing compassionate relief, which is urgently needed for those who wish that economic opportunity, to get that relief now, to get out of the economic suffering now, to take a boat ride, instead of traveling 600 miles to Florida across very dangerous waters in boats that are clearly always overloaded—this is a very dangerous situation, just a short distance in Haitian waters to find a place where they can get food, shelter, medical attention. I think that is a very humanitarian thing to do, and it is immediately available. I think it shuts off the refugee flow going into the high seas in the area around Haiti. I think that is a very important point.

In terms of then going on to the question of getting Aristide back in that area, can he be protected on that island by Aristide loyalists? Yes. Does it require a U.S. invasion? Absolutely no, not. We don't need that. Would we put in some type of facilities to help out Mr. Aristide? My view is probably yes. He is a democratically elect-

ed President. I think he should have the opportunity to broadcast to the mainland from there.

I think there are a number of things we could do. We could process visa claims from there for people who felt more comfortable there than in Port-au-Prince.

I think there are a number of opportunities using Haitian soil to solve this problem. Plus it is so much cheaper than going out and doing what we are proposing to do now: having our Navy and our Coast Guard steaming around, having all of these cruise ships rented, making these \$12 million deals with Turks and Caicos to rent some beach so we can process people. We have got an Embassy that does that in Port-au-Prince. Plus we have to build them—Turks/Caicos—an airport. I would love to have a new airport.

All this kind of stuff that is going on is really straining, really straining, and I don't quite understand why the administration doesn't take a closer look at my approach.

Mr. SMITH. Thank you, Mr. Goss.

Mr. Chairman, one other point I would like to make, if our panelists don't know it or perhaps even members of our own committee don't know it, and that is, as things stand right now, I think the United States is admitting about 20 percent of the Haitian applicants for asylum status. But a more important point than that, when we hear about discrimination by the United States toward Haitians and so forth, and this is a fact I would like to underline, that of the hundred and some odd countries in the world, there are only three countries that send more individuals to this country on a per capita basis than Haiti. So we clearly do not have a discriminatory policy toward Haiti in general.

Thank you, Mr. Chairman.

Mr. MAZZOLI. The gentleman's time has expired. Thank you.

The gentleman from Illinois.

Mr. SANGMEISTER. At the risk of jumping into the fray here, I don't think there is going to be any definitive answers, although I think you will never get Aristide back without putting him in there with military force, and I share the concerns of a number of these committees, including the chairman, as to whether or not we should do that.

But seeing as our witnesses are leaving us here, I guess it leaves Mrs. Meek only. I would like you to comment on what Mr. Goss was saying about using the island as a possibility rather than other procedures. What are your thoughts on that? What is wrong with doing that, I guess is what the question ought to be.

Ms. BROWN. I guess Mr. Goss doesn't know that to me, just listening to him, it sounds very racist. Anything but touching the American soil is what Mr. Goss is saying.

Clearly the conditions on this island that he is talking about are not sanitary. We had discussions about this on the floor. I mean have we sent anyone over there to look at what he is recommending?

Mr. SANGMEISTER. Well, I could see that there has obviously got to be some work done before that would be done.

But, Mr. Goss, getting back to you then, what is the situation over there? You say that we can do this without any military intervention. What is the status of that island right now?

Mr. GOSS. That island is part of Haiti, and to say that it is racist to suggest that Haitians want to go to Haiti, if that is a racist statement I apologize for it; I don't think it is. There are 85,000 Haitians living on that Haitian soil right now. It happens to be an island that is not particularly well developed.

Mr. SANGMEISTER. Are the military dictators there? Have they a presence there now?

Mr. GOSS. Our estimates are that there is no effective military force on that island now at all. There are some police; there are about 100—100 or less on the whole island. As I say, it is 280 square miles. They are not a cohesive, organized force. There are not incidents of brutality, maiming, killing, murdering, rape, or anything else that I know of going on. People are going about their business of trying to survive on that island.

I am not suggesting we are going to divide Haiti into a north and south or, you know, a two-country operation here. What I am saying is that on Haitian soil we are providing, under Haitian sovereignty, under the Haitian flag, the opportunity for Haitians to work out—in a relatively safe situation and less hostile confrontational situation—spread out by 15 miles of water, to work out their problems with our help over the years.

We clearly have a role to play in diplomacy in trying to get the extremes to back down from their extremist positions, and we have to help build democratic institutions—labor, education, all the traditional things that we do. All of that should be part of the package to help Haiti recover and nourish itself into a democracy, but in the long run it is going to have to be Haitians to do it. They don't want Americans to do it, they want Haitians to do it.

Mr. SANGMEISTER. But our country should take the position, at least, of putting Aristide in there and try to establish—

Mr. GOSS. My view is, we should ask President Aristide to return to that island and we should help him get back. That does not mean an invasion. You don't need an invasion. We would be very happy to escort him there in a Coast Guard cutter, and I think he would be safe if he had some of his loyalists around him, and I have no doubt that would happen.

Mr. SANGMEISTER. Ms. Brown—excuse me for saying Mrs. Meek. I apologize.

Ms. BROWN. I'm Brown. And what I suggest is, we return President Aristide to Haiti. He won the election with 77 percent of the vote. It is ludicrous to sit up here and talk about returning him to a part of the island.

What would happen if the President of the United States here, he won the election, and the military decided, "Well, we don't like this and we are going to take over?" That is not a democracy. Why do we have different standards for people of color in Haiti than anywhere else around the world?

Mr. SANGMEISTER. Well, the question of whether color is playing a major role, of course, I guess is always present, but at the same time maybe—let me finish my statement—involved in the legisla-

tive process, where we somewhat look for a compromise, and if this is a compromise, it is a step in the right direction.

I don't certainly agree with everything Mr. Goss has got to say, but this still is part of Haiti, and if we can get Aristide back into Haiti and operating and proceeding from there, that, to me, doesn't sound like too illogical an idea.

Ms. BROWN. I know, but you would have to see the island. I mean we would have to know a lot more information than what we have right here.

Mr. SANGMEISTER. I am not satisfied either that that can even be done at this point, but I am not so sure that is something we need to exclude.

Mr. MAZZOLI. I think the gentleman is correct that, in fact, we would have to do a lot more at Guantanamo if they were going to reopen after this hiatus. We are going to talk about putting in everything from sewage to—

Ms. BROWN. And also I saw the conditions on Guantanamo Bay.

Mr. MAZZOLI. Exactly.

The gentleman's time has expired.

The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you.

I just want to make an observation about Mr. Goss's suggestion, and I have some different questions.

What Mr. Goss is suggesting, in effect, is that the U.S. military seize part of the nation of Haiti and set up a rival government.

Mr. GOSS. That is not correct. There is no role in my proposal for the U.S. Government. You mischaracterize and put words in my mouth.

Mr. NADLER. Well, the island of Gonave is part of Haiti is it not?

Mr. GOSS. Ile de la Gonave is a part of Haitian sovereign territory, yes.

Mr. NADLER. Fine. So what you are suggesting is that we take that territory—

Mr. GOSS. No, not at all.

Mr. NADLER. Well, are you suggesting we give him a steamship ticket there?

Mr. GOSS. What I am suggesting is that if he would like to return to Haitian soil, that we would set up there, with OAS and U.N. peacekeeping observation, the same type of program that is being called for in Haiti by the administration right now. We could set up that base in the Ile de la Gonave rather than on the mainland because that gives Aristide the opportunity to come back and have relative personal safety with Aristide loyalists, not with the U.S. military.

Mr. NADLER. So you are saying we equip an Aristide expeditionary force to seek to hold that territory against the Haitian military?

Mr. GOSS. No. I am suggesting that we not interfere in internal Haitian politics once we get all the players back in Haiti and provide them, to the reasonable degree possible, an opportunity for each camp to be safe and yet a meeting place for them to come together and work out their differences.



Mr. NADLER. I won't belabor this point, and I am sorry Mr. McCollum isn't here because I wanted to ask him to yield for a question, but I will ask you instead.

On May 21 of this year, the Haitian military regime ordered government prosecutors to implement a 14-year-old order declaring illegal all "irregular trips toward foreign lands." In other words, they have now served notice that they deem it illegal for anyone to try to leave the country in a boat without their permission, and they have served notice, I think it is clear, that anyone who is returned to Haiti will be subject to arrest and prosecution, or we might say persecution.

Given this fact and the distinction that Mr. McCollum tried to make between Cuba where, 30 years ago or 25 years ago, all people who left Cuba and were returned were prosecuted, but that is not the case in Haiti, and therefore the cases are different, except now the government has said that henceforth that will be the case, the Haitian Government has said it will be the case, how do we distinguish these two cases?

Mr. GOSS. That law has been on the books, I understand, for more than a dozen years, and the illegal dictatorship that is there, the Jonassaint government, which I readily admit is not a legal government—and I am not a champion or an apologist for it—I think has said that they are going to quote "enforce" that law now.

I have seen some highly publicized activity—where photographers were conveniently available—where they, in fact, had the military, storm some people who were planning to get into a boat, beat up some of them and detained some of them for a few days. That is the only incident I am aware of so far. Whether it was fully propaganda or the beginning of some new policy that they are going to enforce remains to be seen.

If, in fact, they do become so brutal that they start doing that and detaining anyone who wants to get in a ship and interfering with people going fishing—as you know, fishing and getting out on the water is a big part of Haitian subsistence survival these days—I would suggest that that is going to cause a very different set of thinking in our policy negotiations. I don't think we have gotten to that point yet. I think what we are having now is a propaganda war of exaggeration by people who have been polarized.

Mr. NADLER. It is clear, we do admit that it is clear, that many of the people who have been returned to Haiti, such as Mr. DeSanges whose picture we have here, have been, in fact, brutalized, persecuted, and murdered by the regime after we returned them.

Mr. GOSS. The statistics that I have been able to get from the Department of State—and I have not had the fullest cooperation that I would like to be able to report I have had from the administration on this—indicate that very few and until recently almost no cases were involved with returnees or people that we put back. That was what the testimony was. Now I find that very hard to believe.

Mr. NADLER. So do I.

Mr. GOSS. OK. I think that some people have been brutalized, but I think the great, great, great majority have not. And I think that the people who probably ran into the worst consequences were

people that would have run into consequences at any event, one way or the other, because there are some harsh feelings at any place at any time.

Mr. NADLER. But I don't follow you. The people who were returned who ran into harsh consequences would have run into these harsh consequences had they not been returned?

Mr. GOSS. I think they would have run into harsh consequences had they not returned in large case, yes.

Mr. NADLER. They would have been murdered in Miami?

Mr. GOSS. Unfortunately, this has happened. I do not wish to see this happen, and neither does anybody else, and one of the reasons we are here in good faith trying to find solutions, I will tell you that talking about these kinds of differences between Cubans and Haitians is an extremely sensitive subject in the part of the world that Ms. Brown and I represent, and it needs to be handled very carefully.

Mr. NADLER. I see the following facts, and I don't claim to be an expert on Cuba or Haiti, but I see the following facts: A left-wing dictatorship took power in Cuba in 1959. The United States and that left-wing dictatorship the Castro regime had very bad relations for a number of reasons, and we passed the Cuban Adjustment Act which essentially says that we deem that every refugee from Cuba would be subject to political persecution and we will grant, no questions asked, political asylum to all Cuban refugees.

In 19—when did the Haitian regime take over? About 4 years ago?

Mr. GOSS. Yes—3 years.

Mr. NADLER. Three years ago, in 1991, a right-wing dictatorship took power in Haiti and started pursuing policies that generated large numbers of refugees, not economic but political, because in the preceding year or two there had been virtually no refugees, and we treat them differently. Now it is a right-wing dictatorship.

We are still granting asylum, no questions asked, to the Cubans, although, frankly, at this point in time whatever may have been the question 30 years ago or even 10 years ago, at this point in time the Cubans pose no security threat to the United States. Clearly, the Castro regime doesn't.

We deplore the Castro regime because it is a dictatorship and so forth, but they are posing no more of a threat to us than are the Haitians, and yet we treat them very differently, and why should we treat them differently given the fact that they are both likely to be political refugees fleeing political persecution?

Mr. MAZZOLI. Even though the gentleman's time has expired, if the gentleman from Florida or the gentlewoman from Florida would wish to address that, that would be wonderful.

Ms. BROWN. No, I can't add anything. I think he has stated the facts.

Mr. MAZZOLI. OK. Good.

The gentleman from Florida.

Mr. GOSS. I think that the one clear distinction is that the Castro government 30 years ago—and this is well out of today's context, and you had to sort of be there and live this. I remember when the "blinking" went on, as it were. These were very, very extraordinary

times, and I think that was the time in my whole life when I felt that the United States was the most threatened.

Castro was an avowed enemy of this country and said he was going to sink the United States of America. This was a lot of noise, to be sure, but he had a fairly good partner in those days that had a lot of horsepower. That is a totally different circumstance than a tinpot dictatorship taking over.

Mr. NADLER. That's history.

Mr. GOSS. Yes, but I'm just telling that that is the difference. There is a difference.

Mr. MAZZOLI. The gentleman from California.

Mr. BECERRA. Thank you, Mr. Chairman.

Let me go to a different matter for just a second. I do want to return to this line of questioning later on. Are either of you—and it is unfortunate that some of the Members have gone—are either of you aware of any authority that the executive branch has to establish or operate an asylum, a refugee process, which is different for Haitians than it is for any other refugee or asylum-seekers that we treat?

Mr. GOSS. Other than the Cuban Adjustment Act, if that is what you are referring to.

Mr. BECERRA. Is there anything else that either of you might be aware of that allows the U.S. Government to treat Haitians differently in the asylum or refugee process than others?

Mr. GOSS. As far as I know, Haitians get treated like everybody else in the world except Cubans.

Mr. BECERRA. So you are saying that we implement the same type of refugee and asylum process for people coming from Eastern Europe or Asia as we do for Haitians?

Mr. GOSS. What I am saying, unless there are special Cuban adjustment type acts, Haitians are treated the same as everybody else.

Mr. BECERRA. You are saying that the administration's proposal to interdict boats filled with Haitians provides the same treatment for other individuals who may be seeking asylum or refugee status within the United States coming from other countries?

Mr. GOSS. What did we do with that Chinese folk that fetched up on Coney Island? Maybe Mr. Nadler can remind me of that. I don't remember. It seems to me they got returned, didn't they?

Mr. MAZZOLI. I think that the Lautenberg amendment does provide for certain residents of the former Soviet Union and for residents of Vietnam, Laos, and Cambodia a standard of credible fear rather than the well-founded fear of being persecuted that is the case for everyone else.

Mr. BECERRA. That is correct.

Mr. MAZZOLI. But the only major in the sense, other than the standard of proof—the other major change is this Cuban Adjustment Act which has been here since 1966. But everyone else is treated the same way, the same kind of procedures, the same sort of people. But in that case, I am told, pursuant to the Lautenberg amendment, there is a different standard of proof.

Mr. BECERRA. Mr. Chairman, I would disagree. I am not certain if I am completely correct on this, but I understand that those who come under the Lautenberg amendment also qualify for voluntary

assistance of counsel, they also are entitled to some type of meaningful appeal, and they are not automatically returned to their country of origin if they are not found qualified for asylum or refugee status.

Those three things differ completely from the policy that this administration is trying to implement with regard to Haitians, as I understand it.

Mr. MAZZOLI. It could be on those grounds, but the Haitian people are being judged on the basis of a higher standard of proof than the people who would be under the Lautenberg amendment. The Cuban Adjustment Act exists as a major exception.

Mr. BECERRA. But aside—and if I could just ask my two colleagues, if they know of any other instance other than the Cuban situation where we treat refugee or asylum-seekers differently from Haitians by statute or regulation.

Mr. MAZZOLI. Well, we will have the Government in, and they will be able to answer very directly those same questions.

Ms. BROWN. I do not know any, but in looking at what is required of the Haitians, it is, as you said, a higher standard. In addition, there are not lawyers present. I mean they have no rights. They cannot appeal. There is a 24-hour recommended turnaround time to return them to Haiti. It is truly different than any other country.

Mr. GOSS. The quantity problem, I think, has caused a problem. As you remember, the Bush administration tried to use Guantanamo, and there was a great uproar that that was not an appropriate way to deal with it. Unfortunately, that was closed down and there has been no substitute since. The Clinton administration, to its credit, is trying to find a substitute for processing to provide for better full processing.

But you heard my testimony—perhaps you weren't in the room when I testified. The immigration program in this country is broken. It is broken, whether we are talking about illegals or legal or political asylees. We haven't funded them, we haven't given them enough manpower in INS, and they have got an impossible mission.

But we do return Bahamians and Jamaicans and others to the area who try to get into the country illegally if we catch them.

Mr. BECERRA. But under different standards. We provide them with a credible fear standard of review, and we provide them with access to counsel.

Mr. GOSS. We don't have too many other circumstances where they are claiming credible fear right now in the Western Hemisphere.

Mr. BECERRA. I suspect that the Haitians would like to be able to fall under the same credible fear standard versus a well-founded fear of persecution standard if they could.

I am trying to get at least some answers on the procedure here because it is not clear. I am not aware of any particular statute that authorizes the administration to treat one group differently from another except perhaps for the situation with the Cubans.

Mr. GOSS. I think the chairman has answered that exactly the way I understand it.

Mr. BECERRA. Now a question for the two of you again. If, in fact, there are no statutes that permit the administration, the executive branch, to treat those seeking asylum or refugee status differently, would you say that the executive branch has exceeded its authority in implementing the laws passed by Congress?

Mr. GOSS. I don't quite understand. What laws are you talking about?

Mr. BECERRA. The Congress establishes all the laws that affect immigration, whether it is refugee, asylum status, those who are allowed to immigrate as permanent residents, et cetera. Those statutes, of course, have been implemented by regulation.

I have not heard anyone tell me that there is a statute that permits the administration to treat anyone who is trying to seek some type of immigration status in this country differently. If that is the case, whether we agree with the policy or not, do you have any opinion as to whether or not the administration has exceeded its authority to implement or administer a particular immigration policy without statutes that specifically prescribe the activity that the administration is attempting to implement?

Ms. BROWN. While you think about it, I would say that it started with the Bush administration and it has come down to this present administration. Both policies have been different and have treated the Haitians differently.

Mr. MAZZOLI. The gentleman's time has expired. Actually, I think the questions the gentleman asked are very apt, but I think that they can be directed to the administration, both the State Department and the INS, and they will be really much more prepared to answer the very technical nuances of this law than our panel.

The gentleman from Florida, Mr. Canady, if he has any questions.

Mr. CANADY. Thank you, Mr. Chairman. I apologize for going to another subcommittee hearing of the Judiciary Committee. I wish I could have been here for all the other questions.

I have one question which was actually touched on by Mr. Goss in his statement, but I would like to ask Ms. Brown to address it, and then Mr. Goss has something else he wanted to say on the subject, and I would appreciate any additional comments.

The question is this. Do you believe that the current embargo and economic sanctions against Haiti will substantially increase the number of Haitians who flee Haiti solely for economic reasons?

Ms. BROWN. I don't think people are fleeing Haiti solely for economic reasons. If you have been there like I have, people are fearful for their lives. This embargo is just one option.

I support the option, but I support whatever means necessary. If this works, fine, but I want to leave all of the options open. I want the administration and the world community to look at all options and pursue them.

Mr. CANADY. But you don't think that the economic sanctions will lead additional people to leave Haiti for economic reasons?

Ms. BROWN. The conditions are already deplorable in Haiti. Economics is just one thing, but it is fear of life and safety, and to downplay that is appalling. Clearly, people are fearful for their lives. In the past, we didn't have the documented number of rapes that is going on, the raping of the women.

When I went to Haiti, I met with the women of Haiti, and we talked, and the things that are going on are just unheard of in this kind of country except when these thugs and hoodlums have taken over—not criminals, they are thugs and hoodlums in charge of the country.

Mr. CANADY. OK.

Mr. Goss, do you have anything you would like to say on that subject?

Mr. GOSS. That is a very controversial subject. As we measure things, 90 percent or more, I understand, are economic refugees. That does in no way discount what my colleague has said about how people feel in Haiti. I am sure that it would be hard if you asked a Haitian, who is suffering and in misery and has not enough food on the table for the children and has a sick child, whether that person was concerned about suffering and whether it was an economic question or a political question, your well-founded fear type question, you would get a funny look, and you would deserve one.

The issue, it seems to me, of how much harm is coming to people actually across the countryside relative to whatever a norm may be, however, is very debatable. We have seen some sensationalism in our cable traffic in the State Department which will probably be testified to on this subject.

It is clear that there are exaggerations, tremendous exaggerations, about what is actually happening on the ground there. That is why I congratulate Chairman Mazzoli and your subcommittee for trying to get at the heart of some of this.

My real view is that there would be a lot less pressure for people to leave if the sanctions were not in place, because the sanctions are causing a misery of life that is unequalled in this hemisphere right now, to my knowledge.

Mr. MAZZOLI. The gentleman's time has expired.

I think there is one thing to be said about the imposition of the sanctions not only causes human tragedy and with only a far long-range prospect of success in ousting these dictators, but it also leads to a higher degree of emotion, it leads to a higher degree of fear and confusion, which leads to the random violence, which leads to the fact that, even though you are not being persecuted because you are part of some Aristide operation, you were somehow an activist in his Government. Then some guy who wants your food or some guy who is going to rip you off or something because he is hungry is going to take over, and they may use the very same machetes they used because they are wreaking some political retribution, but they use that because they want something that you own that they want.

So the end of it is that it does seem to me that the imposition of sanctions is something that has to be looked at being something that very well could worsen the situation, not just from the human tragedy of it—the lack of food, lack of medicine, lack of clothing, lack of shelter—but also because it just ratchets up everybody's tension, which leads to a lot of other things that happen too. It certainly does challenge us to try to figure out some way to give justice to people, because when Mrs. Meek testified her first word was

"fairness," it is in the title of her bill, and we are trying to find some fair way to treat people.

The gentleman from Texas brought up very clearly, and the other gentlemen on the panel have, about the disparity, it seems, between handling people coming from Cuba, from perhaps roughly the same kind of setting, to the people coming from Haiti, and so it is a tough assignment that our subcommittee has. We will try to move along with it as best we can.

So the gentlewoman and gentleman, we thank you very much for your testimony. You are excused.

We will call forth our panel from the Government, Mr. Brunson McKinley, who is the Acting Director of the Bureau of Refugee Programs of the U.S. Department of State; and Ms. Chris Sale, who is the Deputy Commissioner, Immigration and Naturalization Service, who will be accompanied by Alex Aleinikoff, the General Counsel of the Immigration Service.

In the interests of time, if the people could get their statements and return to their seats, please.

We welcome our panel. All your statements will be made a part of the record and, Ambassador, we can begin with you, and I would hope with you, because you all were all in the room when the gentleman from California, the gentleman from Texas, and others asked questions about what appears to be disparity about the Cuban Adjustment Act, about the standards of proof, about the presence of counsel and all of the different things—so in your comments, to the extent you can address those, it would be very helpful. So you may proceed.

**STATEMENT OF HON. BRUNSON MCKINLEY, ACTING DIRECTOR, BUREAU OF POPULATION, REFUGEES, AND MIGRATION, U.S. DEPARTMENT OF STATE**

Mr. MCKINLEY. Mr. Chairman, distinguished members, I am pleased to have this opportunity to discuss with you the work being done by the administration concerning the Haitian boat people, and we will certainly do our best to answer the questions that have come up so far and any others that you may have.

I have a prepared statement which is available, and I want to call attention to certain parts of it, but I will certainly do that in an abbreviated fashion so that we can get quickly to questions.

I want to start by expressing sympathy on the part of the administration for many of the concerns that we have heard today and to point out that the policy change on Haiti which occurred on May 8 of this year is, in fact, the result of the concerns and the considerations that have been expressed here by the previous panel and by members of the subcommittee. So what I would like to start out by saying is that we hear these concerns loud and clear and that is why we changed the policy, so you are not going to get any fight from me on any of that.

On May 8, the President announced a new look at Haiti policy. He appointed Bill Gray to be his Senior Special Adviser on Haiti. He announced new measures including tougher sanctions, a reinvigorated United Nations force, designed to bring about an end to the illegal government and the restoration of democracy and Presi-

dent Aristide, and he announced a new policy on Haitian boat people, which is what I am principally here to talk about.

I want to refer to Bill Gray's testimony a week ago before Chairman Hamilton's committee, which was very full and which I know many of you follow closely. Bill Gray addressed all of these questions and others, and his statement is the authoritative statement of U.S. policy toward Haiti. I just want to go ahead and talk a little bit about the changes that we are making in the way we treat Haitian boat people.

As you know, an integral part of the administration's review of its policy toward Haitians was the treatment of persons fleeing the island by boat. The President announced on May 8 that certain modifications to U.S. refugee policy toward Haiti would be made. Specifically, he stated that while Haitian asylum-seekers would continue to be interdicted at sea, a determination of eligibility for refugee status would be made for those requesting asylum prior to any repatriation. Those persons found to be refugees would be provided refuge; those found not to be refugees would be returned to Haiti.

Deputy Secretary of State Talbott on June 2 signed a memorandum of understanding in Kingston, Jamaica, permitting the United States to process Haitians aboard vessels in Jamaica's territorial waters, the *U.S. Naval Ship Comfort* is now at anchorage in Kingston. A second support ship and ancillary vessels are in place. We will be ready to proceed with processing of Haitian boat people in the near future.

I want to say that we are very grateful to the Jamaican Government that they have made this facility available to us. They did so because they support the change in policy, they support democracy and the restoration of President Aristide, and we are grateful to them for this sign of support and solidarity.

We are also on the verge of an agreement with the Government of the Turks and Caicos Islands and the British Government, which is responsible for the foreign affairs of the Turks and Caicos, to use Grand Turk Island as an onshore processing location. A survey team has gone to Grand Turk to assess the requirements for quickly making the island suitable to receive Haitians, and we are negotiating a memorandum of understanding with the British and Turks and Caicos Governments similar to the one that we have with the Jamaican Government, and we hope to conclude that soon and get that started, and this would be a land-based facility. I think that is an important distinction. I think all of us consider the land-based possibility to be better and preferable to shipboard processing.

The next point I want to make is really a very important one, and it has to do with the agreement that we have with the United Nations High Commissioner for Refugees.

The United States is very pleased to have reached full agreement with the United Nations High Commissioner for Refugees on UNHCR's participation in the shipboard processing of Haitian boat people within the territorial waters of the Republic of Jamaica.

The United States and UNHCR recognize that shipboard processing is an extraordinary measure which the United States has undertaken as an alternative to interdiction and return. The goal of



the United States and UNHCR remains the establishment of an appropriate land-based processing center. In the interim, however, the United States and UNHCR intend to make every effort to ensure that shipboard processing provides protection and is procedurally fair to all. UNHCR will be permitted full access to the Haitians and their case files.

We are also pleased that UNHCR is about to enter into an agreement with prominent American voluntary agencies which have long experience in refugee processing, counseling, and resettlement, and this, I think, is another very important point. We understand that the voluntary agencies, acting through their coordinating body, will be able to provide teams of professionals and interpreters working directly with UNHCR to provide initial counseling to the Haitians brought to the *Comfort*. Involvement of organizations with specific experience working with Haitian asylum-seekers in the United States will be particularly valuable in these extraordinary circumstances.

Now the role, specific role, that we have worked out with UNHCR for their participation has a couple of points. They are going to do the counseling which takes place before the adjudication, and they are going to have an opportunity to examine and review case files and discuss INS determinations with quality assurance officers.

When a negative determination has been made and UNHCR believes that grounds for reconsideration exist, the UNHCR will have the opportunity to counsel applicants concerning their cases and the possibility of reconsideration by INS. UNHCR will have the opportunity to bring such case and the applicant's grounds for reconsideration to the attention of the quality assurance officer. The determination of refugee status, including any request for reconsideration, will be our officer's responsibility alone under U.S. law, but we very much welcome UNHCR cooperation in this effort.

We are confident that our procedures are fair and will withstand scrutiny. Indeed, I should say that we welcome such scrutiny, and, as I speak now, a team from the Government of Jamaica with Jamaican observers and human rights specialists is going over the operation down in Kingston Harbor, inspecting it, making sure that it is very satisfactory in their terms. The Jamaicans rightly insisted that this operation be fair, open, transparent, above board, and we have cooperated fully in this desire on the part of the Jamaican Government. So we have a system in place which we are proud of and which we think represents a very, very positive change in direction and a great improvement over the old policy, and we are going to try to make it work.

There is in my testimony a section that talks about the steps in processing which I will call to your attention but I don't think I will go through orally at this time.

I want to stress something that has come up already several times in the hearing, and that is the point about our in-country processing. As the President has emphasized, we believe our in-country refugee processing program remains the best and safest means for genuine refugees to have their claims heard. I want to emphasize that we will continue in-country processing. Our three in-country processing centers will continue to operate and to offer

the best means for Haitians with a well-founded fear of persecution to have their claims adjudicated without undertaking a perilous sea journey. Even the suspension of commercial air service to Haiti due to take effect at midnight on June 24 will not stop our work. Preparations are being made to ensure that approved refugees can continue to leave Haiti as they are granted refugee status.

In conclusion, Mr. Chairman, I just wish to emphasize again that the deployment of the *Comfort* to Jamaica, our shipboard operation there, the establishment of a land-based refugee processing center in Turks and Caicos, these are measures that we have devised, interim measures, temporary measures, perhaps not fully satisfactory measures, but they are the best measures that we could come up with in the short time available to us to construct a more humane response to a desperate problem.

The real answer to the problem is a different one. It is changing Haiti, it is bringing about the changes there, the restoration of democracy that will be the basic solution to the Haitian boat people problem at its source, but until that happens we have an interim humanitarian response to this desperate problem, and we are going to try to make it work.

I don't pretend that these measures alone will alleviate the widespread suffering that is the lot of the Haitian people under the illegal regime, but it is our hope that for those who are bona fide refugees the new program will offer needed protection.

Thank you very much, Mr. Chairman.

Mr. MAZZOLI. Thank you, Mr. Ambassador.

[The prepared statement of Mr. McKinley follows:]

PREPARED STATEMENT OF HON. BRUNSON MCKINLEY, ACTING  
DIRECTOR, BUREAU OF POPULATION, REFUGEES, AND MIGRATION,  
U.S. DEPARTMENT OF STATE

Mr. Chairman, distinguished members, I am pleased to have this opportunity to discuss with you the work being done by the Administration concerning the processing of Haitian boat people.

As you know, an integral part of the Administration's review of its policy towards Haitians was the treatment of persons fleeing the island by boat. The President announced on May 8 that certain modifications to U.S. refugee policy towards Haiti would be made. Specifically, he stated that while Haitian asylum seekers would continue to be interdicted at sea, a determination of eligibility for refugee status would be made for those requesting asylum prior to any repatriation. Those persons found to be refugees would be provided refuge. Those found not to be refugees would be returned to Haiti.

Embargoed until 9:00 a.m., June 15, 1994

## INTERNATIONAL COOPERATION IN PROCESSING

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We are on the verge of an agreement with the Government of the Turks and Caicos Islands to use Grand Turk Island as an on-shore processing location. A survey team has gone to Grand Turk to assess the requirements for quickly making the island suitable to receive Haitians.

## AGREEMENT WITH UNHCR

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The United States and UNHCR recognize that shipboard processing is an extraordinary measure, which the United States

has undertaken as an alternative to interdiction and return. The goal of the United States and UNHCR remains establishment of an appropriate land-based processing center. In the interim, however, the United States and UNHCR intend to make every effort to ensure that shipboard processing provides protection and is procedurally fair to all. UNHCR will be permitted full access to the Haitians and their case files.

We are also pleased that UNHCR has entered into an agreement with prominent American voluntary agencies which have long experience in refugee processing, counselling, and resettlement. We understand that the voluntary agencies, acting through their coordinating body, InterAction, will provide one or two teams of up to ten professionals and interpreters to work directly with UNHCR to provide initial counselling to the Haitians brought to the Comfort. Involvement of organizations with specific experience working with Haitian asylum seekers in the United States will be particularly valuable in these extraordinary circumstances.

Under the terms of the agreement, UNHCR will have the opportunity to examine and review case files and to discuss INS determinations with Quality Assurance Officers. When a

negative determination has been made and UNHCR believes that grounds for reconsideration exist, UNHCR will have the opportunity to counsel applicants concerning their cases and the possibility of reconsideration by INS. UNHCR will have the opportunity to bring such cases -- and the applicant's grounds for reconsideration -- to the attention of the Quality Assurance Officer. The determination of refugee status, including any requests for reconsideration, will be our officers' responsibility alone, but we welcome UNHCR cooperation. We are confident our procedures are fair and will withstand scrutiny.

#### REFUGEE PROCESSING ABOARD SHIP

Let me describe for you how the process will work:

After interdiction, U.S. Coast Guard cutters will transport the Haitians to the Comfort. The first priority will be rest, food and emergency medical attention. Any persons requiring special assistance--for example, the disabled, young children--will receive it. Department of Defense personnel will use a special computerized identification system to create individual identity and family records. They will issue identifying documents to the Haitians. A Public Health Service doctor will be on board the vessel and Department of Justice

Community Relations Service personnel will assist with such social service issues as unaccompanied minors and conflict resolution.

Once the Haitians' immediate medical and personal needs have been attended to, UNHCR staff, and staff of non-governmental organizations under contract to UNHCR, will counsel the Haitians about refugee status determination, explain the purpose of the refugee program, and the processing steps involved.

Creole-speaking staff of the International Organization for Migration will prepare cases for INS adjudication. Trained INS officers will then conduct full refugee interviews of all persons, using interpreters provided by IOM. An INS Quality Assurance officer will review each decision before it becomes final.

Those persons found ineligible for refugee status will be repatriated to Haiti by Coast Guard cutters. Those persons approved for refugee status will be transferred to Guantanamo Naval Base for further processing. Refugees who are to be resettled in the U.S. will have their cases expedited. Refugees to be resettled or to be provided asylum elsewhere will be assisted by UNHCR and U.S. government personnel to go to their new homes.

## ACCESS TO THE SHIPBOARD PROCESSING CENTER

The agreement between the U.S. and Jamaica calls for transparency in the operation. We want to be fair and to be seen to be fair. Maximum access to the processing center will be granted consistent with maintaining the safety of the ship and its staff, and consistent also with maintaining the confidentiality of status determinations and the privacy of the Haitians.

## SHARING THE REFUGEE BURDEN

In addition to cooperating in processing, UNHCR has indicated it will use its best endeavors to seek in third countries temporary protection or resettlement for persons determined to be refugees. This complements our efforts. We have approached States in the region and elsewhere, and requested that they accept approved Haitian refugees either temporarily or permanently. We have received commitments and/or encouraging responses from a number of countries. We will continue our efforts to convince other countries to take their fair share. The humanitarian crisis in Haiti is a serious problem for the international community and we hope that it will actively participate in its resolution.



## MONITORING RETURNEES

We have no way of knowing how many Haitian boat people will be found to be refugees, but many certainly will be returned to Haiti. Our experience thus far indicates that repatriated boat people are not targeted for retribution by Haitian authorities for unauthorized departure. As has been done for over two years, however, we will continue to monitor, through our Embassy in Port-au-Prince, the welfare of those who are repatriated.

## IN-COUNTRY PROCESSING WILL CONTINUE

As the President has emphasized, we believe our in-country refugee processing program remains the best and safest means for genuine refugees to have their claims heard. I want to emphasize that we will continue in-country processing. Our three in-country processing centers will continue to operate and to offer the best means for Haitians with a well-founded fear of persecution to have their claims adjudicated without undertaking a perilous sea journey. Even the suspension of commercial air service to Haiti, due to take effect at midnight on June 24, will not stop our work. Preparations are being made to ensure that approved refugees can continue to leave Haiti as they are granted status.

## COMMITMENT TO HUMANE ACTION

The deployment of the Comfort to Jamaica and the establishment of the land-based refugee processing center in the Turks and Caicos are intended to be humane responses to a desperate problem. I don't pretend that these measures alone will alleviate the widespread suffering that is the lot of the Haitian people under the illegal regime. But it is our hope that for those who are bona fide refugees, the new program will offer protection.

Mr. MAZZOLI. Ms. Sale.

**STATEMENT OF CHRIS SALE, DEPUTY COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY T. ALEXANDER ALEINIKOFF, GENERAL COUNSEL**

Ms. SALE. Good morning, Mr. Chairman and members of the committee. I appreciate the timely opportunity to appear before you today to discuss proposals regarding the U.S. response toward Haitian migrants.

I am accompanied this morning by Mr. Alex Aleinikoff who is sitting next to me, General Counsel for the Immigration Service and a distinguished professor in immigration law prior to joining us.

The very intense and interesting discussion that has already ensued this morning I think underlies the reality that Haiti confronts us with one of the most difficult issues on a policy basis as well as immigration law basis that is before us on a worldwide level today.

Both the Department of Justice, the Department of State, the Defense Department, and numerous other entities within the executive branch have been struggling to find solutions to how we respond to the issues that Haiti brings us in the way that both conforms with international obligations toward refugees but, more importantly, as the Ambassador says, addresses the more fundamental issues of a long-term and more permanent fix on behalf of the Haitian people and the Haitian country.

The administration has a clear commitment to provide Haitians who are genuine refugees the full protection of the U.S. law. Much of the impetus for the legislation under discussion today arose from the former U.S. policy of interdiction and direct return of Haitian migrants encountered on the high seas.

As you know, Mr. Chairman, President Clinton on May 8 announced a change in this policy. Under the new policy, Haitian migrants will not be returned to Haiti without an opportunity for a full adjudication to determine if they qualify as refugees under U.S. law.

Haitian migrants encountered by the U.S. Coast Guard and Navy vessels will be brought to a refugee processing center. Immediately or at beginning, that will mean aboard the *U.S. Naval Ship Comfort* lying in Jamaican territorial waters. We fully hope and expect to have land-based processing within the near-term future which obviously affords far better operational and logistical conditions for this kind of activity.

Refugee claims of these migrants will be adjudicated by over 60 officers of the Immigration and Naturalization Service. All of these officers have received intensive specialized training in refugee adjudication with a particular focus on the problems in Haiti. Their work will be independently reviewed by a team of quality assurance officers initially assigned from the legal units of the INS, but in time possibly supplemented by experienced asylum officers as well. Their mission is to ensure that every migrant interviewed on board the *Comfort* receives a decision that fully conforms to U.S. legal standards.

The United Nation's High Commissioner for Refugees has assigned 11 experienced refugee officers to work as observers and consultants with the INS team. UNHCR officers will play a critical role in the quality assurance function. The International Organization for Migration will play a critical role in preparing applicants for their INS interviews.

We are expecting UNHCR to counsel candidates before they prepare their documents, the IOM to provide personal translation and form filling services prior to INS officers receiving cases, and, finally then, INS officers conducting the adjudication interview giving the candidate two opportunities in a series—in a precise space of time to add any additional information they may have.

Candidates will then be asked to wait while INS quality assurance officers, supplemented by UNHCR counsel, review every case on a 100-percent basis, and should there be a reason for a candidate's—for the decision of the officer to be reconsidered, we will take the time to do that as well. Not until that process has been completed on behalf of all the candidates that are brought to the migrant processing center will final adjudications and determinations as to their future status occur.

The administration, as the Ambassador has said, is negotiating with the Government of Turks and Caicos and the United Kingdom to provide for land-based processing on Grand Turk Island. We hope that this operation will begin soon and that once the site is prepared we can actually move off shipboard processing. It is in the interests of everybody who is involved to do this in a landed mode.

The impetus to consider shipboard processing, frankly, was one of a heightened sense of timely response to the conditions in Haiti and putting ourselves in a position to be able to act quickly without having to wait for a landed site to have been negotiated with a third country, but the ultimate objective is to work on land, for all the good reasons that that is appropriate.

We address our task of refugee adjudications under this new policy with a continued sense of duty and commitment. In the meantime, we remain committed to maintaining and improving our in-country refugee processing program in Haiti. We continue to believe and to stress to Haitians that the in-country refugee program is best and safest in lieu of taking to the oceans, than leaving Haiti, for those who fear persecution.

We have constantly reviewed the procedures and the mechanisms that we use to enhance and improve our ability to properly reach and provide protection for bona fide refugees in-country, and, in fact, our percentages of approval have increased dramatically since last January where special procedures were put in place, and we feel that with the help of nongovernmental organizations we are reaching the people who need to be given protection to the extent that it is possible.

I will welcome the opportunity to respond to any additional questions.

Let me, with regard to the discussion on refugee standards, if I may, extemporaneously just add a quick statement.

The statutes—U.S. Code provides actually three standards under law for processing refugee candidates. The first and worldwide standard is the standard that established refugee processing in sec-

tion 208 of the Immigration and Nationality Act, and that is the worldwide standard. There are two exceptions to that standard, the first exception being the exception that has been described at length today for Cubans which was established—

Mr. MAZZOLI. The worldwide standard is well-founded fear?

Ms. SALE. Yes, sir, and it is consistent with U.N. conventions and the like.

The second standard that is an exception to that standard in statute is the Lautenberg amendment which applies to certain categories of Eastern European and Asian persons. We administer those, as the law requires, under a different set of criteria. That is, I think, some of the confusion that was being discussed this morning.

Mr. MAZZOLI. That standard is credible fear.

Ms. SALE. Essentially yes.

Mr. MAZZOLI. And that is both for a Cuban adjustment as well, or Cuban adjustment is just an exception?

Ms. SALE. Cuban adjustment is an exception, it is not even refugee processing. I mean it is just an opportunity for parole and adjustment within a year. It is an exception to immigration law. It is not construed as refugee processing in the same sense that you would construe refugee processing otherwise.

We do in-country processing for refugee purposes in Cuba with a set of guidelines not very different from the kinds of guidelines that we have used in-country in Haiti, and those have evolved over time from guidelines that spoke very specifically to certain occupations or political backgrounds for personnel to a broader set of standards that is a little more general, such as the Haiti in-country standards for screening, not for the final adjudication but for the initial screening, in order to receive an interview, have evolved in the 2 years that we have been working that program.

The remainder of my testimony speaks to the specific legislative proposals that are before the committee today. I will try to be brief, in deference to your need to have questions, but I think we really do need to at least speak on a technical basis to some of the provisions that are proposed in the various laws that are before you.

H.R. 3663, H.R. 4114, and H.R. 4264 all contain similar provisions regarding important aspects of immigration law. They essentially seek to end the former policy of interdiction and repatriation of Haitian migrants. H.R. 3663 and H.R. 4114 do so by declaring that the obligation of nonrefoulement under article 3 of the United Nations Convention on the Status of Refugees applies to actions of the United States on the high seas.

These bills also prohibit the United States from returning any person who claims persecution in his or her home country unless the United States first determines that the person is not a refugee.

These bills express a commitment to the principle of nonrefoulement which the administration shares and intends to fulfill through its newly announced policy.

We do not, however, believe that this type of legislation is the appropriate means through which the United States can achieve this goal. These provisions would overturn Presidential directives regarding interdiction and return of Haitian refugees that last year were upheld by the Supreme Court in an 8-to-1 ruling. The Court

specifically held that the United States does not have obligations under article 33 with respect to persons outside of our territory. The Court also held that section 243(n) of the Immigration and Nationality Act which was amended in 1980 to conform Federal law to article 33 has no application to persons outside U.S. territory.

Moreover, while the bills are designed primarily to affect Haitian migrants, they would also restrict severely the Government's ability to interdict and repatriate persons seeking to come to the United States illegally, whatever their nationality.

The bills also designate Haiti as a foreign state whose nationals may be granted temporary protected status. The designation would remain in effect until the President certifies to Congress that a democratically elected government has been reinstated in Haiti. H.R. 3663 would set a minimum of 24 months for this designation.

The issue of whether Haitian nationals should be granted TPS is under continual review by the Department of Justice and the Department of State. At this point, as the new policy modification indicates, we believe that the return of nonrefugees to Haiti is still feasible and in fact will play an important role in discouraging Haitians from taking treacherous sea voyages.

At the same time, we are making efforts to ensure that Haitians who might be returned to Haiti even from the United States or one of the processing centers do not have a well-founded fear of persecution. We are concerned that the nature of the legislation at issue would have a dramatic impact on encouraging Haitians to leave by boat.

Congress, in section 302 of the Immigration Act of 1990, delegated to the Attorney General the authority to make TPS designations. The congressional designation of TPS status is inconsistent with that original delegation. These provisions also preempt established TPS procedures as defined in the bills under your consideration.

The act of 1990 permits an 18-month initial designation period for TPS. These bills call for an open-ended designation that is contingent on a Presidential certification of changed conditions in Haiti. These bills also remove the designation of Haiti from the act's provisions governing periodic review, terminations and, extensions of a TPS designation.

On another important note, the bills interfere unduly and perhaps unconstitutionally with the President's power to conduct foreign policy on behalf of the United States. H.R. 4114 legislates economic sanctions against Haiti, a step that has already been taken by the President and has recently been reinforced with the announcement of a ban on commercial air traffic.

The bill would also prohibit any employee of the executive branch, including, presumably, the President and the Secretary of State, from attempting to amend, interrupt, or nullify the Governors Island agreement. This improperly attempts to restrict Presidential discretion in diplomatic efforts to end the Haitian crisis.

The situation in Haiti demands a refugee policy that is both firm in its commitment to protection of genuine refugees and flexible in its ability to reach such persons and protect other vital interests of the United States. The administration has adopted new policies in keeping with these demands. The proposed enactments under

consideration today, while echoing the administration's commitment to refugees, endanger the flexibility that the President, the Department of State, and the Immigration and Naturalization Service require to meet that commitment. For these reasons, we can't support some of the technical provisions in the bills as stated.

We look forward to continued close cooperation with you, Mr. Chairman, and with other members of this subcommittee in addressing the issues presented by the plight of Haitian migrants.

Thank you very much for your time.

Mr. MAZZOLI. Thank you very much, Ms. Sale.

[The prepared statement of Ms. Sale follows:]

PREPARED STATEMENT OF CHRIS SALE, DEPUTY COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Subcommittee:

I appreciate the timely opportunity to appear before you today to discuss proposals regarding United States policy toward persons leaving Haiti in order to travel irregularly to the United States. This is among the most difficult issues of immigration policy faced by the Department of Justice, including the Immigration and Naturalization Service, as well as by other components of the Executive branch.

**The Commitment to Protection of Refugees**

Certain principles are clear and provide the basis of U.S. policy. First among these is the Administration's commitment to provide protection to those Haitians who are genuine refugees. Under recognized international standards and United States law, refugee status and resettlement are available to those who establish persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

**The New Policy Toward Haitian Migrants Interdicted at Sea**

Much of the impetus for the legislation under discussion today arose from the former United States policy regarding interdiction and direct return of Haitian migrants encountered on the high seas. As you know, Mr. Chairman, President Clinton on May 8 announced a



change in this policy. Under the new policy, to be implemented shortly, Haitian migrants will not be returned to Haiti without the opportunity for full consideration of their claims that they qualify as refugees under United States law. In addition, the United States successfully has sought the approval of the United Nations for a more restrictive trade embargo against Haiti.

Haitian migrants encountered by United States Coast Guard and Navy vessels will be brought to a refugee processing center on board the USNS Comfort, lying in Jamaican territorial waters. The operation, under the supervision of the Department of State, will involve the adjudication of refugee claims by over 60 officers of the Immigration and Naturalization Service (INS). All of these officers have received intensive, specialized training in refugee adjudications with a focus on the problems in Haiti. The decisions made by these officers will be reviewed by quality assurance officers who are lawyers in the Office of the General Counsel. Their mission is to ensure that each and every migrant interviewed on board the Comfort receives a decision that fully conforms to United States legal standards.

This operation involves close cooperation and consultation between our Government and the United Nations High Commissioner for Refugees (UNHCR). UNHCR has assigned eleven experienced refugee officers to work as observers and consultants with the INS team. American non-governmental organizations are preparing to work with

UNHCR in this effort. The International Organization for Migration will provide assistance in the preparation of migrants prior to the applicants' INS interviews.

The Administration also is negotiating with the Government of the Turks and Caicos Islands and the United Kingdom to provide for a land-based refugee processing center on Grand Turk Island. We hope and expect that this operation will begin in July, once we reach final agreement and the site has been prepared. It will be staffed very much in the same manner as the processing center aboard the Comfort, and will also involve the close cooperation of UNHCR.

We address our task of refugee adjudication under this new policy with a continued sense of duty and commitment. In the meantime, we remain committed to maintaining and improving our in-country refugee processing program in Haiti. We continue to believe and to stress to Haitians -- that the in-country refugee program is the best and safest means to leave Haiti for those who fear persecution.

In February of 1994, the Department of State, in consultation with INS, established a new set of guidelines designed to ensure that genuine refugees have access to the program. These new criteria have been in effect for only a short period of time, but the preliminary results indicate that the new criteria are allowing

us to reach a larger number of more meritorious claims. We are also reviewing ways to enhance our ability to identify deserving applicants.

Another recent improvement in the program has been the increased participation of non-governmental organizations and persons familiar with the human rights situation in Haiti. The INS and the Department of State are looking to these organizations for referrals of persons with refugee characteristics. Many of these organizations have considerable, long-term experience with the Haitian political scene. They possess invaluable information about a broad range of issues relevant to refugee adjudications, from general trends in Haitian events to specific details about particular grass roots political movements. The developing relationship between the refugee program and these organizations already has been extremely helpful to the program as it seeks to identify and protect genuine refugees.

INS also has enhanced the refugee adjudications process through extending the details of INS interviewers and providing targeted, ongoing training. During most of the program's history, refugee applications have been adjudicated by Immigration Officers detailed to the Haiti program for relatively short periods of time. Currently, however, Immigration Officers are detailed to Haiti for six month periods. The Quality Assurance Officer, who reviews all adjudications, is assigned to the program for a full year, as are

the Officer in Charge and Assistant Officer in Charge. The ability to keep officers for longer periods greatly enhances the program's resources. The officers are able to develop greater experience in the adjudication of Haitian refugee claims and expertise in the social, political and cultural contexts of those claims. The continuity will enhance the working relationship between the refugee program and the non-governmental organizations which refer refugee applicants to the program.

Prior to their assignment in Haiti, INS officers receive specialized training to assist them in making refugee determinations. Included in the training are presentations on international and United States law, country conditions, issue identification, case analysis, and decision writing. This training is updated periodically during the course of the officers' details.

I welcome the opportunity to respond to your specific questions regarding both the in-country program and the new adjudications process for interdicted Haitian migrants at the conclusion of my prepared remarks. In the remainder of my testimony, I would like to focus on the specific legislative proposals regarding Haiti that are the subject of this hearing.

H.R. 3663, H.R. 4114, and H.R. 4264

H.R. 3663, the Haitian Refugee Fairness Act, H.R. 4114, the

Governors Island Reinforcement Act of 1994, and H.R. 4264, contain similar provisions regarding important aspects of immigration law. First, all three bills seek to end the former policy of interdiction and repatriation of Haitian migrants. H.R. 3663 and H.R. 4114 do so by declaring that the obligation of non-refoulement under Article 33 of the United Nations Convention on the Status of Refugees applies to actions of the United States on the high seas.

Second, the bills would designate Haiti as a state whose nationals are eligible for temporary protected status (TPS) in the United States under section 244A of the Immigration and Nationality Act. Third, all three bills place certain restrictions on the conduct of United States foreign policy regarding Haiti.

I will discuss each of these aspects of the proposed bills in turn.

#### Restrictions on U.S. Interdiction and Repatriation of Migrants

Both H.R. 3663 and H.R. 4114 state the sense of Congress that Article 33 of the 1951 Geneva Convention Relating to the Status of Refugees, as applied under Article I of the 1967 United Nations Protocol Relating to the Status of Refugees, must control the actions of states wherever they act, whether within or outside their territorial boundaries. The bills would prohibit the United States from returning, causing to be returned, or affecting movement in any manner which results in returning, any person who

is outside the territorial boundaries of his or her country of nationality or last habitual residence, and in which the person claims persecution, unless the United States first determines, in accordance with the procedural and substantive standards in the 1951 Convention and 1967 Protocol, that the person is not a refugee. The bills would extend the same prohibition to a person who is within the territorial waters of his or her country of nationality or last habitual residence.

While not specifically addressing the underlying issues of international refugee law, H.R. 4264 also would state that it is the policy of the United States not to "forcibly return Haitians against their will to Haiti so long as the military dictatorship remains in power."

These provisions would overturn the Presidential directives regarding interdiction and return of Haitian refugees that last year were upheld by the Supreme Court in an 8-1 ruling. Sale v. Haitian Centers Council, Inc., 113 S. Ct. 2549 (1993) (HCC). The Court specifically rejected the argument that the United States bears obligations under Article 33 with respect to persons outside of United States territory. 113 S. Ct. at 2562-2567. The Court also held that section 243(h) of the Immigration and Nationality Act, which was amended in 1980 to conform federal law to Article 33, has no application to persons outside United States territory. Significantly, H.R. 3663 does not propose to extend section 243(h)

of the Act to those persons encountered outside United States territory, although the effect of the bill would be similar.

We believe these measures are unnecessary in view of the President's announcement of May 8; reflect an inaccurate reading of our international obligations; and could restrict severely the Government's ability to interdict and repatriate persons seeking to come to the United States illegally, whatever their nationality.

To be sure, this Administration has afforded opportunity to those persons interdicted outside of United States territory to establish that they may be genuine refugees. In certain situations, for example, the Government has cooperated with the United Nations High Commissioner for Refugees to screen passengers of interdicted vessels for refugee characteristics before conducting repatriations. In the specific case of Haiti, of course, the Administration has gone even farther, first enhancing the refugee processing program there so that persons who have been interdicted and repatriated can pursue refugee protection, and now providing for a full refugee status determination before the migrants are repatriated.

This legislation, however, would unduly infringe on the authority of the President in matters of foreign relations and national security by severely restricting the options available to address alien smuggling and immigration emergencies.

For example, the extent of the legal obligation imposed on the Administration would not be entirely clear. The legislation's proposed standard for conducting refugee determinations -- "procedural safeguards consistent with internationally endorsed standards and guidelines" -- is vague and subject to possibly conflicting interpretations. Thus, the legislation would override current Administration policy and hamper interdiction efforts without establishing an enforceable substantive or procedural standard to protect genuine refugees.

#### **Designation of Haiti Under Temporary Protected Status**

Section 3 of H.R. 3663, Section 7 of H.R. 4114, and Section 3 of H.R. 4264 would designate Haiti as a foreign state whose nationals may be granted temporary protected status (TPS) in the United States under 244A(b) of the Act. The designation would take effect on the dates of enactment and remain in effect until the President certifies to Congress that a democratically elected government has been reinstated in Haiti. H.R. 3663 would set a minimum period of 24 months for this designation.

These sections would alter the current statutory mechanism for TPS designations, in which Congress delegated this authority to the Attorney General. Under section 244A(b)(1) of the Act, the "Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state" as a TPS state.



The Department of Justice has consulted frequently with the Department of State concerning conditions in Haiti since the September 30, 1991 coup.

The issue of whether Haitian nationals should be granted TPS is under continual review by the Department of Justice and the Department of State. At this point, as the new policy modification indicates, we believe that the return of non-refugees to Haiti is still feasible and in fact will play an important role in discouraging Haitians from taking treacherous sea voyages. At the same time, we are making efforts to ensure that Haitians who might be returned to Haiti - either from the U.S. or one of the processing centers - do not have well-founded fears of persecution. We also are concerned that the nature of the legislation at issue would have a dramatic impact on encouraging Haitians to leave by boat.

#### **Inconsistency with Established TPS Procedures**

The proposed designations in all three bills do not appear to conform to the conditions set forth in sections 244(a)(2) and (3) of the Act regarding the duration, periodic review, termination, and extension of TPS designations. Under section 244A(b)(2), the initial period of designation of a foreign state is "the period, specified by the Attorney General, of not less than 6 months and not more than 18 months." Section 244A(b)(3) provides that "[a]t

least 60 days before the end of the initial period of designation, . . . the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state . . . and shall determine whether the conditions for such designation under this subsection continue to be met." The Attorney General then must provide publication of notice of each such determination, including periods of extension of designation or termination of designation. INA § 244A(b)(3)(A), (B).

Section 3(a)(2) of H.R. 3663 would designate Haiti as a TPS state for 24 months or "until such time as the President certifies to Congress that a democratically elected government is securely in place in Haiti, whichever occurs later." Section 7(c) of H.R. 4114 provides that the designation shall end "on the date on which the President certifies to Congress that the democratically-elected President of Haiti has been reinstated and Haiti's military high command has met its obligations under the Governors Island Agreement." Section 3(c) of H.R. 4264 provides that the designation shall end when the President certifies "that democratically elected government has been restored in Haiti consistent with the Haitian Constitution.

These open-ended designations clearly exceed the 18-month initial designation period permitted under section 244A(b)(2). In addition, H.R. 4114 explicitly, and H.R. 3663 and H.R. 4264 by implication, provide that the provisions of section 244(b)(3)

governing periodic review, terminations, and extensions of a TPS designation do not apply to this designation of Haiti. The open-ended nature and the lack of periodic review for this proposed designation are thus inconsistent with the current statutory provisions.

It should be noted that Section 3(b) of H.R. 3663, Section 7(b) of H.R. 4114, and Section 3(b)(1) of H.R. 4264 define the persons eligible under TPS narrowly as "an alien who is a national of Haiti." Section 244A(c)(1)(A) of the Act, however, provides TPS eligibility not only for nationals of a designated country but for persons who, having no nationality, last habitually resided in that designated state. Also, Sections 3(b) of H.R. 3663, 7(b) of H.R. 4114, and 3(b) of H.R. 4264 omit the requirement of section 244A(c)(1)(A)(ii) that an eligible alien must have "continuously resided in the United States since such date as the Attorney General may designate." In fact, Section 7(b)(1) of H.R. 4114 would, during the entire period of the designation, grant TPS to any national of Haiti who is present in the United States, or in the custody or control of the United States, including on any vessel or facility of the United States Government. Apart from creating a huge magnet inducing departures, this would appear to be inconsistent with the proviso in section 244A(c)(5) that the TPS provisions must not "be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for temporary protected status."

**Interference with President's Authority over Foreign Policy**

Sections 2 and 4(a) of H.R. 4114 also appear to interfere unduly, and perhaps unconstitutionally, with the President's power to conduct foreign policy on behalf of the United States. Section 2(a) attempts to legislate economic sanctions against Haiti, a step that has been taken already by the United Nations, acting on the request of the United States. Section 2(c) would require the President to take punitive action against nations that are found not to be cooperating with economic sanctions. Such a requirement would be an unwarranted intrusion into the President's authority to engage in diplomatic or other efforts to encourage compliance with the existing sanctions. Section 2(d) is improper for similar reasons: by directing the President to give particular instructions regarding the enforcement of sanctions to the United States Ambassador to the United Nations, this section attempts to specify the terms or objectives of diplomatic negotiations with foreign powers. This would breach an exclusive power of the Executive. Finally, section 4(a) would prohibit any "officer or employee of the United States" from attempting, directly or indirectly, to "amend, reinterpret, or nullify the Governors Island Agreement." This provision improperly restricts the President and other Executive officers from engaging in diplomatic activities intended to bring about a solution to the Haitian crisis that might be different in some respects from that proposed in the Governors Island Agreement.

Section 4 of H.R. 4264 directs that the President notify the Government of Haiti immediately of the termination of the bilateral agreement relating to migrant interdiction and prohibits any actions pursuant to that agreement as of the date of enactment of this legislation. These restrictions also constitute an undue interference with the foreign affairs authority of the President.

#### **Immigration Emergency Fund**

Section 4 of H.R. 3663 mandates that the Attorney General reimburse State and local governments from the Immigration Emergency Fund established by Section 404(b) of the INA. We believe that this mandatory language is inconsistent with Section 404(b). Congress established the Immigration Emergency Fund to ensure that the federal government and assisting State and local governments are financially able to effectively deal with the unexpected needs arising from an immigration emergency or other urgent circumstances. Section 404(b) allows the President and the Attorney General discretion in determining whether conditions warrant accessing these funds. Section 4 of the Haitian Refugee Fairness Act would undermine that discretion and require expenditure of the funds regardless of the urgency of the circumstances. This amendment would jeopardize the availability of adequate resources to reimburse the States and local governments to access the fund in the event of an immigration emergency.

**Conclusion**

The situation in Haiti demands a refugee policy that is both firm in its commitment to protection of genuine refugees and flexible in its ability to reach such persons and protect other vital interests of the United States. The Administration has adopted new policies in keeping with these demands. The proposed enactments under consideration today, while echoing the Administration's firm commitment to refugees, risk taking away the flexibility that the President, the Department of State, and the Immigration and Naturalization Service require to meet that commitment. For these reasons, we cannot support these proposals.

We look forward to continued close cooperation with you, Mr. Chairman, and the other Members of this Subcommittee in addressing the issues presented by the plight of Haitian migrants.

Mr. MAZZOLI. Let me start out by yielding myself a few minutes here.

I am not sure I am going to be able to ask the questions as well as they should be asked because this is very confusing territory for me, but as you all know from having sat in the room today that there is a considerable concern on this subcommittee's part, and I am sure it is around Congress and around the country, on what appears to be a disparate or inequality or unfairness, as Mrs. Meek used, in the treatment of two categories of people, from the same part of the world, coming from dictatorships which are now or at least recently where severe retribution is meted out, and the question is, how do we maintain logically and even morally, as Mrs. Meek also brought up, these distinctions?

And I would like to sort of start out at ground zero, for me at least, and that is to say we have, as a nation, subscribed to the U.N. treaties of 1951 and the protocol on how we treat refugees, and we say to the worldwide population of refugees, the worldwide population of people who say they are fleeing persecution, you must establish that you have a well-founded fear of persecution for the different reasons—race, religion, membership in a social group, and so forth—a well-founded fear, and I am sure there have been court decisions, and Mr. Aleinikoff I am sure could detail them of, what that actually means, what a well-founded fear means, so we have some understanding.

Then we hear that there are exceptions to that, one exception being the Cuban Adjustment Act, which in a way is not really an exception. The exception is that the Federal foreign policy of the Nation allows to be paroled into this country people from Cuba who, once they are in this country by reason or parole or some other reason, can then apply under the Cuban Adjustment Act to be adjusted.

Ms. SALE. Exactly.

Mr. MAZZOLI. So, in a way, it is a little bit wrong to say that our policy under the immigration law says to Cubans come in and says to Haitians stay away, but if you are a Cuban and if you are paroled in or you wind up in this Nation, you can then seek adjustment after 1 year to be a permanent resident. No standard of proof. No nothing. You could have been a very rich person with a very comfortable life in Cuba, or you could have been a peasant who was hunted down by the Government. One way or the other, you can adjust under the Cuban Adjustment Act.

We then have a situation some years ago, or several months ago, in which we took Haitians who were interdicted at sea to Guantanamo, to conduct hearings on Guantanamo. We heard the term "credible fear" was a kind of standard used to determine whether or not those people would be repatriated. If they survived the credible fear test, then they were cleared to come into the country, to Florida or some place to be further processed.

My question, I guess, is in part this. With regard to the Haitians who are being processed or soon will be processed in Kingston and maybe eventually processed on Grand Turk Island, is that standard the same as the standard used for processing Haitians in Port-au-Prince, Cape Haitian, and La—whatever the other place is? Can someone help me on that? Is there inequality at least on how Hai-

tians are being processed aboard ship, on land, or in-country, Ms. Sale?

Ms. SALE. The standard that we will apply in the migrant processing centers that will begin to operate some time soon will be exactly the same as that we are using in-country from a legal standpoint. We are using the international refugee standard in most of those instances and making case-by-case determinations.

Mr. MAZZOLI. A well-founded fear.

Ms. SALE. Yes, sir.

Mr. MAZZOLI. And using all of whatever structure and training that people have in that.

Ms. SALE. That is correct.

Mr. MAZZOLI. We have this other exception which is the Lautenberg exception, which, for people from Cambodia, Laos, and Vietnam, or from the former Soviet Union, are able to establish well-founded fear by asserting a credible—the term is “credible basis for concern.” In effect, they establish by a lower proof?

Ms. SALE. Yes, and that is provided in statute, and so that is how it works.

Mr. MAZZOLI. And that is only for those people.

Ms. SALE. That is correct.

Mr. MAZZOLI. Not for Haitians, not for—

Ms. SALE. Not for Bosnians, not for Rwandans, nor Iranians, not for Nicaraguans.

Mr. MAZZOLI. So the alien has a well-founded fear—by asserting such a fear and asserting a credible basis of concern about his or her persecution, would they be returned.

I think it is a case where Haitians and Cubans have been mixed on one vessel, and they wound up in the United States, and the Cubans were paroled in, the Haitians were sent back or not admitted. How is that justified, and what is going to be any effort to rationalize that? And, again, you have heard the testimony today that that appears to be an evidence of unequal treatment given to people.

Now I realize you are not a policymaker, Ms. Sale, and nor, for that matter, is Ambassador McKinley, so any decision on whether we change the Cuban Adjustment Act or change the foreign policy which allows Cubans to be paroled in and Haitians not to be paroled in is not exactly what you are going to be deciding today. But, again, to further amplify the record, how is that understood? How is that handled? How can that be sort of justified?

Ms. SALE. There are a variety of realities that constrain the process in addition to the policy overlay that obviously affects how we operate these programs.

The country of Cuba, the Government of the country of Cuba, has been quite difficult to deal with in terms of returning anyone. They not only attempt to close their doors by not letting people leave but they also do not, except for a precise set of 2,700 named individuals, accept the return of persons to their country on our part. So we are technically not in a position to obtain travel documents, et cetera, were we intending to deport people to Cuba absent other policy considerations. That is not the case in most other countries in the world and does put a particular constraint from a logistical standpoint, from a pragmatic standpoint, on what we can



do with regard to Cuba. That has not been the case with regard to Haiti during the entire length of this regime.

The status of the Cuban Adjustment Act and the terms and conditions in statute also make it practically difficult and not fruitful for the Immigration Service to attempt to handle persons who arrive in Cuba in any way differently than the one that has been described, and that is the reality, and that is that we parole people in. They do not get referred for asylum hearings; they do enjoy the benefits of some income supplements under refugee status. Within a year they can adjust their status and become legal permanent residents, and that enables them then to apply for relatives and things of that nature.

Other refugees around the world, including refugees that we have brought in from Haiti since the in-country program has been in effect, arrive in the United States with again some income supplement under refugee status and ability to adjust their status within a year and then file for relatives.

Persons who entered from Guantánamo or who enter on board vessels from Haiti and from Santo Domingo and from China are asked to file for asylum and fall under the different set of standards and procedures that are described under the asylum processes and do not, until that decision is made, have an opportunity to either adjust or, much less, bring in their family.

Mr. MAZZOLI. I thank you.

I guess one last question, and I have taken a little bit more of my time, but Ambassador, when you were reading from your statement, on page 7 there is a section called "Monitoring Returnees" which you didn't address, and I wondered if you would address it now at least briefly for my colleagues and me.

Just exactly what is the State Department's process for monitoring Haitians who have been returned to Haiti and what is the result of that monitoring?

Mr. MCKINLEY. The monitoring effort is very important, Mr. Chairman, and it is continuing. As part of the recent look at Embassy priorities in Port-au-Prince, Ambassador Swing was asked to list his priority activities, and he did so in the following terms. He said top priority would be safety of American citizens and services to them. Second would be humanitarian assistance, and you know we have very large humanitarian programs, feeding and health care. Third would be in-country refugee processing to make sure that it keeps going through thick and thin. And fourth would be monitoring, and monitoring means that Embassy officers will travel the country—and they do, we get regular reports from them—they will visit population centers, they will seek out returned boat people, they will check stories that are given to them by human rights groups inside and outside of Haiti. They will do their best to follow up any leads that are given to them. They are also in contact with other groups inside Haiti that carry out the same function.

In principle, the ICM, the UN/OAS monitoring organization, could be very important. Right now their activities are somewhat restricted, but we are hoping to build them up and get them out in the country.

But there is a network of nongovernmental organizations, human rights, church-based groups, throughout the country that are very active and very helpful to the monitoring effort and also to the in-country refugee processing effort. In fact, I think it is fair to say that we rely very, very heavily on these grassroots organizations throughout the country, humanitarian, human rights organizations, religious-based organizations, to supply us with information about potential refugees and about the fate of returned boat people and rejected refugees, so we do feel that we have a pretty fair notion of what is happening.

Mr. MAZZOLI. This is my very last question, and I will yield to my friend. Are you pretty well satisfied that the people who either are rejected in-country or returned from out-of-country processing are not, as a class, persecuted, treated like the gentleman whose picture is on that wall?

Mr. MCKINLEY. Yes, Chairman, I am. I don't believe that up to now persecution is directed at people because they took to a boat or because they applied for refugee status at the U.S. Embassy.

Now I say this not at all contradicting what Mr. Nadler has been saying throughout this hearing. There is no question that gross human rights abuses and persecution do occur and that they may well have occurred to people who were in those categories. I am not contesting that at all.

Mr. MAZZOLI. So your point—

Mr. MCKINLEY. I am not contesting that at all, and I am saying that that is one of the reasons that we changed the policy. What we now want to do is have in place, and we have in place, a process which will give us the humanly best possible assurance that we are finding those people so that people who do have a well-founded fear of persecution are not sent back into harm's way.

Mr. MAZZOLI. I thank my friend. My time has expired.

The gentleman from Florida.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman.

Ms. Sale, has a date been set yet to begin processing on the *Comfort*?

Ms. SALE. No, sir.

Mr. MCCOLLUM. How many people will be able to be housed at any one time on the *Comfort* for processing?

Ms. SALE. I am going to rely on the Ambassador to help me on this.

Mr. MCCOLLUM. Certainly.

Ms. SALE. We have been working the developing of this program in what, in my experience, has been the most extraordinary inter-agency collaboration that I have seen, in which basically INS, the Department of State, and in great measure the Department of Defense and Coast Guard have sat at the table at the same time and drawn flow charts and calculated numbers and just made this thing work because everybody is committed to the better good.

The *Comfort* today, we estimate, will hold 1,500 persons. It will berth 1,000 migrants while 500 are in process. So there will be up to 1,500 migrants on board at any point in time.

Mr. MCCOLLUM. Plus your personnel or the personnel who are manning ship, I presume.

Ms. SALE. Correct, absolutely. Oh, absolutely, which are ours, IOM's, UNHCR's, the Department of Defense, a State Department official overseeing it. There is a whole team of people involved.

Mr. MCKINLEY. Mr. McCollum, the reason I had a side word with Chris Sale was just to point out to her that I have actually been on board the *Comfort*.

Ms. SALE. That is right, and I haven't.

Mr. MCKINLEY. And I don't think Chris has yet, so I have seen the ship. It is a remarkable ship. It is a hospital ship, as I think you know, and reportedly one of the world's best trauma facilities anywhere, and it happens to be afloat, and it was used in Desert Storm, and it was ready to go in Baltimore Harbor, which is the reason that at very short notice, when we were looking for a ship to put in, we pulled it into service.

I think the answers that Chris Sale has given you on the numbers are indeed the numbers we are working with, but I think in another sense perhaps a more realistic answer to your question would be, we don't really know for sure until we try. I mean this is rather experimental, we are not sure exactly how it is going to work.

But there is one thing I want to get on the record very clearly. We are going to do whatever is necessary to give the Haitians a fair hearing. That means if they arrive tired, sick, traumatized, we are going to give them a chance to rest and recuperate before they start. If they don't understand the process of adjudication, we are going to be sure it is explained to them as often as necessary. If they have problems in the process, we are going to be sure they get counseling by UNHCR.

Mr. MCCOLLUM. I think that is all very important.

Mr. MCKINLEY. But the point I am trying to make, Mr. McCollum, is that until we see how this process works, and we are not going to push people through it—until we see how it works, we don't really know how the numbers are going to come out. So all of this is just kind of rather tentative planning: You know, call us back next week and—

Mr. MCCOLLUM. I understand, and my only purpose in this is to—

Mr. MCKINLEY [continuing]. And then we will tell you what the reality is.

Mr. MCCOLLUM. I just wanted to lay a predicate for what you were thinking at this point in time because I realize it has to unfold.

I want to follow up, Ms. Sale, on a question related but not about the ship. You said there would be 60 specially trained asylum officers to work on the *Comfort*, as I recall. How many asylum officers specially trained are there currently doing in-country processing in Haiti, and will that number change once the *Comfort* is operational?

Ms. SALE. We have 18 persons on staff in Haiti today. It might be 17, Mr. McCollum. We were in the process of a turnover of some sort. Three of them are an officer in charge, a quality assurance officer, and a clerk. So 15 are actually adjudicating cases. They are there on 6-month tours of duty and do, in fact, circuit ride to cities outside of Port-au-Prince so that we can be available not just in the

capital city for persons who need to be able to reach us without having to expose themselves, they also make themselves available at the request of NGO's and the like—nongovernmental organizations who identify cases for us and say, "This person really ought not to come out of hiding, you come to us," and we are doing that at this point.

Mr. MCCOLLUM. When we talk about a specially trained asylum team, I am talking primarily in my mind about those who are going to do the screening or do the actual interviewing and so forth and you are talking about these 17 or 18 people who do that job.

Ms. SALE. Exactly.

Mr. MCCOLLUM. And that is the equivalent of the type of job the 60 will do aboard the *Comfort*, right?

Ms. SALE. Precisely.

Mr. MCCOLLUM. Will there be any reduction once the *Comfort* is operational of the numbers of personnel in Haiti, or will that remain static and these 60 be in addition to those?

Ms. SALE. We sincerely hope not. The Ambassador obviously, as Chief of Mission Swing, in-country has an obligation to both abide by requirements under the embargo and requirements to modify the size of our presence in country. We have been urging him, and clearly from the priorities that the Ambassador just named he is hearing us, that it is not something that we want to see happen.

I believe the situation in Haiti is daily evolving and changing and daily being reassessed, and we will take our lead obviously from the Ambassador as Chief of Mission, but we hope that that won't happen.

Mr. MCCOLLUM. All right. Let me follow up with one other question, now that we have talked about 60 new officers that are going to be put onto the ship presumably in addition to the 18 or so currently in Haiti.

Ms. SALE. Yes, additional officers.

Mr. MCCOLLUM. Right, and we have talked about the need to accommodate 1,500 people and also operate the ship. This is going to cost money coming from somebody's budget. Is this DOD money? Is it your budget? I guess I am as concerned as anything else about where all this is coming from. I know how you have to live within your parameters, and I am really looking at immigration when I am asking this question. I am not trying to get to the broad picture other than to put it in context. What portion of this cost is coming from INS and where are you taking the assets from?

Ms. SALE. INS at this point is exclusively and only paying for the TDY, the per diem and travel expense and overtime of the officers that are being assigned to Haiti or to the *Comfort*. The ones in Haiti were obviously part of our regular refugee budget.

Mr. MCCOLLUM. Sure. I understand that.

Ms. SALE. The others are being detailed or seconded from operational programs in all elements of INS, and those jobs are being left untended for a while, and we are asking our other employees who remain in the States to roll up their sleeves and do a little more.

Mr. MCCOLLUM. OK. I kind of suspected that, but I wanted to be sure we got that on the record because Chairman Mazzoli and

others of us on the committee are always concerned about that. We don't think you get enough resources; you know we don't think so.

The last question I want to ask has to do with the question that has been posed to me about whether or not refugee screening aboard the *Comfort* will involve any changes. Are there any plans to change the documentary evidence that might be required for somebody to demonstrate a fear of persecution sufficient to get them into an asylum status?

Ms. SALE. There is not, as such, a documentary requirement as a part of a refugee interview. They are sometimes a piece of the evidence that is considered, but it is not a bottom line requirement that if you don't have your SDS card you don't get considered and clearly not in processing. I mean we are very, very acutely aware and the staff have been given very precise instructions that this is an extraordinary set of circumstances and it is a person's credible story that is going to count, their ability to consistently explain what their circumstances are and our ability to appreciate those that will count. We are not going to be looking for pieces of paper.

Mr. MCCOLLUM. OK. I had heard that.

Maybe one last followup thing, Mr. Chairman. I would think it would help us as a subcommittee if I might suggest this, Mr. Chairman, if the INS—you, Ms. Sale—could supply us with information, as you open the operation, on what resources and dollars we would need to provide to you to make this whole. In other words, if we get a chance—and we don't ever know if we are going to—on a supplemental appropriation or some other legislation, what would it take? Because if we are undertaking this special project, it would be nice to be able at least to replace what you were taking from somewhere else temporarily.

Thank you.

Mr. MAZZOLI. Thank you very much.

The gentleman from Illinois.

Mr. SANGMEISTER. Ambassador McKinley, I think you were sitting here when you heard Representative Goss' testimony and his thoughts about using that island to Haiti as the possibility of putting people there. How do you—and of course, the whole theory being putting Mr. Aristide back in power—how does the State Department view that program? What are your thoughts on that? Is that possible, or is it feasible, or are you totally against it? Where are you?

Mr. MCKINLEY. Mr. Sangmeister, the Isle de la Gonave option is not one which is currently under active consideration by the executive branch of the U.S. Government. Having said that, we have not ruled out options, and we are willing to look at things that make sense. I believe that Mr. Goss stated the arguments in favor of his proposal well. I think there are some serious objections to his proposals that Mrs. Meek and others had stated, but it is not one that we are actively working on right now.

Mr. SANGMEISTER. I would hope that you would keep that open for consideration. I don't think the Department should close that out totally because, as I indicated previously, I think we are looking for some form of compromise here. I am not saying that is the panacea to cure the problem, but I don't see this country either—what about the other position? Do you see the State Department

ever recommending, one way or another, to the President that we ought to go in and put Mr. Aristide back in there with the use of armed forces? Is that a possibility that is being considered?

Mr. MCKINLEY. Well, the President has said that he is not closing the door on any options, but I don't think I want to go beyond that at this hearing.

Mr. SANGMEISTER. That is all I have.

Mr. MAZZOLI. Thank you. I thank the gentleman.

The gentleman from Florida.

Mr. CANADY. Thank you, Mr. Chairman.

We appreciate your testimony today.

I want to repeat the question I asked to the earlier panel concerning the impact of the economic sanctions and the embargo in order to get your perspective on that. Do you believe that the current embargo and economic sanctions will increase the number of Haitians who flee Haiti solely for economic reasons? We have seen the statistics indicate that many of the Haitians who are fleeing are already fleeing for economic reasons. What impact do you think the economic sanctions and embargo—as that is ratcheted up—will have on that?

Mr. MCKINLEY. I think it is a very interesting question. I am not sure that I have a firm answer. It seems intuitive that, as the sanctions bite, the economic conditions will worsen across the board and may, in fact, hit those people most likely to leave Haiti by boat the hardest.

On the other hand, we have not had many boat departures lately, and it is possible to argue that the heightened sanctions which are strong evidence of new resolve on the part of the U.S. Government to bring about a change in Haiti and a resolution to the Haitian crisis have instilled some hope in the people that a change is imminent and that therefore, despite worsening conditions, they are willing to wait and see what happens. This is speculation on my part.

I don't have the answer to your question, but I am not sure that it will automatically happen that as the sanctions go forward and as we open our processing center Haitians will pour out in enormous numbers. I think we just have to wait and see how that develops.

Mr. CANADY. Let me ask you this. I understand in the short term it is very hard to judge something like this. Would you think that if the sanctions are kept in place over an extended period of time that it would be likely to force the exodus of substantial numbers of people?

Mr. MCKINLEY. Well, I think that may be true, but we are looking for the sanctions to work sooner rather than later.

Mr. CANADY. I understand. OK.

Let me ask a question about Guantanamo Bay. What is going on now at Guantanamo Bay with respect to the processing of Haitians?

Mr. MCKINLEY. Right now today, there is no activity on Guantanamo.

Mr. CANADY. What will be happening?

Mr. MCKINLEY. Guantanamo is envisioned as what we have been calling the post-adjudication facility. In other words, those Haitian

boat people who put forward a successful claim whether in Kingston or in Grand Turk will then be moved to Guantanamo for followup processing in sponsorship, medicals, the rest of it. So we see Guantanamo as not a place where adjudications will occur but where the post-adjudication necessities are taken care of.

Mr. CANADY. The reason I ask is that I have in my area felt the direct impact of what will be going on at Guantanamo because certain medical personnel have been transferred from MacDill Air Force Base in Tampa to Guantanamo for this operation. As a consequence, veterans in my district who were being served by the medical personnel there have had their medical appointments canceled there and have been turned away at the door. So that is a matter of concern.

I realize that that is probably not within the scope of your responsibility or Ms. Sale's responsibility and it is something we have communicated with the Department of Defense on, but I do express it. I share Mr. McCollum's concern about where all the resources for this operation are coming from, and we see that some of the resources for this are coming from resources that were being provided to take care of veterans in my district.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from New York.

Mr. NADLER. Thank you, Mr. Chairman.

Ambassador McKinley, Yvon Desanges was interned at Guantanamo by the U.S. Government, forcibly returned to Haiti because the appropriate authorities of our Government felt he did not have a well-founded fear of persecution, and he was subsequently persecuted, murdered, et cetera, as were some of the other members of his family. His brother had his hand shot when he attempted to find out what had happened to his brother. We have testimony of many other people who were also persecuted after been returned.

How confident are you of the accuracy of the determinations being made in Port-au-Prince, aboard ship, at Guantanamo, or anywhere, given the murderous nature of this regime?

Mr. MCKINLEY. I don't dispute with you at all the murderous nature of the regime, Mr. Nadler, and I am confident that the U.S. Government and the United Nations High Commissioner for Refugees and the private voluntary organizations that are going to be working with us on this project will do the best possible job of identifying—

Mr. NADLER. That is not my question. How confident are you of the accuracy of the determinations, not that they will do their job?

Mr. MCKINLEY. I think that we will do the best possible determination.

Mr. NADLER. Will we be 100 percent accurate? Be 50 percent accurate? In other words, how many people will we be sending to their deaths as a percentage?

Mr. MCKINLEY. We are going to—

Mr. NADLER. How many have we?

Mr. MCKINLEY. We are going to have 100 percent.

Mr. NADLER. Do you think we will get 100 percent accuracy?

Mr. MCKINLEY. I certainly hope so.

Mr. NADLER. Do you think we have had 100 percent accuracy?

Mr. MCKINLEY. Well, we haven't been doing this screening. We have been sending them back, you know, unscreened.

Mr. NADLER. No, no, these people were screened at Guantanamo. This person was screened at Guantanamo and returned after being screened.

Mr. MCKINLEY. Well, the Guantanamo operation was different in kind from the operation that we are trying to put into place now. It was a different standard. It was administered in a different fashion. One of the reasons that we decided this time around to adopt the full refugee interview and to bring in the U.N. High Commissioner and the other people was to be certain that we weren't in any way cutting corners or trying to put together something that was—

Mr. NADLER. Well, I am glad to hear that we are not cutting corners. Do these people have access? Will they have access to legal help?

Mr. MCKINLEY. It is not included that lawyers should be present in the counseling phase.

Mr. NADLER. Will they be present for that?

Mr. MCKINLEY. We do not envision a lawyer-client relationship in this process.

Mr. NADLER. So the answer is no.

Mr. MCKINLEY. But lawyers and legal expertise, I think, is very likely to be available.

Mr. NADLER. What kind of appeals process will be available?

Mr. MCKINLEY. The appeals process is spelled out rather clearly in our exchange of letters with the United Nations High Commissioner for Refugees.

Mr. NADLER. No, I didn't see an appeals process. What I saw was that a quality review officer would look and finalize it and then they would be sent back. That is not an appeals process.

Mr. MCKINLEY. Let me read from the exchange of letters with UNHCR which is available, and we brought extra copies with us today because we wrote the description in some—

Mr. NADLER. Just give me a summary, because I don't want to use up my time, please.

Mr. MCKINLEY. At the close of the interview, the INS interviewer will inform the applicant if he or she intends to deny the claim and of the basis for such denial. The interviewer will then ask the applicant if there is additional information the applicant would like to add to the file in response to the proposed denial and provide a fair opportunity for the applicant to do so.

Any additional information or arguments that the applicant supplies will be recorded by the interviewer on a separate piece of paper that will be placed in the applicant's file for review by the INS quality assurance officer. As part of the review, the quality assurance officer—

Mr. NADLER. Excuse, me. The INS quality review officer—quality assurance officer is the appeal?

Mr. MCKINLEY. No. Now let me now come to the most important part of this. That was the procedure that will be done by the INS people. Now we come to the part that UNHCR was particularly interested in and which I think is, in fact, the answer to your question. UNHCR will have the opportunity to examine and review case



files and to discuss INS determinations with quality assurance officers. When a negative determination has been made—and this is any negative determination—when a negative determination has been made and UNHCR believes that grounds for reconsideration exist, UNHCR will have the opportunity to counsel applicants concerning their cases and the possibility of reconsideration by INS.

Mr. NADLER. In other words, UNHCR can determine that maybe there should be a reconsideration, but there is no right of appeal by the detainee. He has no right to appeal. UNHCR may suggest that it be permitted and then only to INS.

Mr. MCKINLEY. Well, if you mean appeal through the U.S. judicial system—

Mr. NADLER. Among other things, yes.

Mr. MCKINLEY. That is correct, but this is—this is a standard part of all worldwide refugee adjudication. So it is in no sense different from the way we adjudicate refugees around the world. None of them have the right of appeal through the U.S. judicial system, nor will the Haitians in this case.

Mr. NADLER. Well, let me—

Mr. MAZZOLI. The gentleman's time has expired, but I will let the gentleman go on because he has been here all day and I appreciate his attention. But another couple of minutes.

Mr. NADLER. Thank you very much, Mr. Chairman. I appreciate that.

The Haitian Refugee Center states that hundreds denied refugee status by United States authorities in Port-au-Prince have subsequently been persecuted. We have the names of 20 such rejectees who were later murdered, tortured, or sexually violated. Free legal help even in Port-au-Prince is prohibited. Virtually no one wins asylum in the United States without legal counsel. The United States—this is from the National Coalition for Haitian Refugees—returned a total of 1,447 boat people since President Clinton announced his new refugee policy on May 8, of whom 80 were observed being arrested on the dock, never mind how many were arrested later. Eighty were picked up on the spot as they landed and were arrested.

U.S.A. Today reports that in Port-au-Prince 184 boat refugees who were returned to the city's dock Monday morning, May 23, 1994, were beaten by police as they were taken to jail, Red Cross officials said. In Petit Goave, a port where boat people leave for the United States of America, 30 to 40 people were arrested and beaten, human rights observers said.

My point is that the testimony that we have been hearing this morning seems to bear no relation to the reality that we are hearing from people who deal with the refugees, and it seems to me that what we are saying is that we know that about 2.5 percent of people who apply for asylum in the in-country process are granted, we know that there is no real legal counsel, and it seems to me that what we are setting up is a continuation of what we would not begin to believe passes for due process in this country, a procedure that is guaranteed to produce many, many more instances of this kind of atrocity, and for you to sit there and say that you believe we will have 100 percent or anything near in accuracy is unbelievable.

I wrote a letter to the Commissioner on May 23, I think it was, which was signed by 23 other Members of Congress, asking that in view of the demonstrated brutality of the regime toward many who had been returned by the United States and in view of the declaration by the regime on May 21, that they would now regard as criminals all who attempted to flee, that we grant temporary protected status.

Short of doing that, I would have to say that we can guarantee that the United States will be allowing a situation where more of this exists, and I simply ask you, what is the view of the Department toward that, toward granting temporary protected status to all Haitian refugees as a way of having a much greater assurance that we won't have on our moral consciences a lot more murders?

Ms. SALE. Established procedures require and do have us review temporary protected status on a recurring basis for any number of countries, including Haiti. Our view at this point is that, although we continue to monitor the situation and consider the options, that it is not clear at this point in time that temporary protected status is appropriate.

I would like to add a few things, if I can, given the fact that Mr. Nadler has put so many things on the record.

Cumulative in-country refugee processing today shows us approving 30 percent of the cases that we have considered. In recent weeks, that approval rate has reached as high as 60 percent in great part, I believe, both as a function of technical changes that we made to the screening process in memoranda issued under State and INS authorities in February and, more particularly, because of the enormous amount of cooperation and assistance that we receive from U.S. Catholic Charities, World Relief Organization, and other nongovernmental groups that have been working with us with a very, very clear and deliberate intent to identify persons who are at risk so that they can come to the head of the queue and not get mixed up in everyone else who may see this as an opportunity to essentially get a visa. I mean there is some of that as well that we face.

The case that Mr. Nadler has so clearly shown us with his photographic copies is one I would like an opportunity to confirm. There were two brothers who were erroneously returned from Guantanamo because of an administrative error and confusion in the middle of that operation prior to our having in place computer systems that facilitated managing human beings so that we did not ever send someone home who was wrong.

I would like an opportunity to verify, now that you have named the person whose picture you have brought, that this might have been one of those cases. If it is the same case that I believe it is, it was a person that our screening criteria would have brought to the United States and whom we sought, with State Department's assistance, once we realized that we had made an error in returning him, but it was not a person whom we erred in adjudication of.

I can't guarantee that, because I am forcing myself to remember a name from 18 months ago, but I would like to be able to provide that information when we have a file review, please.

Mr. MAZZOLI. We will be happy to have that, and I assume from that, that there will be computer systems set up on *Comfort* and on Guantanamo.

Ms. SALE. All of those procedures involved.

Mr. MAZZOLI. Thank you.

[The information follows:]

The Immigration and Naturalization Service has confirmed that Mr. Roman(e) Desanges, accompanied by his wife and son, arrived at Guantanamo Naval Station on or about February 20, 1992. INS records reflect that Mr. Desanges had a brother, Ronald, who was also encamped at Guantanamo. Both Roman(e) and Ronald Desanges were "screened in" after a "credible fear" interview with an Asylum Pre-Screening Officer. This was not a determination that either was a refugee; rather, the "credible fear" test was a threshold test to identify those who might have a good refugee claim and who should therefore be paroled into the United States, if not excludable, to apply for asylum.

INS records show that all four family members were resident at Camp Bulkeley, which housed "screened in" Haitians who had tested positive for HIV, the virus that causes AIDS. Persons seeking to enter the United States who are HIV positive are excludable under Section 212(a)(1)(A)(i) [8 U.S.C. 1182] of the Immigration and Nationality Act (INA). INS records indicate, though not conclusively, that Roman(e) was HIV positive. It is also possible that Roman(e) was not HIV positive, but that he and his family choose to go to Camp Bulkeley in order to be with his brother, Ronald, who may have been HIV positive.

While it is possible that Roman(e) Desanges was supposed to come to the United States but mistakenly repatriated to Haiti, it is also possible that his return was not inappropriate under the procedures that were in place at the time. For example, he may have been returned to Haiti after failing to meet the higher refugee definition consistent with existing policy at that time. HIV positive Haitians who were screened in after the credible fear interview were offered an interview for a full eligibility determination according to section 101(a)(42) of the INA. Those who established a "well-founded" fear of persecution" remained at Guantanamo and were moved to the United States in keeping with the April 1992 federal court order. Interviewing was begun and then suspended by order of the federal district court. For a short period of time persons were repatriated based on one of the following:

- 1) If a "screened in" HIV positive individual failed to establish his/her eligibility after a "well-founded fear" interview, then the applicant would have been repatriated as a "non-refugee."
- 2) Some of the "screened in" HIV positive Haitians voluntarily requested repatriation. These persons were returned to Haiti after being informed of all the options available to them after signing forms indicating their wish to return home.
- 3) Some of the "screened in" HIV positive Haitians refused to participate in "well-founded fear" interviews and further refused to request voluntary repatriation, thus rendering them subject to involuntary repatriation.

We admit that we do not have perfect records available on this, and no further information or files have been found regarding this specific case.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from California.

Mr. BECERRA. I thank the chairman, and I thank him for being generous with his allocation of time to the Members for questioning.

Let me follow up on some of the things that my colleague from New York, Mr. Nadler, focused on. I would like to make sure we have some distinct answers to some of the points that were made with regard to the administration's new policy on the process that is used for refugees or those seeking asylum compared to the process we currently have for most refugees.

Correct me if I am wrong, but it is true that we are prohibiting Haitian refugees from seeking counsel.

Ms. SALE. I don't believe we are prohibiting it. It is not norm nor does it occur except in very extraordinary cases in the worldwide refugee process for counsel to be there at the point of interview. I know of a very, very few cases where that was, on an extraordinary nature, made available in our Rome office, but it is not norm for counsel to be available.

Now it is not unlikely for NGO's, who are both counseling and advising refugees in-country or anywhere else in the world, to possibly be lawyers as a matter of their training.

Mr. BECERRA. Let me ask, if I may interrupt, if any of you on the panel are aware of any actions by the administration to inform advocates or NGO's that voluntary attorneys seeking to provide free legal representation to individuals interdicted will not be allowed access to boats where the Haitians are present or the Haitians themselves. Are you aware of that particular representation being made by the administration to representatives of NGO's or attorneys seeking to provide voluntary assistance?

Ms. SALE. I am not aware of instances, Mr. Becerra, if that is what you are talking about. I know that we have wrestled with access as an issue of generic policy for the press, for counsel, for NGO's.

Mr. BECERRA. I don't mean to interrupt. I know that I am going to run out of time as well. I am just trying to get some clear answers. So far as you are aware, there is no representation that has been made by the administration, and I don't hear anyone else on the panel speaking, so I assume that by your silence you are saying—

Mr. ALENIKOFF. I can speak to that, Mr. Becerra. I have had conversations with a wide range of NGO groups and lawyer groups as we have talked through the process and thought about it. I think there has been no final decision from the administration. Certainly it is not one that I can make. We have raised various set of alternatives for participation. I think the current plan—

Mr. BECERRA. OK, let me stop you.

Mr. ALENIKOFF. Yes.

Mr. BECERRA. On the specific question, has anyone from the administration advised anyone who seeks to be an advocate for these Haitian individuals that they do not—they will not be granted to access the boats where they are being processed? And I think it is a pretty clear question, yes or no.

Mr. ALEINIKOFF. Yes, to the hospital ship there will be—the UNHCR will have NGO's counseling. That may well include lawyers. Beyond that, I think the view is that there will not be representation of people in the process.

Mr. BECERRA. But tell me what the administration has said, not what you believe UNHCR or anyone else has said. Has the administration said to any representatives that wish to provide some form of advocacy to the Haitians on these boats that are being processed that they will not have access to these Haitians?

Mr. ALEINIKOFF. I have said to advocates what I have just said to you. I am not sure it uses the words that you have said. What others have said or what the administration as a whole has said I can't answer.

Mr. BECERRA. And is it true that for those people who are being processed outside of the United States for asylum or refugee status, that they do have access to voluntary counsel?

Mr. ALEINIKOFF. I guess theoretically they do, but what Ms. Sale has said is that we admit about 100,000 refugees a year who do not have counsel in the process.

Mr. BECERRA. OK. Whether they do or don't is not my question, it is whether they have access. Ultimately they are able to obtain access.

It seems to me, from what I understand, that access is being denied to Haitians on these boats through the processing program.

Let me move on to my next question.

We are making the final determination of well-founded fear of persecution more or less on the spot for these individuals found on boats and being processed on a U.S. boat or on Jamaican or other territory, correct?

Ms. SALE. As we make it in almost any other part of the world. I mean an interview occurs, an asylum officer, a refugee officer, takes into account broad expertise on the circumstances, considers the case and makes a decision. Now in other parts of the world the person may go home and wait 6 weeks for an answer. Everywhere else in the world, the person doesn't have the benefit of onsite quality assurance review of his work, onsite UNHCR participation.

Mr. BECERRA. Let me try to stick to just the question. We can get into some of those things. But in terms of the actual proceeding itself, in terms of an opportunity for the Haitian individual to prepare a case, the individual is not given whether it is 6 weeks or any particular time to prepare himself for a final determination of a well-founded fear of persecution, correct?

Ms. SALE. Well, the reality of an immediately fleeing refugee to have time for weeks to prepare a case doesn't really work absent an in-country program such as we have in the Soviet Union.

Mr. BECERRA. So in in-country programs, we do provide those seeking refugee status with an opportunity to prepare a case and in some cases seek counsel?

Ms. SALE. People have time to make a decision when they appear before us, are scheduled for an interview, and if there is an intervening period of time between when that interview occurs, they can think about the process, if that is preparation. They can talk to

friends, if that is preparation. Friends may be lawyers. There is not a judicial process as there is in the domestic asylum process.

Mr. BECERRA. Again, we are going beyond the question. I am just trying to determine the distinctions between the current policy with regard to Haitians versus our policy with regard to other individuals seeking refugee status.

As Mr. Nadler, I think, tried to elicit responses, there is no meaningful appeal process similar to what might be granted to those either on U.S. territory or those processed in the country, the home country; there is a different process.

Mr. ALEINIKOFF. There is no appeal process—

Mr. MAZZOLI. Could I cut in here just for one second maybe just to clear me up? In the technical terminology, in asylum cases—can only be processed on U.S. soil. You have to be here.

Mr. ALEINIKOFF. That is correct.

Mr. MAZZOLI. And when you are here, constitutional responsibilities and other things trigger. A refugee is processed abroad where there is not the application of the U.S. Constitution. So what we do, and I think that is what we want to do, is fairness, getting back to what Mrs. Meek has said at the very start of our hearing today, is fairness, but in this rubric of fairness it does not have to be necessarily what is done in the United States because there are a different set of applications, so long as it is fair, and I guess the question the gentleman is asking, and I would ask too, is: Is this fair compared to processing as to other nationalities seeking asylum—seeking really refugee status, seeking to be identified as a refugee, and does it conform to the world's nations under the U.N. protocol and the U.N. treaty whereby other nations are looking at people who are asking to be declared refugees? I guess that is the sort of thing. Is this fair from the standpoint of how we treat other nationalities who are abroad at the time processing is done, and how about the world's nations to see if there is any fairness there?

Mr. ALEINIKOFF. Mr. Mazzoli, I think it is fair and I think if it weren't fair we wouldn't be putting it forward and we wouldn't be staffing it with people from my office and from the INS. We do believe it is fair.

It differs from the general 207—section 207 Immigration Act overseas processing, in fact, in a way that benefits the shipboard processing to some extent. Overseas processing usually does not have a quality assurance officer that oversees the decision of the INS adjudicator. There is no right of appeal overseas. If one is applying for refugee status, there is no right to appeal. There is no judicial appeal. There is no higher review panel that looks at those decisions of INS adjudicators.

In this case, on shipboard there will be an INS quality assurance officer, a trained lawyer from my staff looking at every single determination, and, moreover, every determination reached by the quality assurance officer will then be reviewed by a representative of the United Nations High Commissioner for Refugees. If the UNHCR person does not agree, they will question the quality assurance and they will go back to the applicant and see if the applicant would like to raise additional questions which INS would then further consider.

So different circumstances call for different kind of solutions to very difficult questions, but on the bottom line question of fairness we are convinced that this is a fair process or we would not be putting it forward and presenting it to you today.

Mr. MAZZOLI. I thank my friend from California for yielding.

Mr. BECERRA. And I thank the chairman for his clarification, although I would point out with regard to the issue of asylum and the reason we don't have people seeking asylum is because the United States is denying Haitians the opportunity to land on our shores to seek asylum. So asylum is not being afforded them because we are not giving them a chance to go through the process we would most other people who are seeking asylum.

Let me try to finish then.

Mr. MAZZOLI. The gentleman has one more question, and then the gentleman from New York, and then we will go on to our next panel. The gentleman is recognized for an additional question.

Mr. BECERRA. I would ask the chairman for some indulgence because I had one more question. I will try to keep it very limited.

Mr. MAZZOLI. Go ahead. You have been here all day too, and I appreciate your attention.

Mr. BECERRA. Thank you.

Correct me if I am wrong. In terms of the actual practice, it differs from the current practice in that, one, Haitians may not have access to representation, counsel; two, their appeal process, to the degree that you can call it an appeal, is a review of the paperwork completed by a hastily trained INS officer who has not been trained, or many of them have not been trained at the same level with the same skills as the current corps of asylum officers. Three, we forcibly repatriate individuals whom we do not grant refugee status, which is different than what we do with other folks which is something we do not do to other individuals seeking refugee status, and it seems that the appeal process—oh, I already mentioned the appeal process is nothing more than an opportunity to have someone else review the process.

Given that, correct me if I am wrong, but isn't it true that we would probably afford someone who gets a parking ticket with more rights to adjudicate his or her claim than we afford someone who is seeking to show that he fears death or persecution from a country he is fleeing.

We provide someone who has a parking ticket with the right to counsel, the opportunity to get counsel, with the right to appeal, a meaningful appeal. We accord them the right to go before a judge or magistrate.

Yet, we are not doing some of those same things for people who are seeking refugee or asylum status, and we do that for people who get a simple parking ticket.

Mr. ALEINIKOFF. Sir, I would make the analogy to our overseas refugee process in general by which we admit over 100,000 people, as well as by the fact that UNHCR has agreed to participate with us in this process, and ultimately I think they are both moral and legal arbiters of the fairness of the process.

I am not saying that they have sanctioned the process in that way, but their participation with us lends assurance to us that we

have constructed a fair process that will adequately test the refugee claims.

Mr. BECERRA. Only one last question, but let me make sure I get an answer to the question.

We don't afford a Haitian seeking refugee status—the same types of rights that we afford someone who is contesting a parking ticket, do we?

Mr. MAZZOLI. Well, the gentleman's time has expired.

Mr. BECERRA. Mr. Chairman, if I could just get an answer to that.

Mr. MAZZOLI. If somebody can answer it. If he wants to answer it, I guess.

Mr. ALEINIKOFF. We think we are abiding by the law, Mr. Becerra.

Mr. BECERRA. OK. That is not my question.

Mr. ALEINIKOFF. I don't mean to play games with you, sir. I think it is true that in the criminal process under the kinds of constitutional provisions that Mr. Mazzoli has pointed to the courts have read the Constitution in particular ways for people inside the borders of the United States.

Those rules don't apply—we are not standing on those kind of technicalities. We think whether or not the Constitution applies, we have an obligation to create a fundamentally fair procedure.

I hope that is responsive to your question.

Mr. BECERRA. Mr. Chairman, and I hate to pursue this, and I don't wish to put anyone particularly on the spot, Mr. Aleinikoff, or anyone else, but I think it is a fair question. And I know it perhaps places him in a spot, but I think it is a fair question, a simple question. It is very direct.

The rights that I mention that we accord to those who are contesting a parking ticket, those similar rights that I identified are not accorded to someone seeking refugee status from Haiti.

Mr. ALEINIKOFF. If you are talking about the right to an article III judge, and the right to court-appointed counsel at government expense, and the right to a judicial appeal, those rights are not here. But those are rights that we don't afford in refugee processing in general.

Nor do we afford, by the way, to asylum-seekers in this country, because the asylum process is not viewed as a criminal process.

Mr. BECERRA. So you said yes, we don't afford those rights which means that we don't afford the Haitian refugees similar rights that we afford to people with parking tickets?

Mr. ALEINIKOFF. Sir, can I stand on my prior answer?

Mr. MAZZOLI. The gentleman's time has expired.

Mr. BECERRA. Mr. Chairman, the one last question I wanted to ask, and I can make this very quick.

And to Mr.—is it Aleinikoff?

Mr. ALEINIKOFF. Aleinikoff.

Mr. BECERRA. Aleinikoff. Have you represented asylum or refugee applicants in the past?

Mr. ALEINIKOFF. Yes, I have.

Mr. BECERRA. And what would you consider the minimum amount of time it has taken you to prepare a case for a hearing?



Mr. ALEINIKOFF. That has varied. I did it with a set of students who needed to learn the ropes, and we took a fair amount of time, which we had the luxury of time, and we—because at that point the Immigration Service was quite slow in hearing these cases and gave us the benefit of time, and it was an educative experience for my students.

We took as long as we could. We could take several hours a day.

Mr. BECERRA. But the question is not so much how much time you were allocated or found yourself to have, but how much time you believe it was necessary to have to prepare your case, whether you had more time than not?

Mr. ALEINIKOFF. I think any lawyer would tell you that more time is always better than less, and I would like to take as much time as I could with any applicant.

Mr. BECERRA. Minimal time. Minimal time.

If I could just, Mr. Chairman, again, get an answer. Unless Mr. Aleinikoff is saying he cannot answer the question.

Mr. ALEINIKOFF. I couldn't give you minimal time. It takes an adequate time to get the story out and help the person tell the story.

Mr. BECERRA. More than a day? Less than a day?

Mr. ALEINIKOFF. I don't know, sir. It could be, could be—I don't know. I really can't give you an answer.

Mr. MAZZOLI. The gentleman's time has expired.

Mr. BECERRA. Thank you very much.

Mr. MAZZOLI. He has tried his best to answer the question. I think that is fair.

Mr. NADLER. Mr. Chairman, could I request one question? You had said—just briefly.

Mr. MAZZOLI. One question.

Mr. NADLER. It is one.

Mr. MAZZOLI. All right.

Mr. NADLER. Thank you, Mr. Chairman. The reason—I thank you for being so considerate with time, but I had asked the question of Ms. Sale about the percentage of in-country processing. I had said that it was 2 percent approvals, and Ms. Sale came back and said, No, it was 30 percent. Recently it was 60 percent.

My information, and this is from the Haitian Refugee Center, is that since the February 1992 inception of the in-country processing program through May 13 there were 56,577 applications of which 1,177 were granted, which is a little less than 2 percent.

So, I would simply ask where the 30-percent and the 60-percent figure came from and if these figures are correct or not?

Ms. SALE. Mr. Nadler, there is always a distinction when you deal with numbers in refugee cases between numbers of people, individuals, and cases that are interviewed. We have interviewed or considered 13,000 cases representing 16,000 persons—13,000 cases representing 16,000 cases, according to data that I have, in-country, that resulted in 1,300 approvals, and you are right. That is a 10-percent approval rate.

I am sorry. I apologize. I misread my notes.

Mr. NADLER. Well, what happened to the other 50,000? This says 56,577 through May 13.

Ms. SALE. Individuals, not cases.

Mr. NADLER. You just said 13,000 cases for 16,000 individuals.

Mr. MAZZOLI. Well, we will get that.

Ms. SALE. Let me submit it for the record because I need to make sure that I have got the right number.

Mr. MAZZOLI. If you could supply the information, we will try to rationalize.

Thank you.

[The information follows:]

Since the inception of the In-Country Refugee Processing Program in Haiti in February, 1992, INS officers have processed 14,520 refugee cases involving 17,532 individuals. These cases resulted in 1,481 approvals involving 4,303 individuals. This gives an overall approval rate of approximately 10%.

Since February 1994, with the operation of new screening criteria, approval rates have increased to approximately 30%. However, data on the numbers of refugees processed and approved are maintained on a cumulative basis, thus exact numbers relative to recent applicants are unavailable.

Mr. MAZZOLI. We will have a recess until we vote and we will come back.

[Recess].

Mr. MAZZOLI. We welcome our afternoon panel. It was to be a morning panel, now it is an afternoon panel. It is Rev. Richard Ryscavage, the director of the migration and refugee services, the U.S. Catholic Conference; Mr. Jocelyn McCalla, the executive director of the National Coalition for Haitian Refugees; Mr. Rick Swartz, Esq., Swartz and Associates, Washington, DC; Mr. Dan Stein, executive director of the Federation for American Immigration Reform; and Mr. Forester—Mr. Steven Forester, the supervising attorney for the Haitian Refugee Center.

I guess they are taken in alphabetical order from the best I can see here. So, Mr. Forester.

Mr. FORESTER. Thank you. In terms of—

Mr. MAZZOLI. Incidentally, all the statements will be made a part of the record, and obviously, to the extent that you can address any of the issues that were brought up earlier today along with what you are here to speak about would be useful too, because we had a pretty interesting debate in the early part of the day.

#### STATEMENT OF STEVEN FORESTER, SUPERVISING ATTORNEY, HAITIAN REFUGEE CENTER, MIAMI, FL

Mr. FORESTER. Mr. Chairman, the figure for INS approved in-country is 11 percent. But 58,000 to date. As of May 13, it was 56,577; 1,177 had been approved.

The reason for the discrepancy is that there is a two-stage process. You first have to meet the State Department eligibility criteria. Seventy-six percent of the people never get interviewed by the Immigration Service because they don't overcome the State Department mountain of a hurdle which they put in the place of getting an interview.

In order to—and I have summed this up in my summary of testimony. In order to see the INS, you have to show that you are "high profile." The State Department has consistently over the years minimized human rights violations. The Embassy has never done one serious human rights investigation in Haiti. They consider the press and journalists the enemy, and they are friends with the military and the rich families.

After Mr. Gray announced the intention to affect the rich families that have benefited from the coup, an Embassy employee made a special attempt to reopen the consulate to get six visas for children of the rich, who they were supposedly targeting, to bring in here.

The preliminary questionnaire that is used to say whether you are high profile or not is a form that is in Creole. The person who vets, who looks at these thousands of forms, a few hundred every week, is a dependent of a U.S. Embassy official named Gerda Lane, who does not speak Creole or read it.

Most of these are filled out in French or Creole. She is unsympathetic. She doesn't speak the language. She is the one who takes these home—she is a dependent, she is not even an employee, as I understand it—and reviews these.

From what I hear, she has no training whatsoever, is unsympathetic, and can't read much of the stuff she supposedly reviews.

The requirement that people be high profile is something that directly contradicts INS authority. The State Department has always said that only the prominent people in Haiti are being killed.

The man whose photo everybody has seen wasn't prominent, nor are the people who come to my office with stories, which I cross-examine and make sure are correct, of people who have—they have gone to their houses in Haiti.

One woman came to me. She was a grassroots activist. She had traveled to Washington to meet Aristide along with many others. A grassroots person. They asked for her and her brother said, "She is not home." So they said, "You can replace her." He has never been seen again.

I have cases in terms of in-country processing of people who I have submitted 30 pages of documentation on, correspondence between the organization they were a member of and other Embassies and other organizations throughout the world, to-and-from correspondence, asking for relief for eight persons who were the executive committee members of that organization, all documented. Three cases denied. Two of these people have been killed since then.

The actual figure for approval is about 2 percent. It is 11 percent of those people INS sees. Of all who fill out the preliminary questionnaire, the figure is 2 percent. Anyone can do the arithmetic: 1,177 into 56,577 is 2 percent.

Reference was made to 60 specially trained asylum officers. First of all, they are not asylum officers. They are Border Patrol agents, inspectors and examiners whose entire careers have been enforcement oriented. They went through 5 days of training, which is supposed to overcome years of enforcement background.

When this process was done on Guantanamo a couple of years back and a credible claim, credible fear standard was used, the initial officers knew nothing about Haiti, just like these people know very, very little about Haiti. The screening rate was 5 percent. We sued them. They brought in better trained officers, the screening rate went up to about 75 to 80 percent, actually for 4 to 6 weeks. Then people in Washington said that is too high. So overall it was 27 percent.

One reason I think Guantanamo has never been considered is they know that the sham that is being set up today would be challenged and would have to be revised to make it fair.

The in-country processing is not safe at all. You have to return five to eight times just to get interviews, appointments, stuff like that. There is an initial interview site that is a movie theater right across from military headquarters that is open to view. There is nothing safe about applying in-country.

I would like to refer to the exhibits that I brought. The first exhibit shows the figures for 1991 interdictions, proving that if you get Aristide back you are not going to have a problem. Forty-three people were interdicted the month before the coup in August 1991. Zero were interdicted the month he was inaugurated. The month after the coup, November—the coup was September 30—6,012.

Aristide is the Haitian's JFK. They adore the man. As Representative Owens said, he is their hope. You get him back there is going to be a reverse flow of thousands of people, I really think, going back to participate in building democracy in that country. The figures are very clear.

Secondly, this year alone, of the people that the Coast Guard has handed over on the docks, through June 1, 219 people have been arrested on the docks. That is exhibit B of your documents. Since June 1 others have been imprisoned.

Third document, Department of State telegram, September 1993 stating—this is the State Department, September 22, that though the ostensible purpose of questioning by the Haitian military on the dock was to identify boat trip organizers, the interrogation which took place within the hearing of Embassy officials, an international civilian mission—that is, UN/OAS observers—“appeared to be a fishing expedition for persons considered troublemakers by the police and probably designed to intimidate the returnees.”

We repatriated, in February, 64 people who were inside U.S. territorial waters, who were survivors of the Cite Soleil massacre, that is a part of Port-au-Prince, which was largely burned down because it is an Aristide stronghold. These people were terrified and traumatized about being returned. All of them were summarily repatriated.

The only human rights investigation done by our Embassy was a symbolic visit by the Ambassador.

We have repatriated people caught off the Northwest where many of the massacres have been occurring—Raboteau, Gonaive, other places. Massacres, so people get in boats. Fifteen miles offshore, they are caught and sailed right back to Port-au-Prince like sheep to slaughter, and handed right over to Haitian soldiers.

Two hundred and nineteen imprisoned just this year. And there is exhibit C, the State Department telegram about the fishing expedition.

Exhibit D is approval rates for refugees. When we want to be fair to refugees, and this is where the issue of race comes up, we grant refugee status. Fifty-one thousand people, or 96 percent, of applicants in the former U.S.S.R. approved in fiscal year 1993. Nobody raised a fuss about 51,000 people coming to this country. They are white people. They got through. We let them in.

From East Asia and the Pacific, 38,000. Not 96 percent but 88.3 percent. The figure for Haitians is 2 percent. Similar figures for Africa and Southeast Asia. Africa is a little lower.

I would like also to refer to an exhibit, that I think is E, which is a memorandum by John Cummings. He is the Acting Director of the Immigration Service's Office of International Affairs. In March 1993, he wrote this memo, "Considerations When Adjudicating Haitian Refugee and Asylum Applications." He wrote this to the Asylum and Refugee Divisions, and on the 6th page, he says—and this was a response to the State Department.

You have to understand he prepared this memo because the State Department was contradicting every human rights organization and saying they are only persecuting the "prominent." So he writes, "Lack of prominence does not diminish the risk. Activities either real or imputed are a far more important consideration in assessing risk than is prominence." That is a quote.

But the State Department continues to insist that even to get an INS interview in-country you have got to be "high profile." The 5,000 to 6,000 I have estimated—nobody knows the exact figure—murdered in Haiti were not "high profile." It is enough in Haiti if you are somebody's relative to get killed.

Alerte Balance whose macheted disfigured appearance is documented in the materials you have, she was the wife of somebody. They came to invade the home. They took her to a killing field. She miraculously survived.

Now, the 20 people—we have the names of 20 people, as referred to earlier, persecuted after being denied refugee status: Three of them were killed. Four people were killed just for being related to the 20.

They use rape—this has been documented by many groups—mutilation with machetes, decapitation even, as instruments of terror, and they throw the bodies into the streets. So there is extensive evidence of this kind of horrible treatment.

Now, the Jamaica stuff—the boat should be called the *USS No Comfort*, because it is designed, as Sandy Berger said, to repatriate 95 percent of the people: no attorneys, no legal assistance whatsoever, the highest refugee burden. In this country, we have a right to counsel. Nobody prevails realistically without having counsel.

The per agent—because these are not asylum officers, they are Border Patrol people—per agent quota per day is being estimated at six or seven adjudications per day. I have written about this stuff. There is no way in the world it can be done so quickly and that is why Mr. Aleinikoff had such trouble answering that question—he could not honestly say that you can do a meaningful job whatsoever in such a short time.

They are using interpreters who are getting \$1,000 a month and are untrained. They are in addition doing it on boats where there is a 10-year history, on boats, of approving 28 out of 23,000, or a tenth of a percent of the people on boats. People don't open up if they are afraid they are going to be sailed right back.

Now, the State Department idea—

Mr. MAZZOLI. Mr. Forester, I wish we had all day long, because this is a very important subject. But we have—

Mr. FORESTER. Can I sum it up in two sentences?

Mr. MAZZOLI. That would be fine.

Mr. FORESTER. Fifty years ago the State Department came and testified in Congress and lied. The State Department consistently lies about the human rights picture. The generalities you have heard have nothing to do, as Representative Nadler said, with reality.

Fifty years ago a report was written to the Secretary of the Treasury by Treasury employees called "On Our Government's Acquiescence in the Murder of the Jews." This is a Rwanda or a Bosnia. We would never—it is an obscenity to call these people economic. They are as political as any refugees in the world. They should be allowed—we have room for them if we have room for others.

And the sham that is being perpetrated in this processing must not be allowed; it is a horrible system. Ninety-five percent they are intending to send back.

Mr. MAZZOLI. I appreciate it very much. That is very important testimony, Mr. Forester.

[The prepared statement of Mr. Forester follows:]

PREPARED STATEMENT OF STEVEN FORESTER,<sup>1</sup> SUPERVISING  
ATTORNEY, HAITIAN REFUGEE CENTER, MIAMI, FL

"They're chopping people's faces off," says President Clinton, "killing and mutilating innocent civilians, people not even directly involved in the political life of the country."

Alerte Balance, 32, mother of three, macheted, arm hacked off, face, neck, mouth slashed. Oman Desanges, 27, repatriated by U. S., macheted, knived, shot to death, eyes plucked out, tongue and right ear cut off, stomach slit. Joseph Egamil Jean, 73, shot dead in head and stomach in front of wife and children. Elie Zephir, Ernst Bernard, Sauveur Nerette, Dieulefet Jeune, Sabiento Stinfil, Cherilis Joseph, Andrel Fortune, countless others, murdered.

Haiti's butchers have killed 5,000 to 6,000, including children, since ousting President Aristide on September 30, 1991. They rape, decapitate, and mutilate to terrorize the population, which overwhelmingly supports Aristide. If you're not home, they kill your sister, cousin, child, parent. Haiti is a burning house, a killing field, a Holocaust.

Our Coast Guard has repatriated everyone trying to flee this hell, handing them in Port-au-Prince to Haitian soldiers who

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<sup>1</sup>Steven Forester, Supervising Attorney at the Haitian Refugee Center since 1992, is the author of "Haitian Asylum Advocacy: Questions to Ask Applicants and Notes on Interviewing and Representation," New York Law School Journal of Human Rights, Vol. X Part Two, Spring 1993, used in training attorneys and students. He was HRC's staff attorney from 1979 to 1985 and Legal Director of the Florida ACLU from 1985 to 1987.

fingerprint them in a "fishing expedition for troublemakers," as our Embassy described it in a September 22, 1993 cable, and imprisoning 219 this year alone (through May). In February we returned 64 survivors of the torching of Cite Soleil, in May survivors of massacres in Raboteau, Le Borgne, Petit Goave.

Clinton called this repatriation "humanitarian."

In-country processing ("ICP"), a fig leaf for this complicity in repression, supposedly allows one to seek refuge in Port-au-Prince. It doesn't. Since its February 1992 inception, of 58,000 would-be applicants, only 2% (1,177 of 56,577 through May 13) have been approved and less than 24% got an INS interview. Most can't meet arbitrary State Department vetting criteria excluding everyone who isn't "high profile." (The 5,000 to 6,000 killed weren't "high profile.") The requirement contradicts INS authority. In March 1993 John Cummings, INS Acting Director, Office of International Affairs, wrote guidelines for Haitian refugee adjudications stating "lack of prominence does not remove the possibility of being at risk.... Activities, either real or imputed, are a far more important consideration... than is prominence." And of those found to be "high profile," only 30% have been approved.

Physically applying is dangerous. One must return at least five times, sometimes eight or more, to places exposed to military view, like a movie theater interview site near military HQ.

In contrast, in FY 1993 we accepted 95.9% (50,924) of refugee applicants from the former USSR, 88.3% from East Asia and the Pacific, similar percentages from other areas, and all Cubans.

Hundreds denied refugee status by U. S. authorities in Port-



au-Prince have subsequently been persecuted. We have the names of 20 such rejectees who were later murdered (3), tortured, sexually violated. Four persons were killed just for being related to them.

On May 8 Clinton said he would stop summarily repatriating Haitians, but promised interviews are designed in bad faith to quickly repatriate 95%, not protect people. Its a sham.

**There's a quota.** Five days after Clinton's atrocity comments, Deputy National Security Advisor Samuel Berger said we will repatriate 95% of the Haitians. Officials say to prevent a magnet effect, the grant rate may not exceed ICP's grant rate (2%, but usually given as 5%) and "success" means returning large numbers quickly. The goal is to "send a message" not to flee. If "they're chopping people's faces off," this is complicity in murder.

Interviews will be conducted on ships -- a remote Turks and Caicos island won't be operational for months -- by minimally trained and largely insensitive "enforcement" personnel, Border Patrol agents and the like trained to exclude and deport people, not by trained and non-adversarial INS asylum officers sensitive to country conditions. From 1981 to 1991, only 28 of 23,000 Haitians, a tenth of a percent, were approved in shipboard screening.

**Free legal help** -- essential to elicit facts, gather witnesses, show credibility, document the persecution of similarly situated persons -- is prohibited. Virtually no one wins asylum in the U.S. without counsel. Asking Haitians to do so ties their hands behind their backs. And they must prove the hardest burden, persecution or a well-founded fear of persecution -- in contrast to applicants in the former USSR, East Asia, and the Pacific, who need

only show membership in a class, and the lower "credible claim" standard used on Guantanamo in 1991-1992.

Only about one hour will be allowed from first contact to adjudication -- with a "per officer" quota of 6 or 7 adjudications per day -- an impossible deadline, with no review of the decision before repatriation. No one will assist the Haitian before he or she meets the agent. The set-up insures erroneous denials. We will return thousands who need protection. Even the interpreters are untrained. Essential to get good information, trained ones refused to work for \$1,000 per month.

Why Border Patrol agents? Why only about an hour per adjudication without review? Why no attorneys? Why on ships? Why the most difficult standard instead of "credible claim"? Why not bring them here? For the same reason we sealed Haiti's borders. To relieve political pressures in Washington to exclude black people and oust Haiti's military. It's racist, obscene, immoral, and murderous.

Why aren't we using Guantanamo Naval Base, as in 1991-1992? Probably to avoid federal court challenge to this sham. When untrained adjudicators on Guantanamo "screened in" only about 5%, the Haitian Refugee Center sued, causing INS to bring in trained asylum officers and the "screen in" rate to rise to about 80% for 4 to 6 weeks. Alarmed Bush Administration officials then lowered it to an overall rate of about 27%.

Recently dictator Raoul Cedras summoned all regional and operational commanders to an unusual briefing. To decrease the risk of invasion, he gave orders to crack down on boat people

trying to flee, the main catalyst for U. S. interest in Haiti. On May 16-17 he arrested and beat 50 boat people, confiscating Aristide's photo, accusing them of being pro-Aristide, and jailing 19 women, 4 babies, and 2 children in a cell so small they couldn't lie down. Cedras helps the U. S. with its dirty work.

The solution to the refugee issue is restoring Aristide. Coast Guard statistics show virtually no one fled under his government. None fled in February and March 1991, 43 in August, compared with 6,013 in November, a month after the September 30 coup. That's why senators Graham and Mack and Florida congresspersons want action to restore him. Thousands of exiles will return to build democracy in a reverse refugee flow, as when Duvalier fled.

Meanwhile, repatriating fleeing Haitians is as unconscionable as returning Bosnians or Rwandans. We should give them TPS, temporary protected status, until Aristide is restored. No one should be returned to the killing fields. (We haven't deported from the mainland U. S. since mid-October due to the repression. Gileste Pericles, deported October 12, was held on return in two prisons, bribed his way out, and is now in hiding if still alive.)

During the Holocaust, Richard Cohen reminds us, a prisoner asked, "Where is God?" Another answered, "Where is man?" As I prepare this, Therese George, Oman Desanges's 57-year old mother, sits across from me. How she smiles I'll never know. She brought me the photo of her son's mutilated face. How many more Omans are being murdered today? How many abducted? How many more such photos must we view?

# Coast Guard Haitian Rescue Statistics

Source: Seventh Coast Guard District Public Affairs Office (305)536-5641  
 (Numbers reflect only those cases involving the Seventh Coast Guard District)

## YEARLY

	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
	64	158	687	2,951	2,327	3,176	3,588	4,699	3,368	1,131	9,941	31,401	2,324
	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>	<u>2000</u>						

197

## MONTHLY

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
1981	0	0	0	0	0	0	0	0	0	56	8	0
1982	106	0	12	0	13	0	8	0	0	0	0	19
1983	0	13	0	44	29	153	90	6	33	142	60	117
1984	30	326	26	74	250	187	43	58	393	149	872	543
1985	104	20	67	682	256	24	0	294	548	44	16	272
1986	261	470	160	545	180	92	0	1,255	7	8	37	161
1987	218	27	250	31	187	165	606	602	544	369	419	170
1988	497	0	739	328	526	401	402	172	348	452	392	442
1989	340	141	1,533	417	0	136	150	70	423	121	0	37
1990	54	90	0	101	0	123	207	0	136	95	84	231
1991	246	0	0	717	70	127	198	43	163	19	6,012	2,346
1992	6,477	1,401	1,158	6,144	13,053	473	160	252	84	714	713	772
1993	1,363	9	10	3	0	96	26	23	371	148	60	220*
1994	78	119										

\* AS OF LE BRIEF OF 09 FEB 94  
 UPDATED 09 FEB 94  
 doc: (SIMONE) Cuban/Haitian.stats

COMPARE!

# National Coalition for HAITIAN REFUGEES

Keclyn McCall  
Executive Director

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For release:  
June 1, 1994

A01JN411

## More Haitian 'Boat People' Arrested

The United States returned a total of 266 refugees to Haiti without screening interviews during the week of May 23 to May 29. Sixteen of these people were arrested by the military on the Port-au-Prince dock. Today, June 1, another 63 were returned, and seven arrested.

The Coast Guard returned 184 people on Monday, May 23, 1994. Eleven of these were arrested. All were released the following day.

On Tuesday, May 24, the Coast Guard repatriated 59 Haitians. Two men, Manuel Fremont and Wilson Pierra, were arrested and held for more than a week.

On Friday, May 27, 23 people were returned by the Coast Guard, and three people were arrested.

This puts the total at 1,447 boat people returned and 80 arrested since President Clinton announced his new refugee policy on May 8.

A total of 2,269 Haitians have been returned this year without a screening interview, and 219 have been arrested.

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To	STEVE FORLESTER	From	NCHK
Co	HR	Co	
Dept		Phone #	(511) 454 454
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EXHIBIT B



1/20/94

**PRIMARY REFUGEE APPLICANT APPROVAL RATE BY REGION  
AND SELECTED NATIONALITY, FY 93**

	APPROVAL RATE FOR CASES DECIDED	CASES APPROVED	CASES DENIED	PENDING
<b>TOTAL</b>	<b>83.7%</b>	<b>104,283</b>	<b>20,242</b>	<b>9,038</b>
<b>REGION</b>				
Ex-USSR .....	95.9%	50,924	2,150	0
East Asia/Pacific .....	88.3%	37,845	5,021	58
Africa .....	89.6%	6,087	2,654	5,829
Near East/S. Asia .....	62.2%	4,701	2,858	2,807
Eastern Europe .....	53.9%	739	631	544
Latin America/Caribbean .....	36.5%	3,987	6,928	0

<b>COUNTRY</b>				
Bosnia and Herzegovina .....	100.0%	299	0	514
Lebanon .....	98.9%	6,927	77	0
Ex-USSR .....	95.9%	50,924	2,150	0
Vietnam .....	86.6%	30,825	4,782	58
Cuba .....	85.3%	2,725	489	0
Ethiopia .....	78.9%	2,140	571	153
Afghanistan .....	78.7%	1,217	330	67
Somalia .....	71.8%	2,706	1,062	4,309
Rwanda .....	70.0%	7	3	5
Zaire .....	68.6%	198	104	148
Iraq .....	64.0%	2,391	1,346	2,113
Sudan .....	62.3%	215	130	742
Liberia .....	51.6%	793	744	408
Iran .....	48.2%	1,062	1,174	423
Albania .....	45.6%	368	462	16
Uganda .....	42.0%	21	29	32
Burma .....	35.5%	89	162	0
Romania .....	23.8%	51	183	1
Haiti .....	16.3% *	1,260	6,459*	0

Note: The total and regional subtotals include all nationalities. Nationalities for whom fewer than a total of ten cases were approved or denied are not included in the country-by-country tally. In addition to the primary refugee applicants listed above, in FY 93, a total of 1,743 persons were approved for admission to the United States under the refugee admissions program as Visa 93 recipients (38 other applicants were denied Visas 93).

Source: U.S. Department of Justice, Immigration and Naturalization Service (INS). Tabulated by the U.S. Committee for Refugees.

\* [Note by SF: apparently doesn't include those who failed to meet State Department eligibility criteria]

FINAL EDITION

# The Miami Herald

MONDAY, APRIL 18, 1994

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## How U.S. error sent Haitian to his death



**HAITI**  
A NATION -  
IN PAIN  
OCCASIONAL SERIES

By **SUSAN BENESCH**  
Herald Staff Writer

Before she buried her son in Haiti, Therese Georges hired a photographer.

She saw that Omann Desanges' body — with half the face cut away, stomach slit and brow smashed — would prove what he had tried in vain to tell U.S. authorities: that he would be in danger if they forced him back to Haiti.

As more bodies are found on Haitian streets during a terror campaign against supporters of ousted President Jean-Bertrand Aristide, U.S. policy for granting refugee to frightened Haitians has come under angry attack.

Human rights groups and even U.S. immigration officials themselves say that many Haitians with legitimate fears of persecution are turned down.

Overworked interviewers are told they may be reprimanded for accepting an applicant for political asylum in the United States, but not for rejecting one, The Herald reported Sunday.

Omann Desanges actually won the right to go to the United States to plead for asylum, based on earlier persecution he described to interviewers at the U.S. Navy base in Guan-

PLEASE SEE HAITI, 11A



CARL JUSTE / Herald Staff

**FLED HAITI WITH BROTHER:** Ronald Desanges, 22, with daughter Ashley.

EXHIBIT E



ONE REFUGEE'S TRAGIC ORDEAL

# Clerical error sends Haitian to his country — and his death

HAITI, FROM 1A

tanamo, Cuba. Still he was sent back to Haiti, the victim of an apparent error in the files. He died in a hospital in the United States.

Desanges was returned to Haiti in April or May 1982, a few weeks after he left his country. He stayed in hiding for nearly two years. Finally this January he returned to his home in the northern town of Cap-Haitien, in the northern neighborhood of Mar-tissant.

On Jan. 24, a Monday night, he was arrested outside his home by a squad of armed men, and taken to a police station. That Wednesday, at 3 p.m., his mutilated body was found on the main road to the airport.

He was dressed in clothes his sister had brought him the day before, and the dishes in which she had taken him spaghetti and broth were lying near his body. But for an apparent clerical error, it would not have happened.

**Long path to freedom**

Omman Desanges, then 25, his brother Ronald, then 26, and several other family members were picked up by the U.S. Coast Guard February 1982 from a small boat in the Gulf of Mexico. They were taken to a refugee camp at the U.S. Navy base in Guantanamo Bay.

Interviewed there by U.S. immigration officers, both told of their membership in the pro-Aristide Association of Progress-

sive Youths of Martissant.

They described how pro-military squads had sacked the family house in Martissant. They told of hiding for months in the employments of a friend.

Based on the interview both were "screened in," given permission to go to the United States to apply for political asylum, according to Immigration and Naturalization Service computerized records.

But when Omman's case became what some immigration inspectors called a "mistake," Sometime in May, according to Ronald, who now lives in Miami, Omman was summoned from the Guantanamo tent camp, along with several other brothers. He was told to board a bus.

"They believed that they were going to Miami," said Ronald. Instead, Omman and the others were returned to Haiti. Ronald was interviewed a second time at Guantanamo and granted full asylum based on his records. He will be eligible for a work permit in June.

**HIV as saving grace**

The difference between Omman and Ronald was that Ronald, according to INS computerized records, was HIV-positive, with access to them, was HIV-positive.

Along with other HIV-positive Haitians at Guantanamo, he was moved to a different part of the camp, and his name was not

called when the rest of his family was sent back to Haiti.

"Being HIV-positive may have saved his life," said one of the INS employees who worked on the case. "It was not mentioned on the case because they have not yet been able to find Omman Desanges' complete file. Although INS sources provided some information on Desange, an INS spokesman said he could not provide a lawyer at the Haitian Refugee Center in Miami, asked for the file several weeks ago. The Herald has also requested the file. "We are reviewing the records and reconstructing the case," an INS official said.

Wholesale repatriations. Meanwhile, Omman Desanges' wife, children, and another brother, William, are in hiding in Haiti, moving from place to place. Forester said he has asked INS officials to help him locate his family, but he has not heard from them.

"It is inexcusable and outrageous" that Desanges was sent back to Haiti, Forester said, adding that "even as we speak, the U.S. Coast Guard continues to repatriate Haitian refugees without listening to their asylum claims."

Ronald said he did not discover that his brother had been sent to Haiti instead of Miami until he came to Miami himself. He went to live with his mother, Therese Georges, who arrived in Miami in 1983 as a boat person, in a cramped Little Haiti apartment building.

Ronald and his mother talked to Omman by telephone for about 40 minutes. Omman said he thought it might be safe to move back to the family house in Martissant, even

though one wall was painted with a rooster, Aristide's symbol. A knock in the night

On about Feb. 7, on Jan. 24, Omman and his brother were found at a knock at his door and found a group of armed men outside waiting for him, according to witnesses who later spoke to Omman's mother.

William Desanges went to the police station, where he had heard his brother was being held, and asked why Omman had been arrested. "You'll soon find out," one man told William, who later told the story to his mother. Then she burned him to death in a funeral.

"You know you are the Red

Army." When William challenged this apparent reference to communism, one of the men shot him in the night.

Omman's body was found the next day, with a red armband labeled "President of the Red Army" and "Lavalas" — the name for Aristide's popular movement.

Georges received a photograph of her son on Jan. 26. They told her that her son had been arrested, and she flew to Haiti, hoping to pay a bribe to get him out of jail.

Instead she paid a photographer to take pictures of his buried body. Then she burned him to death in a funeral.

## Memorandum



208-9-5.2

Subject

Considerations when Adjudicating  
Haitian Refugee/Asylee Applications

Date

9 MAR 1993

To Asylum Division  
Refugee Division

From Office of  
International  
Affairs

One of the main components of quality refugee and asylum adjudications is a measure of consistency among Offices and Officers in the decisions reached as a result of their interviews. Refugee and asylum adjudicators already have relevant information on the law and conditions in countries of origin. These two aspects of decision-making are discussed in considerable detail during training, and follow-on information is available in various forms to decision-makers.

In adjudicating cases involving a potentially difficult nexus between law and country conditions, access to additional information -- which ties together both law and country conditions -- has been found useful in producing a better measure of consistency among final decisions.

With this in mind, the Asylum Division's Resource Information Center and Quality Assurance Branch, together with the Refugee Division, have developed the attached paper addressed to adjudicators of Haitian refugee and asylum claims. This is the third in what will become a series of such papers emanating from the Office of International Affairs. [The first two such memoranda dealt with "Adjudicating Refugee and Asylum Claims ... in Times of Evolving Country Conditions" and "Adjudicating Claims Based on Coercive Family Practices"].

Please ensure that all adjudicators of Haitian refugee and asylum applications have access to this memorandum as well as to the usual information on the law and country conditions.

*John W. Cummings*  
John W. Cummings  
Acting Director

Attachment

EXHIBIT F

Considerations when Adjudicating Haitian Refugee/Asylum Claims

The purpose of this paper is to provide additional guidance to INS officers to assist them in the adjudication of Haitian refugee and asylum applications. In recent months, a number of issues have been raised regarding these determinations. This paper aims to promote consistency of procedure and method of analysis to assure fairness with regard to these adjudications.

1. Reporting of the levels of violence in Haiti during 1992.

Previous wide divergences in reporting on the levels of violence in Haiti have greatly diminished in 1992.

Freedom House has rated Haiti as one of the twelve worst violators of human rights in the world. Amnesty International, Human Rights Watch, The Lawyers Committee for Human Rights, and the United Nations Human Rights Commission Special Rapporteur on Haiti maintain that serious and widespread human rights abuses continued throughout 1992.

The 1992 State Department Country Report on Haiti states:

Haitians suffered frequent human rights abuses throughout 1992 including extrajudicial killings by security forces, disappearances, beatings, and other mistreatment of detainees and prisoners, arbitrary arrest<sup>1</sup> and detention, and executive interference with the judicial process.

The Report further states:

At year's end, widespread abuses continue, and there was no evidence either that the military was willing to stop such practices or that the civilian government was able to bring the military under control.

...levels of violence remained high and were exacerbated by the manifest unwillingness of the two post-coup governments to pursue criminal justice, particularly in cases of politically motivated murder. Dozens of murders, presumed to be political, were carried out by individuals in authority acting without apparent fear of punishment...

---

<sup>1</sup> Arbitrary arrest is arrest without legal justification. The use of the word "arbitrary" in this context does not indicate "indiscriminate" or "random". The relevant definition of "arbitrary" in Webster's Ninth New Collegiate Dictionary is "marked by or resulting from the unrestrained and often tyrannical exercise of power <protection from -- arrest and detention>."

## 2. Sources of violence or threats of violence

### A. General lawlessness

General lawlessness can be described as a situation in which the government is unable or unwilling to control violence by societal forces or individuals. This occurs, for example, when societal unrest, guerrilla movements, or organized crime challenge the authority of the government (eg: Somalia, Liberia). In situations of general lawlessness, it is often difficult to identify any protected ground(s) under the refugee definition as a motive for violent acts.

### B. State violence / Government repression

When governmental authorities, in or out of uniform, are committing acts of violence against a largely unarmed civilian population, the situation may be more correctly referred to as state violence or governmental repression. By all accounts, state violence and repression are clearly present in Haiti.

Most weapons are controlled by the government, and most of the acts of violence or threats of violence which may form the basis of a meritorious refugee/asylum claim are committed by governmental or quasi-governmental figures. Officials of the de facto government -- whether they be section chiefs, members of the military, or members of the police -- are most often connected with the ongoing human rights abuses in Haiti.

#### Background on the de-facto governmental structure in Haiti

For administrative and political purposes, Haiti is divided into regional departments, districts, sub-districts, and communal sections, all of which are under the control of the Commander in Chief of the Forces Armees d'Haiti (FADH), General Raul Cedras.

Lower ranking officers, including captains, colonels, lieutenants and sub-lieutenants, are placed in command of these divisions through the sub-district level. The communal sections in Haiti represent the lowest division in this structure. They are headed by section chiefs.

The section chief lies at the lowest level of the military hierarchy. Each of Haiti's [more than 500] communal sections is under the command of a section chief appointed by the military commander of the sub-district with jurisdiction over the section. The section chief reports directly to a lower level military commander at the head of his sub-district, and

he commands dozens of "assistants." <sup>2</sup>

It appears that as long as the incumbents in each of these levels do not interfere with the prerogatives of the level above, they are at liberty to do as they wish, with no threat of punishment or accountability.

This structure constitutes all effective governmental authority in Haiti at the present time. Military officers, section chiefs, and the assistants of section chiefs are all official positions under the current de-facto political authority. Although the Haitian Constitution calls for an independent police force under civilian authority, the national police operate primarily in urban areas as a division of the army. Moreover, they operate with the same authority and impunity.

### C. Individually-motivated acts of violence

Haiti is the poorest country in the Western Hemisphere. It has a largely uneducated populace which suffers from a multitude of problems including a deteriorating environmental resource base, high infant mortality due to disease, and little hope or opportunity to improve the harsh conditions of life.

These and other factors may exacerbate a number of personal, family, and social conflicts over limited resources. Violence may occur for reasons of envy, ambition, greed, or sheer desperation in such an atmosphere of abject poverty.

These acts, in and of themselves, are not usually grounds for refugee protection. However, if they are conducted by section chiefs, their subordinates, or other governmental or quasi-governmental officials, and/or if they are coupled with other acts related to a protected ground, they may form part of a pattern or practice which may rise to the level of persecution.

### 3. Potential targets of violence and threats of violence

A variety of credible reporting sources<sup>3</sup> have identified groups whose members and leaders may potentially be targets of violence in Haiti. Some of these populations at risk are

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<sup>2</sup> Paper Laws and Steel Bayonets (New York: Lawyers Committee for Human Rights, November 1990) p. 34.

<sup>3</sup> Sources include: U.S. Department of State, Amnesty International, Human Rights Watch, United Nations Special Rapporteur, and Lawyers Committee for Human Rights

Leaders and members of potential targets

Although those in leadership or prominent positions are possibly at greater risk due to their greater visibility, lack of prominence does not remove the possibility of being at risk. This is true especially considering the fact that Haitian society is organized into small communities.

Activities, either real or imputed, are a far more important consideration in assessing risk, than is prominence.

4. Method of analysis in decision-making

"Persecution" is a conclusion based not only on law and country conditions information, but upon a full, fair, and consistent analysis of the applicant's situation as it measures-up to both country conditions information and the statutory and regulatory definitions contained in the Immigration and Nationality Act and the Federal Code of Regulations.

The Decisionmaking Checklist (see attachment), is a guide to the method of legal analysis required. It provides a framework of analysis for asylum (and, with some few modifications, for refugee) determinations.

Under no circumstances should an Officer deviate from, or abort, this required analysis. For example, all inclusion grounds must be explored before considering exclusion grounds.

Moreover, Officers must not make assumptions about the viability of internal flight within Haiti. While the extent to which the de-facto government may be able to locate an individual is unknown, if the applicant is determined to have established a well-founded fear of persecution in one location in Haiti, it is generally correct, under present conditions, to find that the threat of persecution exists countrywide. This is true notwithstanding the fact that sympathetic countrymen may be successful in hiding the applicant from a reportedly wide network of civilian informants employed by the military.

The foregoing discussion by no means exhausts the issues which might arise when adjudicating these applications. Officers are encouraged to discuss this paper and to request further information and/or guidance from the Office of International Affairs.

Attachment

listed below. Adjudicators should be aware that other groups or individuals, not on the list which follows, may also be subjected to or fear human rights abuses. Moreover, a "population at risk" should not necessarily be regarded as a "particular social group" for purposes of the refugee definition. It is possible for an individual applicant to be a member of a population at risk, and yet not establish eligibility for refugee status.

- A. Individuals who support, supported, or who are imputed to support or have supported the exiled President, Jean Bertrand Aristide.

Grassroots liberation theology organizations in the countryside remain a strong base of support for President Aristide. These groups and their leaders have been particular targets of the army.<sup>4</sup>

Individuals, particularly in the countryside, who are identified as being pro-Aristide. Credible reports indicate that violence, including arrest and detention, has been directed at persons for possessing or circulating pictures of President Aristide.<sup>5</sup>

- B. Rural development and community organizations

Military violence has been aimed at rural development or peasant organizations, neighborhood and community organizations, and literacy, pro-democracy, and women's groups. This violence has thwarted the ability of many groups to meet openly or to meet at all. Leaders and members of these organizations have been hunted down and arrested, tortured, or killed by soldiers and section chiefs.<sup>6</sup>

- C. Trade unions

There is widespread repression and violence against trade

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<sup>4</sup> U.S. Department of State, "Haiti," Country Reports on Human Rights Practices for 1992 (Washington: U.S. Government Printing Office, February 1993), p. 424.

<sup>5</sup> U.N. Human Rights Commission Special Rapporteur, Situation of Human Rights in Haiti (New York: United Nations, A/47/621, 6 November 1992), p. 9.

<sup>6</sup> "Haiti," Human Rights Watch World Report 1993: Events of 1992 (New York: Human Rights Watch, January 1993) p. 120.

union activities by the military authorities. Many union leaders have gone into hiding and closed their offices. Unions, as well as all other citizen groups or assemblies, may only meet with the express written permission of the military. There are also allegations of intimidation of agricultural union leaders by arrests, beatings, and banning of meetings.<sup>7</sup>

D. Students and student organizations

The military has targeted student leaders and members of student organizations. Soldiers have prohibited student meetings, arrested and detained students, and brutally beaten and in some cases tortured suspected student activists.<sup>8</sup>

E. Journalists

Journalists have not escaped repression ... Intimidation of members of the press continues, and many radio stations have stopped broadcasting. Several were closed by the military authorities, while others have preferred to stop broadcasting news, or to stop broadcasting altogether, in fear of their security.<sup>9</sup>

F. Members of the clergy and religious workers

Priests and nuns, especially those suspected of being supporters of Aristide or who are active in peasant organizing, community development or monitoring human rights, have been threatened, arrested and beaten. Protestant churches and groups that have become strongly identified with social activism and development have also been attacked.<sup>10</sup>

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<sup>7</sup> U.S. Department of State, "Haiti," Country Reports on Human Rights Practices for 1992 (Washington: U.S. Government Printing Office, February 1993), p. 426.

<sup>8</sup> Haiti: A Human Rights Nightmare (New York: Lawyers Committee for Human Rights, September 1992) p. 20.

<sup>9</sup> Haiti: Human Rights Held Ransom (London: Amnesty International, August 1992) p. 18.

<sup>10</sup> "Haiti," Human Rights Watch World Report 1993: Events of 1992 (New York: Human Rights Watch, January 1993) p. 120.



Decisionmaking ChecklistINCLUSION

- Was applicant's testimony credible?  
 detailed  internally consistent  believable  
 consistent with country conditions
- Does applicant have a genuine subjective fear of return?
- Has applicant suffered past persecution ?
- If so, is there a preponderance of evidence that country conditions have changed to such an extent that there is not a reasonable possibility that applicant would be persecuted if he were to return to that country?
- Even if country conditions have sufficiently changed, has applicant shown compelling reasons not to return because of the severity of the past persecution suffered?
- Has applicant shown a reasonable possibility of future persecution?
- Has applicant been singled out individually making future persecution a reasonable possibility?
- If not, is applicant similarly situated to groups against whom there has been a pattern or practice of persecution?
- Is the fear well-founded? (Use Mogharrabi!)  
 Belief/Characteristic?  Persecutor aware?  Capable/Inclined to punish?  Based on one of the five grounds?
- Is the past persecution or future persecution on account of one of the five grounds? If so, which?
- political opinion  race  religion  
 overt  social group  nationality  
 imputed

EXCLUSION

## 1. Mandatory

- Persecution of Others  
 Conviction of Particularly Serious Crime in U.S.  
 Firm Resettlement  
 National Security Danger

## 2. Discretionary (Balance against strength of claim)

- Commission of Crime Outside U.S.  
 Avoidance of Refugee Processing  
 Fraudulent Entry to U.S.  
 Other Adverse Factors

# National Coalition for HAITIAN REFUGEES

Jocelyn McCalla  
Executive Director

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**WELIC**

April 21, 1994

## Memorandum

by Anne Fuller, Associate Director, Director Haiti program

### Persecution of refugee applicants in Haiti

Following is a list of individual Haitians who have applied for refugee status in the United States through the in-country refugee processing program in Haiti and have either 1) been denied by INS or 2) refused a preliminary interview, and have subsequently suffered persecution. These cases are among those our office in Port-au-Prince has encountered in the last year.

### Haitians persecuted after being denied refugee status by INS:

1. Nelio Toussaint, leader of a Port-au-Prince popular organization and a City Hall employee during the Aristide administration, was interviewed by INS and denied, filed for reconsideration and was again denied Feb. 12, 1993. Filed again in October 1993 after he was injured September 8, 1993, at Mayor Evans' Paul's reinvestiture and again denied. On March 1, 1994, he was grabbed, pushed around and threatened by four members of FRAPH in Carrefour. Arrested March 9 by a police sergeant, accused of spreading Lavalas propaganda, and detained for two days at the Delmas 33 police station. (HA 12477, A25 432 929)
2. Louis Philogene, a popular movement leader and ambulance driver from Cite Soleil, applied in November 1993, was denied by INS Dec. 9, 1993. On Dec. 21, 1993, brother arrested in his place and beaten at Cite Soleil police post to force him to reveal Louis' whereabouts. His father's house was burned down during the Dec. 27 Cite Soleil fire and his brother, Jean Louis, was shot and killed by a FRAPH leader. Cousin, Denise Joseph, abducted December 29, 1993, and killed. Has filed motion for reconsideration. Philogene was arrested again on April 20, when he went to meet with a human rights group, and remains in custody. (HA36186)
3. Claudy Vilme, reporter and photographer for the Port-au-Prince daily, Le Nouvelliste, arrested in 1991 and 1992. was denied by INS on June 21, 1993. He was arrested again on July 2, 1993 and tortured at the infamous Fort Dimanche. He was finally accepted and is now in the US. (HA24423, A25436079)
4. Farah Cherestal filed for asylum in September 1993, was denied by INS in early November 1993 and filed for reconsideration on Nov. 15, 1993. On Nov. 11, 1993, she was abducted from a friend's house where she was staying and

18 East 42nd Street, Third Floor, New York, NY 10017-8507 Tel 212-867-0020; Fax 212-867-1658

Lydia Thomas  
Coordinator for Migration Studies  
Avery Dumas

EXHIBIT 9

11. 1993, she was abducted from a friend's house where she was staying and taken to the house of an attache known as Gaston. There she was blindfolded, shown the corpses of three people, and threatened with death. Several men ripped off her clothes, preparing to rape her, only stopping after seeing that she was menstruating. They left her naked and tied up in front of her house. (HA33463)

5. Duly Oxocva, a member of the Papaye Peasant Movement (MPP), was arrested in March 1992 in Mirebalais and held for 33 days. He was denied by INS in August 1993. He tried to return home in October 1993 and was forced to flee as the authorities attacked MPP members once again. Currently has another motion for reconsideration pending.

6. Jean Emile Estimable, a radio journalist, applied for asylum in October 1992 after receiving threats and living in hiding. He was rejected and then was arrested January 22, 1993, beaten and tortured. released Feb. 2, 1993. His motion for reconsideration was approved May 1993 and he is in the US.

7. Jean Clotaire Cenoble, deputy mayor of Mirebalais, FNCD party, denied July 28, 1992, forced to leave Mirebalais September 1993, fleeing arrest, cousin Fabiola Ocessite arrested Nov. 4, 1993, by soldiers seeking Cenoble. (HA005259)

8. Jeune Romel, member of a peasant union near Mirebalais, arrested twice in 1992, applied and was denied prior to October 1993, escaped with a beating from a group of armed men on October 17, 1993. The men seized his brother, Dieuleft Jeune, and his body was later found in the street. (HA31631)

9. Judith Marie Chery applied September 1993, denied early November 1993, abducted by men in civilian clothes on November 5, 1993, and held in a secret detention center north of Port-au-Prince (HA33457)

10. Stinfil Medinor, PNDPH party (a member of FNCD, Aristide's party), was denied July 14, 1992, filed for reconsideration June 29, 1993. Narrowly escaped arrest October 24, 1993, by Sergeant Pierre Herode, who beat his cousin Marasse Stinfil, attempting to force him to reveal Medinor's whereabouts. and searched the house. His brother, Sabiento Stinfil, disappeared October 1993. (A72087771)

11. Jean Miracle Leonard, 23, of Cabaret, fled on a boat in November 1991 and was returned to Haiti February 14, 1992. On Aug. 20, 1992 he applied for refugee status, was refused Sept. 25, 1992. He was arrested August 5, 1993 in Cabaret and beaten. (A25431662)

12. (under investigation) Cherilis Joseph, a member of the Konfederasyon Oganisasyon Popile (KOP), applied and was turned down by INS more than once. He was shot and killed February 13, 1994.

**Haitians persecuted after being denied entry to program or while waiting for an interview:**

1. Jean Beauliere Herold Lubin, a 1990 election worker and member of popular organizations who was arrested in October 1991, filed an application on January 20, 1994, and was told he would not receive an interview. On Feb. 2, 1994 he was arrested and taken to the Cafeteria police station in Port-au-Prince, accused of being Lavalas and tortured, released on Feb. 18, 1994. We believe he has been arrested again more recently, but cannot confirm this. In April 1994, he was denied by INS (HA49667)

2. Jean Claude Thiophun, 35, an FNCD member from Gonaives, was arrested on November 22, 1993, just as he left the refugee processing facility at the Paramount Theater in Port-au-Prince, where he had filed an application. He was beaten for several hours at the Anti-gang Service prison before being transported to Gonaives and jailed there for a day. Was eventually granted refugee status.

3. Lormil Rodrigue, 33, a member of a popular organization in Grand Gouve who was detained for 22 days in 1991, applied for asylum May 6, 1993, and received an interview date of Dec. 3, 1993. On June 4, 1993 he was seized by armed men, blindfolded, beaten and held for eight days.

4. Berthony Alcega, 32, from Verrettes, a member of several important popular organizations, arrested in 1992, experienced other recent persecution, applied for asylum in mid-February 1994, received an interview date of March 1, 1994. On Feb. 27, 1994, he was seized by four armed civilians in the streets of Port-au-Prince, interrogated and badly beaten in a secret detention center before being brought to the Anti-gang Service prison and again questioned and beaten, later dumped on the street.

**Cases noted in the NCHR/Human Rights Watch September 1993 report, "No Port in a Storm: The Misguided Use of In-Country Refugee Processing in Haiti" :**

- Andrei Fortune, denied several times and assassinated Aug. 16, 1993.
- Celor Josaphat, denied several times, arrested and beaten.
- Vesnel Jean-Francois (aka Vesnel Francois), applied in October 1992, turned down and was arrested and tortured June 28, 1993. Motion for reconsideration accepted August 1993.;
- Fritzion Orius, 30, journalist, applied in May 1992, denied in October 1992, Police and attaches seeking him, badly beat his brother in Feb. 1993; escaped attempted arrest.

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# National Coalition for HAITIAN REFUGEES

Joeclyn McCalla  
Executive Director

April 21, 1994

## MEMORANDUM

Persecution of Haitian refugees forcibly returned to Haiti  
by Anne Fuller, Associate Director and Director, Haiti Program

Haitian police began regularly arresting and jailing returned Haitian "boat people" on the Port-au-Prince dock in July 1992, two months after President Bush's Kennebunkport Order ending all asylum screening of Haitians interdicted on the high seas. Since then, some passengers on virtually every boat interdicted by the Coast Guard have been arrested and taken to the Immigration and Identification Police headquarters. In 1993, between 3 and 20 people were arrested from each boat, or a total of 117 of the 1,683 Haitians returned..

Since the beginning of 1994, 113 of the 709 Haitians returned through April 15 (on 11 boats) have been arrested on the dock. On only two boats this year have no refugees been arrested. On both these dates, February 19 and March 29, there was violent abuse of a refugee on the dock itself. On Feb. 19, a man was beaten after trying to escape, and on March 29, Luckner Joseph, was poked in the eye by a security official. (I witnessed this incident.) After these incidents, police were persuaded to release Haitians provisionally detained at the dockside police station.

All returnees are interrogated by the Haitian police on the dock. They are usually fingerprinted and their belongings are searched. Typically, the police single out a group of male passengers, who are brought to the dockside police post for further questioning. All or some of these are then taken into custody, informally charged with "organizing a clandestine voyage" or "illegally leaving the country." Some of these have been refugees tagged "high priority" for in-country asylum interviews (although most Haitians interdicted and returned are not even granted interviews).

Some of those arrested are freed quickly but others remain in prison for weeks. Most must pay to be released and are badly treated in prison. None of those arrested has ever been tried.

US officials used to try to visit the detainees and so had some sense of how they were being treated, but since February 1994, the military authorities have not permitted this, nor have they allowed representatives of the UN/OAS International Civilian Mission to visit the detained refugees. Thus, there is no reliable information on their condition.

Persecution of returnees at a later date. The following cases have been documented:

Omann "Yvon" Desanges, repatriated "in error" after screened in at Guantanamo. Killed January 1994, his body mutilated. (See Miami Herald and other reports)

Aulbert Compere fled Haiti by boat from the island of La Gonave on May 27, 1992. He was interdicted and returned on June 3, one of the first to be returned under the Kennebunkport Order ending screening interviews for intercepted refugees. He applied for asylum at the in-country refugee processing office in Port-au-Prince and was turned down on July 28, 1992. Mr. Compere eventually returned to Grand Riviere du Nord, where he was active in a popular organization called MOWEP (Mouvement pou la Democratie Populaire). On March 24, 1994, he was arrested by Corporal Gustave Aurelis after he organized a MOWEP meeting. The corporal called him a "Lavalassien" or supporter of Aristide. He was jailed and beaten at the local army post. Released after two days, he is again seeking asylum.

(5) Beaucicault Wilman, 21 years old, is a member of the Youth Movement of Anse à Galets, La Gonave (MJA). The organization was involved in civic instruction, alphabetization, and posting pictures of Jean-Bertrand Aristide during the presidential race. After the coup of 1991, members of MJA were arrested and terrorized. Mr. Wilman went into hiding in October 1991 and returned to his town on November 10, 1992. That same day, a soldier arrested him at his home and took him to the police station. On the way, the soldier told Mr. Wilman that he was being arrested because he had been doing propaganda for president Aristide during the elections. On November 12, a soldier that knew Mr. Wilman and had approved of his work permitted him to escape. Mr. Wilman went back into hiding. On November 18, he found a boat and fled the country.

On November 20, his boat was intercepted by the US Coast Guard. Mr. Wilman and the other passengers were returned without an interview. Once returned, Mr. Wilman managed to get by the police at the docks and went back into hiding. On September 10, 1993, he returned to his town. On October 18, a uniformed soldier and three civilians known to be former Tonton Macoutes arrested him at his house. They said: "We finally got our hands on this lavalas. You left and came back. Today, we'll finish with you." One of the civilians slapped him repeatedly. They then took him to the station house. There, he was asked by the Sergeant when his dad Aristide was returning and was told that he (Wilman) had come back to post Aristide pictures. They tied his hands and legs together in a crouched position and beat him with a large club for about 30 minutes. This was done in front of soldiers and *anachés*. They then locked him up for six days. His sister obtained his release by paying 2,000 Gd (US\$160) to the Sergeant. Mr. Wilman has been in hiding ever since.

(6) Damier Cadichon, 42 years old, is from Marisade but has lived in Port-au-Prince for 8 years. He is a member of a watch group in Delmas and of the Voter Registration Bureau (BIV) during the 1990 elections. A few days after the 1991 coup, three soldiers went to his house in the afternoon. He escaped by the backdoor before they could find him. His wife and six children remained in the house. The soldiers interrogated his wife and searched his house, confiscating organizational papers. The family had to abandon the house thereafter. Mr. Cadichon went to a cousin's in Sartre, north of Port-au-Prince.

On the afternoon of November 27, 1992, two soldiers went to his cousin's house and asked for Mr. Cadichon. He wasn't home and the soldiers left. He then went to La Gonave to hide. There, he took a boat on November 29. On November 30, his boat was interdicted by the US Coast Guard and returned on December 5.

After his repatriation, Mr. Cadichon went back into hiding. In March 1993, he returned to his cousin's home. On May 12, 1993, two soldiers found him at his cousin's in the afternoon. They tied him up and put him in a Nissan pickup truck. They took him to the "Cafeteria" (Port-au-Prince police station). There, he was beaten and tortured without being interrogated. After the beating, a lieutenant asked him questions about his political affiliations. The lieutenant called him a necklacing lavalas and jailed him. His cousin obtained his release by paying the lieutenant 2,500 Gd (US\$200). Mr. Cadichon has been in hiding ever since.

*Haitian Refugee Center  
Sant Réfijyé Ayisyen, Inc.*

119 North East 54th Street  
Miami, Florida 33137

Phone: (305) 757-8538  
Fax: (305) 758-2444

June 13, 1994

**AS ATROCITIES CONTINUE, REFUGEE PROCESSING IS A SHAM**

Summary repatriation continues a month after Clinton said Haiti's dictators are "chopping people's faces off." And processing off Jamaica and on a Turks and Caicos Island is shaping up as a sham.

There's a quota. Deputy National Security Advisor Berger says we will reject 95%! In contrast, we accept 96% of refugee applicants from the former USSR, 88.3% from East Asia and the Pacific, similar percentages from other areas, and all Cubans.

Shipboard screening is unacceptable. Only 28 of 23,000, a tenth of a percent, were approved in such screening from 1981 to 1991. And screening will be conducted by "enforcement" types, untrained Border Patrol agents and the like, not trained INS asylum officers.

Free legal help -- essential to elicit facts, gather witnesses, show credibility, document the persecution of similarly situated persons -- is prohibited. Asking Haitians to proceed without help ties their hands behind their backs. And they must prove the hardest burden, persecution or a well-founded fear of persecution, in contrast to applicants in the former USSR, East Asia, and the Pacific, who need only show membership in a class, and to the lower "credible claim" standard used on Guantanamo in 1991-1992.

Only about one hour is allotted per case -- with a "per officer" quota of 6 or 7 per day -- an impossible deadline, with no review before repatriation. No one will assist the Haitian, a recipe for erroneous denials. And the interpreters are untrained. Why this sham? Why not bring them here? Barring refugees relieves pressure to oust Cedras. Why not use Guantanamo? To avoid court challenge.

Meanwhile, Cedras has ordered a crackdown on boat people. On May 16-17 he arrested and beat 50 boat people, jailing 19 women, 4 babies, and 2 children in a cell so small they couldn't lie down. "President" Jonassaint has ordered enforcement of a November 17, 1980 Duvalier decree to imprison boat people. Cedras helps the U. S. with its dirty work.

The solution is restoring Aristide. Coast Guard statistics show no one fled under him: 0 in February and March 1991, 43 in August, compared to 6,013 in November, a month post-coup. Repatriating Haitians is unconscionable, like returning Bosnians or Rwandans. Grant TPS, temporary protected status, until Aristide is restored.

Clinton says Haiti's dictators are "killing and mutilating innocent civilians, people not even directly involved in the political life of the country." Haiti's military has murdered 7,000 since the coup and imprisoned 219 Coast Guard repatriatees this year alone (through May). Rejecting 95% is a sham, criminal, and murderous.

EXHIBIT 4

Mr. MAZZOLI. Mr. McCalla.

**STATEMENT OF JOCELYN McCALLA, EXECUTIVE DIRECTOR,  
NATIONAL COALITION FOR HAITIAN REFUGEES**

Mr. McCALLA. Thank you, Mr. Chairman for convening this hearing. In the interest of time and the speakers on this panel, I will try to be as short as possible.

The things that I will say are going to relate to the discussion held earlier today with Members of the Congress and the administration, and will touch on to the three issues that I think have repeatedly come to the fore.

One, the question of consistency with respect to U.S. policy toward Haiti. The second one being the question of fairness and the question of access to counsel in an appropriate manner. And the third one being the issue of the right of appeal in the case of an unfavorable decision.

With respect to the question of consistency, let me say the following. It relates primarily to the situation of human rights in Haiti. It is very clear that that situation has gotten worse in recent months as the military in Haiti has tried to dig in its heel, has basically said that it is not going to allow President Aristide to return despite the insistence of the international community and despite the insistence of the Haitian people themselves. They have decided to try to withstand every kind of pressure possible, and at the same time trying to maintain a very clean slate for themselves, and to them maintaining a very clean slate is simply persecuting, terrorizing Haiti and intimidating people by leaving, for example, dead bodies on the streets in Port-au-Prince, by making sure that you have very visible means by which you can suppress people's right to freely express themselves, that people are so intimidated that they continue to be cowering in fear of Haitian military and paramilitary death squads, phenomenon that has resurfaced in recent months.

The fact is that there has been a significant rise in paramilitary death squad activity in Haiti, and those units are operating, of course, under the umbrella of the Haitian military. As they had been allowed to under the Duvalier regime, they have been allowed to not only identify and persecute activists who are clearly identified as democratic activists, but they also go into homes to loot, maim, intimidate, and rape so that they create a general state of terror, and this is the situation that we are dealing with here today.

Those findings, by the way, are included in a report that we recently issued with Human Rights Watch/America's called "Terror Prevails," and if you agree, I would like to have this report as part of the record.

Mr. MAZZOLI. Without objection.

Mr. McCALLA. Thank you.

But in recent months since the administration has taken stronger measures to force the ouster of the Haitian military leaders and to return Aristide, the military has done the following. It has established its own government, its own president, and it has decided to invoke a law, which is a 1980 law, decreed then by the Duvalier—by Jean Claude "Baby Doc" Duvalier, and that law



served to then reinforce travel restrictions that were imposed earlier by Francois "Papa Doc" Duvalier. These travel restrictions included the obligation on Haitians to obtain exit and entry visas from the Ministry of Interior and Defense under whose supervision both the dreaded Duvalier militia, known as the Tonton Macoutes, immigration authorities operated. Someone who failed to obtain that visa was then automatically identified as a dissident to be arrested on sight and thrown in jail.

I would like to add the following. When the interdiction program began in 1991 there was no participation of the Haitian Red Cross then at the very beginning of the program. Haitians were being turned over to Haitian military authorities and to the paramilitary authorities that were operating under the authority of Jean Claude Duvalier, the Tonton Macoutes. Many Haitians who were returned then ended up in jail, as they are now ending up in jail today. And it is because of that situation and because there were concerns expressed that, in fact, Haitians were facing a situation that was quite similar to what the Cubans are facing and the measures taken by the Castro regime, that the United States then worked out another agreement, a separate agreement with the Haitian Government then which allowed for the presence of Haitian Red Cross officials on the docks so that they would be the first point of contact with the Haitians rather than the Haitian military, thereby giving this return process a kind of legitimacy or neutral cover.

Today, we know that the Haitian Red Cross has been so compromised and so incapable of standing up to the Haitian military that its participation is simply there to be simply a welcoming committee with wads of Haitian dollars where to distribute to the refugee, bring them to a bus station, and then basically tell them "Go home. We can't do anything for you and we can't protect you."

So, in short, the situation that Haitians repatriated today are facing is similar to the situation that Cubans today are facing if they were to be returned to Cuba. So the question is why are we returning Haitians who are subject to similar penalties, if not more severe penalties, than the Cubans? Why are we returning them and not looking at specifically the Cuban measures and perhaps leveling the field? And, as you mentioned, leveling the field means either you include the Haitians in the Cuban Adjustment Act and give the Haitians the same privileges or basically you get rid of the Cuban Adjustment Act and everybody will then be subject to the same thing.

I would say, as you also noted, there is one slight difference. The fact is that the Cuban Adjustment Act was established in favor of Cubans already on U.S. soil. So there has been an extension of that protection given to Cubans who are not even yet on U.S. soil but are allowed then to be brought into the States first on their own means, and secondly, by people who can bring them in, is another issue that, in fact, flies in the face of fair decency.

The fact is that more than 2,000 Cubans have entered the United States this year but not one single word of opposition, to my knowledge, has been expressed about the number of Cubans that have entered here.

To illustrate what Haitians are facing, since the President's announcement on Mother's Day there have been a number of repatriations, as you know. About 1,800 people were repatriated to Haiti.

In my testimony I will include figures on the number of people immediately arrested, and the number of people interviewed on the Coast Guard cutter, by Haitian interpreters.

They fill out this preliminary questionnaire form and those forms are then taken by the State Department refugee officer in Haiti. Before the Haitian refugees are left off the dock they are vetted and people are then identified based on what they put into the questionnaire. A number of people have been identified as fitting the strict eligibility criteria that the Immigration Service has talked about this morning.

But some of those people ended up in jail. The fact is that on those boats there are people who would qualify for refugee status under the very strict criteria.

I will not go into the details of repatriation. Suffice it to say that about 219 Haitians out of more than 2,000 have ended up in jail so far this year. The 219 is not a small number. In fact, it is a huge area of concern for us.

Secondly, with respect to the question of processing in Kingston, Jamaica, which I understand is supposed to start very soon, there are a couple of things that we want to point out.

One, we have been told today that Haitians are going to be given enough time to prepare for the interview process. In fact, Ambassador McKinley has said that we are not going to push Haitians through this process. We are going to try to do as much as possible to have a fair process, and fair process means if they want to meet with counsel provided by the High Commissioner for Refugees as many times as they want, they will do it. I am very pleased that he has said that on the record.

But let us note, however, the following. That it has been our understanding that State and the highest level of this administration were pushing for a very quick process on the boat. In fact, from sunup to sundown was the time frame which they considered to be a normal time frame for everything: one, identification of the refugees; two, counseling; three, interview; and fourth, the review process by the quality assurance person. And this was the time frame that was absolutely inadequate to us. We are pleased that the administration is now considering extending the time frame, but as was demonstrated earlier, they still have not committed themselves to the minimum amount of time, which is absolutely necessary to ensure a minimum level of fairness.

The second thing I want to say is that administration officials have also said repeatedly that only about 5 percent of those picked up and interviewed would qualify for refugee status, and that to us prejudices the process. We have held, as I have indicated, various discussions with members of the administration. We have also participated and helped them in the training of the INS adjudicators. It is true that most of the adjudicators are going to be simply Border Patrol officers, people who are trained to enforce the control of the border or trained to identify the likely illegal migrant, but they are not necessarily trained to identify the refugee, the likely refu-

gee, and therefore their approach to this issue is simply an approach of managing the numbers.

So when the administration at its highest level has said that only 5 percent will qualify, to the adjudicators that constitutes a quota. That constitutes a ceiling on their balance sheet. When they go home after the day is over they can see whether they meet the quota or not. And this is a very big concern.

And I would say that my concern increased after I met with them and tried to express to them what current conditions in Haiti were like.

And finally, I would end with the following. There have been comparisons made between the standards used for Haitians and the standards that are being used for Jews and Evangelical Christians under the Lautenberg amendment. It is quite clear that those who qualify under the amendment only have to demonstrate a credible fear or concern that they will be persecuted, but that the Haitians are going to have to demonstrate a well-founded fear that they will be persecuted.

Under the Lautenberg amendment 95 percent of those who apply get in as refugee, and only 5 percent are rejected. There again that points out these exceptional matters being talked about, being raised, questions of fairness overall, not just vis-a-vis the Cuban refugees, but vis-a-vis the whole refugee program. It is one of much concern to us.

And we repeat that though we are looking forward to a productive relationship with members of the administration, and we are looking forward to an issue that can be resolved fairly, but we are also clearly concerned that there are a number of shortcomings to this program.

Mr. MAZZOLI. Thank you very much, Mr. McCalla.

[The prepared statement of Mr. McCalla follows:]

**PREPARED STATEMENT OF JOCELYN MCCALLA, EXECUTIVE  
DIRECTOR, NATIONAL COALITION FOR HAITIAN REFUGEES**

**I. Introduction**

I wish to begin by thanking Chairman Mazzolli for convening this hearing at such an important moment in U.S.-Haiti relations. I am also pleased to appear before this committee on behalf of the National Coalition for Haitian Refugees (NCHR). NCHR is a 12 year old institution that, since its inception, has aimed to ensure protection for refugees from Haiti under international and U.S. law. We maintained then that it was simply wrong for the United States to interdict Haitians on the high seas and to return them to their persecutors after very brief, prejudicial interviews on Coast Guard cutters. We maintain today that in considering refugee claims, Haitians should be treated no worse than refugees from other lands, and that they should be at least given full and fair hearings in appropriate settings that enhance procedural safeguards.

Given the military's tight grip on Haiti, a policy of providing safe haven to all fleeing Haitian refugees is perhaps the fairest policy of all. For in administering ship board hearings, the Clinton Administration will be hard pressed to reconcile fairness toward Haitian refugees with the preferential treatment accorded Cuban refugees. Finally, the question inevitably arises: why do Haitians have to meet a refugee standard that is far higher than standards set for Jews and Evangelical Christians from the former Soviet Union?

**II. Inconsistencies in Administration policy**

In recent weeks, the Clinton Administration has renewed its commitment to restoring President Jean-Bertrand Aristide to office by developing a policy that appears to be more consistent than those contemplated or explored since Aristide's ouster in 1991. To the sanctions imposed by the international community a few weeks ago, the United States has added the suspension of commercial flights and limited the amount of money that can be transferred to Haiti. These measures were taken after President Clinton allowed that the severity of human rights abuses perpetrated by the Haitian military and its allied death squads could no longer be ignored.

Yet the Administration's response to Haitians fleeing Haiti's terror has been far less consistent. On May 8, Mother's Day, President Clinton announced that Haitians would be

granted the opportunity to state a claim for refugee status through hearings. But after repatriating without any hearing about 1,800 refugees in more than four weeks, it is not certain that the Administration's response is up to the task, nor that hearings will be fair.

#### A. Repatriations continue while political violence rises

There is no doubt that the human rights situation in Haiti has gotten increasingly worse as military rulers have taken several steps to dig their heels in, hoping to withstand whatever international economic pressure is thrown their way. In response to the more aggressive attitudes adopted by the US and the international community since the President's Mother's Day announcement, Haitian military leaders have appointed a figure-head President, Supreme Court Judge Emile Jonassaint, shedding any veneer of legitimacy that Haitian military rulers still held with some members of the Administration and the international community. Jonassaint in turn promptly established a new cabinet, and began his rule by invoking a 1980 law threatening prosecution of all charged with illegally leaving Haiti. This law was initially decreed by the Jean-Claude "Baby Doc" Duvalier regime and served then to reinforce travel restrictions imposed earlier by Francois "Papa Doc" Duvalier. These travel restrictions included the obligation by Haitians to obtain exit and entry visas from the Ministry of Interior and Defense, under whose supervision both the dreaded Duvalier militia known as the "Tontons Macoutes" and immigration authorities operated. Someone who failed to obtain the necessary visas then was automatically identified as a dissident, to be arrested on sight and thrown in jail. The 1980 law stipulates in part that:

*Any organizer of an irregular voyage destined for abroad, any attempt to make a person undertake a voyage abroad from the national territory without the corresponding legal procedures will be punished by a sentence of six months to three years as dictated by the competent correctional court. In case of a repeat offense, the guilty will receive the maximum sentence and will be fined 10,000 to 50,000 gourdes.<sup>1</sup>*

The 1980 law violates the 1967 Constitution under which President Aristide was elected, and article 14 of the Universal Declaration of Human Rights which provides for the right to leave a country and seek asylum. Haiti's military regime clearly lacks the thin veil of

<sup>1</sup>Article 3 of the Decree dated November 17, 1980.

legitimacy needed to "prosecute" those who flee their stranglehold. Their use of this illegal measure is nothing but persecution.

Both the severity of human rights abuses and the actions of Haiti's military should have given the Administration cause to pause and suspend immediately its policy of repatriation without a hearing, set up the naval base at Guantanamo as a safe haven, at least until the mechanisms were in place for off-shore processing in another area. The Administration chose instead to continue the automatic repatriations which resulted in several arrests, as the following repatriations, done from May 13 to May 19, 1994 illustrate:

1. May 13, 1994, the US Coast Guard repatriated 277 Haitian refugees. Two were immediately arrested: Azibe Seizeme and Louis Charles Dieumet. The latter was reportedly released on May 19. Of the rest, six were advised to go immediately to the In-Country program and granted interviews.
2. May 16, 1994, the US Coast Guard repatriates a total of 341 refugees in two separate landings. Of the 252 people returned first, five ended up in jail, ten identified during the return trip to Haiti as likely candidates for refugee status were granted interviews. Of the 89 refugees that made up the second off-loading, twenty were arrested and five were granted refugee interviews;
3. May 17, 1994, 152 Haitians were repatriated. Five were arrested, and six were given interviews.
4. May 19, 1994 the Coast Guard cutter Vigorous returned 108 Haitians, six of whom were arrested. One was lucky enough to be granted an interview at the In-Country Processing Program.
5. There is little that distinguishes Haiti's current policy toward refugees from the policy to which Cuban refugees fleeing Castro's Cuba are subjected. Yet while much is made about the need to avert a mass Haitian exodus, or to prevent a Haitian invasion of the United States, the screening-free entry of approximately 1,000 seafaring Cuban refugees a month since the year started has barely raised an eyebrow.

### **C. Haitian refugees forced to meet the most stringent standards**

The United States is now poised to begin processing Haitian refugees first on a ship docked in Kingston, Jamaica, and then hopefully in the not-too-distant future on land in the Turks and Caicos Islands.

When he announced the change of policy on May 8, President Clinton said that "we have not broadened the criteria of eligibility." Administration officials have repeatedly

explained since then that they do not expect the number of Haitians qualifying as refugees to be more than 5% of the total interviewed. These statements are prejudicial and, if used as guidelines by adjudicators who have repeatedly heard these figures from the highest levels of the Administration, will naturally undermine the fairness of Haitian refugee processing.

More importantly however, the Administration has insisted on using the strict eligibility criteria employed in-country. The requirements in effect since February 1994 include only the following:

1. Senior and mid-level Aristide government officials;
2. Close Aristide associates;
3. Journalists and educational activists who have experienced significant and persistent harassment by the de facto authorities, or who have a credible fear because of their activities;
4. High-profile members of political/development/social organizations who have experienced significant and persistent harassment by the de facto authorities, or who have a credible fear because of their activities; and
5. Others of compelling concern to the U.S. and in immediate danger because of their actual or perceived political beliefs or activities.

Let us first note that these categories are narrower than those used in U.S. and international definitions to identify refugees fearing persecution. The contrast gets to be more extreme when requirements set forth for Haitians are compared to requirements set forth for Jews and Christian Evangelicals from the former Soviet Union, under what is commonly known as the Lautenberg Amendment. The most important contrast is that a Lautenberg amendment applicant need only assert a credible basis for concern about the possibility of persecution. Under these standards, 95% of the applicants have been accepted under this program.

Given the overwhelming evidence of outright terror directed at members of community associations, church groups and other democratic groupings which support the return of President Aristide why the higher standards for the Haitians? The answer could be as simple as that Haiti is too close for comfort. Nonetheless it would be unacceptable. Equity should be applied across the board.

#### **D. Procedural Fairness**

It is our understanding that in negotiating a role for the United Nations High Commissioner for Refugees, both the U.S. and the UNHCR have gone a long way toward trying to shield the processing from political interference. That effort should be commended. But the question of whether interviews for well-founded fear can be adequately pursued onboard a ship docked in Kingston, Jamaica, remains.

Other questions need some very specific answers:

1. In addition to a general orientation upon arrival on the ship, will Haitian refugees be given the opportunity to have individual counseling prior to being interviewed?
2. Will the interviews be conducted in a manner that secures confidentiality of the process?
3. Why are Haitians to be denied a basic right of appeal after an initial denial? As it stands now, reconsideration of their claims is completely discretionary. When the difference may be between life or death, torture or freedom, the right of appeal is an inconvenience that we should be able to live with.

#### **III. Conclusion**

Since it first began to respond to outflow of Haitian boat people, the United States has asserted that Haitians are nothing more than job-seekers attempting to break U.S. laws and circumvent normal immigration channels. The presumption has remained and has poisoned our policy vis-a-vis Haiti.

It is not too late to presume otherwise, in other words that Haitians have legitimate fears of persecution if returned to the land that the military has ravaged. The sooner this is done, the more consistent will overall U.S. policy toward Haiti be. In the process, we will perhaps have contributed to restoring to the Haitians some of the dignity that we have sought to deny them. We hope that we are on that path.



Mr. MAZZOLI. Father Ryscavage.

**STATEMENT OF REV. RICHARD RYSCAVAGE, EXECUTIVE DIRECTOR, MIGRATION AND REFUGEE SERVICES, U.S. CATHOLIC CONFERENCE**

Reverend RYSCAVAGE. Good afternoon, Mr. Chairman. Thanks for having me here today.

I think, as you know, the U.S. Catholic Conference has for many years been deeply involved in almost all aspects of Haitian migration to the United States. Currently, we are the only agency now that is doing the resettlement of the Haitian boat people that actually arrive in Florida and need some kind of assistance which they get out of Krome detention.

We are also handling thousands of pro bono asylum cases for the post-Guantanamo Haitians, and are running one of the in-country processing centers inside Haiti also. And this week I have been very involved as the chairman of the Interaction Refugee Group in negotiations with the Government over the in-jail participation and the Jamaica shipboard processing.

A week ago I would have to say that my testimony here would have been much, much angrier than it is going to be today. The long overdue reversal of the administration's policy on return and interdiction was followed by an impossibly slow implementation period, and then by reports of an incredibly flawed processing plan for Jamaica. I think, thanks to the persistence of the UNHCR negotiator, Mr. Asamani, and Mr. Gray, the leadership of the Special Assistant on Haiti for President Clinton, I am more optimistic now that, in fact, we can see the beginning of a full, fair adjudication process for Haitians in Jamaica, and especially in Turks and Caicos when they get the land-based processing moving.

But first let me say that our position has consistently been that any interdiction and return policy is bad policy. Refugees who meet the refugee standards should be brought to the United States. Haitians who do not meet this stringent standard but still have a credible fear of return should be held either in Guantanamo or at a third country, safe haven site temporarily, and temporary protective status should be given to those already in the United States as of a recent date, but not open-ended and truly a temporary status.

So, we support those elements of the bills before us that reflect these positions and protect the Haitians.

We particularly want to—I want to applaud Congresswoman Meek's attempt to address some of the fiscal instability in the Cuban-Haitian program. You know, raft and boat arrivals from both Cuba and Haiti have been increasing. We see this as a trend in general. And yet the Justice Department's CRS program is chronically underfunded. And if it collapses, as it is in danger—as it was in danger of doing last year, and this year also, the State of Florida will feel the direct impact of that.

Let me talk about in-country processing from the point of view of an agency that is actually running one of those things. There has been serious flaws in in-country processing procedures, and we entered into contract with a lot of soul-searching because we weren't sure we really wanted to be part of this. We feel in the long run,

if we get a few people out of Haiti, it is worth putting in the effort to save them. But we support it as long as it is seen as a complement, not a substitute, for out of country protection and processing.

In the past, the quality of the INS interviewing officers has been extremely poor, and their training has been extremely poor. And the process was far too cumbersome, and as Steven said, even dangerous. And now, everyone—now as we talk, as Ms. Sale had mentioned, there is a question of whether the Ambassador is going to call for a drawdown on the INS staffing, in which case we are afraid simply that we are just going to have to pull out of in-country processing if that happens. If they cut INS staffing by 33 percent, I doubt if the U.S. Catholic Conference will be able to continue in-country processing under those conditions.

We also have some grave questions about the security of our staff in Cap Haitien.

I think it is important to point out that the process is different, in-country processing, than is going to happen in Jamaica. They do not all get an interview in in-country Haitian processing. In Jamaica, everyone will get a full INS interview.

Now, that is an important distinction that I think was overlooked earlier today. And the confusion over the statistics of in-country processing I think can be tied directly to what Steven Forester said about the vetting procedure. This too is different from what is going to happen in Jamaica.

In Haiti, there is a prevetting kind of procedure that goes on so that only a certain type of person gets to the INS interview, and therefore, yes, the statistics have been rising in terms of approval rates. But you have to understand that is part of a much more limited pool. It is not the total applicant number, and I think that is where the confusion was with the INS questions today.

I would like to say a word about economic sanctions. From the U.S. Catholic Conference position these are not morally neutral acts. Economic sanctions are a very delicate matter in the ethical sort of scheme of things, so from our perspective the effects and the harm must be proportional to the good realistically you expect to get out of the political process.

And a second moral consideration is to ask whether substantial segments of Haitian people are consenting to the sanctions in the first place?

I am not sure there are clear answers to these two questions. But whatever happens in the sanctions area needs to have very careful monitoring less there be severe humanitarian damage and, in fact, no political solution.

Finally, about the shipboard processing. Our bottom line, or at least the Refugee Resettlement Agency's, on the quality of shipboard processing was basically that it have access, or as the Jamaican Government has in its agreement with the U.S. Government, it has transparency, and we would say NGO access, both to observers as well as to workers. And secondly, that the process be fair and full and valid under international refugee standards.

There are indications I think in the final agreement that this could be accomplished given the structure they are setting up. But I stress that it could be accomplished if it is done in good faith.

And I think everything rests here on the good faith by which the INS, if NGO, the UNHCR community can manage to work together to create something out of this.

It is obviously constrained by the ship. I would expect a much better process to take place in Turks and Caicos next month, if they get that up and running.

But we are very uneasy about the quality of the INS personnel that is being seconded down to Haiti despite the intensive training. Very much will rest on the ability of the quality assurance officers to cap the mistakes and, you know, sort of gaps in the initial interviewing, and we are concerned about this level of case reconsideration and how that is actually going to work.

I would feel, and we have been talking directly with the UNHCR about having as part of the NGO counseling function people who are able to help the Haitians articulate their case more carefully, particularly those that are flagged by UNHCR as in need of reconsideration by the quality assurance officer. I know there is some resistance to that within the INS, but I think that possibly we might be able to work something out.

And finally, I just want to—there is a forgotten group, a group that was created by the former administration and hasn't yet been cleared up by the current administration. That is the 10,000 Guantanamo Haitians that were brought in under prescreening who are still struggling to get their asylum applications in the United States.

As an agency that does a lot of that kind of work, we are absolutely overwhelmed by the legal work involved in getting their cases in. Most of them don't have a chance at all of getting asylum unless they get attorney help.

It would seem to me once again that it would make a lot of sense in terms of clearing up the asylum backlog to simply grant them asylum since they have already gone through at least a screening process, or at least to grant them some kind of entrance status that would take them off the INS kind of consideration list. Thank you.

Mr. MAZZOLI. Thank you, Father.

[The prepared statement of Reverend Ryscavage follows:]

PREPARED STATEMENT OF REV. RICHARD RYSCAVAGE, EXECUTIVE DIRECTOR, OFFICE OF MIGRATION AND REFUGEE SERVICES, U.S. CATHOLIC CONFERENCE

Mr. Chairman and members of the Subcommittee. I am Father Richard Ryscavage, S.J., Executive Director of the United States Catholic Conference's Office of Migration and Refugee Services (USCC/MRS). We are one of the oldest and largest private refugee resettlement agencies in the United States. We operate the refugee processing center in Cap Haitian on the north coast of Haiti under contract to the Department of State. We also support pastoral care responsibilities for over 40 different ethnic groups, including Haitian Catholics. Additionally, the Conference provides legal counseling services for immigrants, asylum applicants, and the undocumented through the Catholic Legal Immigration Network (CLINIC). This extensive experience with newcomers gives us a unique perspective on refugee issues.

I appreciate the opportunity to appear before this Subcommittee, which has played such a key role in pressing for a humane refugee policies, to testify on H.R. 3663, H.R. 4114 and H.R. 4264 regarding Haitian refugee problems. The situation in Haiti represents one of the most serious violations of human rights facing the Administration. Until the past few days, the United States response to that repression has represented a serious failure of refugee protection. In turn, this failure by the United States to meet its obligations in the field of refugee asylum has had disastrous effects both on the fate of individual Haitian asylum seekers and on respect for the principle of refugee asylum worldwide. We were encouraged by the President's announcement on May 8, 1994, of a change in the policy of interdiction and automatic return of the Haitian boat people. However, the delay in the implementation of the new policy and the form in which the policy apparently will be implemented have increasingly fed the fears of the voluntary agencies that the new policy would prove to be a mere sham.

Let me briefly say something about the moral framework for our concern for the Haitian boat people.

The Catholic Church has for centuries struggled to clarify the moral obligations of the State toward human persons. These moral obligations flow from the belief that the State, as a human creation, must serve human beings. Human beings were never meant to serve the State. In this light, the Church insists that public policy that fails to promote human dignity is bad policy. We judge policy by its respect for human dignity. This moral perspective shapes the way the Church views the crisis in Haiti.

Pope John Paul II explicitly stated his concern and interest in Haiti during his 1983 visit there. He observed

There is really a profound need of justice, of a better distribution of goods, of more equitable organization of society, with more participation, a more disinterested concept of service to all on the part of those who have responsibilities...There should be the possibility to eat one's fill, to satisfy one's hunger, to be well kept, to have housing, schooling, victory over illiteracy, honest and dignified work, social security, respect for family responsibilities and for the basic rights of man: in a few words, everything which ensures that men and women, children and the aged can live truly human lives.

**It is with the aim of ensuring that Haitian nationals are treated with dignity and justice that the Catholic Church in the U.S. has maintained a commitment to Haitian boat people.**

I would like to concentrate my comments on the refugee questions involved in Haiti policy. USCC/MRS has been deeply involved in the Haitian refugee problem from the beginning. In 1982, testifying before the Senate Subcommittee on Immigration and Refugee Policy, then-Bishop (now Cardinal) Anthony J. Bevilacqua discussed the "unjustifiable incarceration" of Haitian asylum-seekers. Bishop Bevilacqua testified in 1984 before the House Subcommittee on International Operations on the Cuban/Haitian Adjustment Act of 1984. In his testimony, he discussed "Haitian refugees [who] risked their lives to flee from misery and repression to this country."

More recently, on September 12, 1989, in testimony also before the House Subcommittee on International Operations, former MRS Executive Director Msgr. Nicholas DiMarzio pointed out that

At the same time that we are running this interdiction program, we are leading the international outcry against the Hong Kong government's intention to return Vietnamese boat arrivals to Vietnam. The US government's historic and continued inequitable treatment of Haitians is indefensible.

Again, on June 25 1992, before the same subcommittee, I testified in favor of the International Refugee Protection Act of 1992, as an important declaration that the United States must conform to the humanitarian norms of customary international law.

USCC/MRS is now the only agency resettling recent Haitian boat arrivals in the United States. As many as 500 Haitians will be referred to USCC/MRS for resettlement by the contracting agency, Community Relations Service, Department of Justice. Our affiliates, primarily Miami, Palm Beach, Brooklyn and Boston, are attempting to arrange pro bono legal representation to assist these cases in their immigration proceedings.

Additionally, USCC/MRS is presently managing a refugee processing facility at Cap Haitian on the north coast of Haiti under a cooperative agreement with the Department of State and, of course, along with the other resettlement agencies, we are involved in the resettlement in the United States of those Haitians accepted by the United States Refugee Program.

#### **United States Policy of Interdiction and Return**

Throughout the development of this problem, USCC/MRS has repeatedly and forcefully called for respect for the rights of Haitian asylum seekers who flee Haiti by boat. We have always strongly felt that they should be permitted to present their claims for political asylum and have them fairly adjudicated before being summarily and forcibly returned to Haiti, as has been done until the past few days by the United States Coast Guard. That policy was a gross violation of the principles of first asylum and non-refoulement which forbids a state from forcibly returning political refugees to their persecutors.

No one, including refugee advocates, denies that some of the Haitian boat people are economic migrants. But, equally, even Administration spokespersons do not deny that repression exists in Haiti and that some of those fleeing are fleeing political persecution. Supporters of President Aristide are gunned down with impunity in the streets of Port-au-Prince before the eyes of United Nations monitors. Indeed, the existence of political persecution in Haiti is clearly recognized by the United States Refugee Program which operates three refugee processing sites in Haiti. But those that flee by boat have been returned without examination even though many would surely have qualified as political refugees.

What excuse, then, could the present Administration possibly offer for the continuation of the contradictory policies of the Bush Administration which the President, as a candidate, had so sharply criticized? Administration spokesmen expressed alarm that many Haitian boat people might perish at sea if not rescued by the Coast Guard. But all boats are interdicted, not just unseaworthy ones. Even where rescue is required, this does not relieve the United States of its obligation to give those rescued an opportunity to present their claim for political asylum. In addition to being highly paternalistic, this is an argument frequently used by states as a

justification for avoiding their responsibilities for refugee protection. For example, concern for the safety of the Vietnamese boat people did not surface as a reason not to take more Vietnamese refugees until the international community had already decided that it had had enough of Vietnamese refugees. Whether and how to flee is a decision to be made by the refugee. United States immigration officers will judge the bona fides of refugee claims presented to them. The refugee must judge and decide between the dangers at home and those which he or she may face at sea.

The Administration also argues that it was not in violation of its obligations under the 1951 Convention Relating to the Status of Refugees and the 1967 United Nations Protocol because the interdictions take place in international waters and the Convention and Protocol do not have extra-territorial application. That the Administration must hide behind such a technicality is shameful and a clear signal of the lack of justification for the policy. Even Justice Stevens, in the majority opinion of the Supreme Court case of Sale v. Haitian Centers Council, Inc. 113 S.Ct.2549,2565 (1993), supporting the Administration's position, said:

The drafters of the Convention and the parties to the Protocol..... may not have contemplated that any nation would gather fleeing refugees and return them to the one country they had desperately sought to escape; such actions may even violate the spirit of Article 33;...

We must assume that many Haitian boat people, well qualified as political refugees, have been returned to the Haitian police authorities. The United States position on this issue damages core values of refugee protection worldwide: (1) the principle of first asylum, which requires that an asylum seeker be given an opportunity to present his or her claim to political asylum and to have that claim fairly adjudicated before being forcibly returned home, and (2) the principle of non-refoulement, which provides that no refugee shall be expelled or returned **in any manner whatsoever** to the frontiers of territories where his or her life or freedom would be threatened. The United Nations High Commissioner for Refugees (UNHCR) believes that the United States is in violation of its treaty obligations in this respect and so states in its amicus briefs that were submitted to the Supreme Court in the Sale case.

Representative Carrie Meek introduced H.R. 3663 to rectify this situation. USCC/MRS continues to strongly support this bill, which is also supported by the UNHCR. I would request your permission to submit for the record a letter from Mr. Rene van Rooyen, the UNHCR Representative to the United States. Mr. Van Rooyen points out that U.S. practice with regard to the interdiction and return of Haitian asylum seekers was "inconsistent with the fundamental principles of refugee protection." He states that this fact was "eroding the commitment of the international community to the protection of refugees" and had "seriously undermined the ability of the U.S. authorities to speak up on behalf of refugees worldwide."

To understand the impact of these United States policies, one only had to talk to field level UNHCR officials. Their common refrain was, "before this, when we had a protection problem, our first thought would be to turn to the American Ambassador for help. Now that official no longer has credibility on refugee protection issues." When one considers the role the United States has played in refugee relief and protection in the past, Mr. Chairman, we can see what a tragedy this policy has been for refugees worldwide.

Let us be frank about this. The Administration was not concerned about boat people in distress at sea. It maintained this policy out of a fear of a mass migration to South Florida and the political consequences that might flow from that event. No doubt a considerable impression was made on the present Administration by the days in 1980 when the Cuban refugees from the Mariel boat lift rioted in their camp at Fort Chafee, Arkansas, and marched down the streets of Fort Smith. And, clearly, the Governor and congressional delegation of Florida have legitimate concerns about adding to the already large population of immigrants and refugees in that state.

USCC/MRS, however, has consistently argued that the alternative to the policy of automatic forcible return was not a mass migration to Florida. We have long felt that the alternative would be a high level White House commitment to finding a regional solution. We argued that position in a paper passed to the Clinton transition team in January, 1993. This is the position that the Administration has now adopted. Obviously, we are pleased that this is the case, but we are also deeply concerned that implementation was delayed for so long after the announcement of the new policy. We are also very concerned by the operational deficiencies in the new policy as it now appears it will be implemented.



### Delayed Implementation

The President announced a new policy for the screening of Haitian boat people and the appointment of William Gray III as his new Special Advisor on Haiti on May 8, 1994. Inexplicably, however, the Administration continued to forcibly return Haitian boat people even as this testimony was being drafted. As of June 3, over 1500 boat people had been forcibly returned into the hands of the Port-au-Prince authorities after the President's announcement of the new policy. This was so despite the President's statement that:

In recent months, I have become increasingly concerned that Haiti's declining human rights situation may endanger the safety of those who have valid fears of political persecution, who flee by boat, and who are then returned to Haiti where they are met at the docks by Haitian authorities before they can be referred to in-country processing.

On May 23, 1994, in a statement by the National Conference of Catholic Bishops Committee on Migration, the Bishops expressed their deep concern at this continuing situation:

We are, therefore, doubly distressed that such forcible returns are continuing with over 1000 persons turned over to the military authorities in Port-au-Prince since the President's May 8th statement. By now, persons encouraged to flee by the new policy, have left Haiti and are at risk of interdiction and forcible return.

Obviously, the screening of the Haitian boat people presents some complex operational problems which need to be addressed for a successful implementation. One might have hoped that these could have been dealt with before announcing such a policy. If not, then options such as the use of Guantanamo as a temporary holding site should have been considered. Instead, over 1500 persons came out after the announced change, some almost surely with well founded claims to political asylum and encouraged by the President's statement to come forward - only to be forcibly returned into the arms of their oppressors.

This delay by the Administration in implementing this vital change leaves us with a sense of deep unease that there is still insufficient understanding by Administration officials of the damage that the previous policy was doing to the rights of legitimate Haitian refugees and to refugee protection worldwide. This raises the specter that, if faced with too many

difficulties in the implementation of the new policy, the Administration will be tempted to go back to a policy of forcible return. This cannot be allowed to happen. It is for this reason that we believe the Administration's change of policy with respect to the interdiction and return of Haitian refugees does not remove the need for the passage of the provisions in H.R. 3663, H.R. 4114 which reestablish United States practice with respect to Haitian asylum seekers in accord with international law and practice.

### **The Shipboard Option**

One source of this concern has been our understanding of the way in which it is expected that the new policy will be implemented. Although it appears that the Administration is also seeking a land based site, the initial implementation will be through a shipboard operation, aboard United States owned or leased vessels berthed in the harbor at Kingston, Jamaica. We understand that about 800 asylum seekers can be accommodated at one time aboard these vessels. Although we are told that the process aboard these ships will replicate that followed in in-country processing, there are, in fact, a number of differences.

- Vetting. Vetting or pre-screening was introduced initially for in-country processing in order to assure that the more urgent cases were seen first. As the number of applications and the resulting backlog grew rapidly, this was adjusted to provide that those not fitting into prescribed categories would not be considered eligible for the program and would never be seen by an INS officer for a refugee status interview. This cannot be the case in shipboard processing since, as presently planned, those that are screened out as not political refugees will be forcibly returned to Haiti. If an individual were returned without having had a refugee status adjudication, this would constitute refoulement. Thus, the in-country system of pre-screening would only be admissible if a land based site is located where those found not eligible for resettlement processing could be held in a safehaven environment until the situation in Haiti improved.

- Rapid Processing. Initially, we were told that the plan was to move asylum seekers in and out of shipboard processing in 24 to 48 hours with immediate return to Haiti of those found not qualified as refugees. This implies a process very different from that followed in Haiti and with

far fewer safeguards. For example, at the refugee processing center operated by USCC/MRS at Cap Haitien, it often takes three weeks from the time that an applicant is seen by an INS Interviewing Officer until a final decision by INS on the case is announced. This enables the Interviewing Officers to write up their view of the case and for these views to be reviewed by a Quality Assurance Officer. Such a procedure will be especially important as the INS will inevitably be using many officers with little or no experience in refugee adjudication and with little or no country background on Haiti, and most likely assigned on a short term temporary duty basis. To attempt to move asylum seekers through this system quickly is to invite a high level of erroneous decisions. More recent contacts with the Administration indicate that this period may be lengthened slightly, but the key point is that adequate time must be found for the refugee to collect his or her thoughts, be counselled and prepare for such a critical interview and time must also be available for the adjudicators to reach a considered decision and to allow for an appeal procedure.

- Non-Governmental Organization (NGO) participation. While the International Organization for Migration (IOM) operates the refugee processing support facility in Port-au-Prince, the two facilities in Les Cayes and Cap Haitien are operated by the American NGOs, World Relief and USCC/MRS respectively. IOM has been asked to participate in shipboard processing, but, initially the NGOs were not invited to participate in the planning for these new procedures and, apparently no role for the American NGOs was planned or desired by the the Administration. This was unfortunate and was the case despite numerous communications from NGOs expressing interest in being involved and willingness to assist in a variety of ways. NGO assistance can greatly increase the volume of cases an INS team can accommodate in a fair manner. Additionally, NGO involvement would add credibility to the process by placing the NGO in a position to render an informed judgment on the relative fairness of the processing system. As Chair of the InterAction Committee on Migration and Refugee Affairs, I wrote to Special Advisor William Gray on May 9, 1994 indicating the member agencies readiness to assist in whatever way we could, whether helping in planning a just implementation of the new policy or operationally, including case file preparation services typically provided by the agencies under contract to the Department of State in refugee processing situations. I am aware that human rights and legal assistance organizations have also suggested that it would be appropriate to define a role for their participation.

More recently, there has been some indication of a willingness by the Administration to consider an NGO role and it is my hope that, by the time of this testimony, I will have more positive developments to report.

Among possible NGO roles might be:

**- Reception functions**

\* Accompany refugees from their initial pick-up site by coast guard cutters to the processing site. Approximately a 16 hour trip from Haiti to Jamaica could be used to make primary contact with refugees, give a basic explanation of where they are going and what to expect. Passing out special brochure in Creole.

\* Greeting the refugee/explaining the process/answering questions.

\* Initial identification of refugee with special needs:

- unaccompanied minors
- unaccompanied elderly
- physically or mentally disabled
- single parent families
- victims of rape, torture, violence
- persons with medical conditions requiring treatment

**- Counselor Appeals Function**

\* After an INS negative refugee status determination - the applicant would signify to the UNHCR that it wished to have a case review. The individual could be referred to the NGO Counselor Team who could help the individual prepare his or her case for INS review.

**- NGO Coordination for U.S. Resettlement**

\* Stationed on Guantanamo NGO reps could do bio-clarification and facilitate speedier resettlement.

**- NGO Observer Mission**

\* High level reps of the NGO U.S. community - including the legal community could be organized as a visitor mission to observe and monitor the processing system. Issue report.

**- Pastoral Access**

\* Access for ministries of religion to serve the Haitians.

**A Regional Safehaven**

The Bishop's Committee on Migration, in its May 23 statement, also noted that:

We understand that the Administration plans screening that applies strict refugee criteria. While this will allow some refugees to be resettled in the United States, the majority will be sent back. Reports of current conditions of violence in Haiti are such that we fear that many persons not meeting the refugee criteria could still be at serious risk if returned to Haiti. These persons should not be returned. We urge the Administration to seek a land-based site where Haitians can wait in safety until the political situation in Haiti improves.

If a safehaven area cannot be located in the region that could accommodate all Haitian asylum seekers, we ask that a safe haven be provided, at least, to those boat people who can demonstrate a credible fear of persecution if returned forcibly to Haiti.

It is our understanding that such a safehaven is not being planned at the present time. We urge that this be made a serious part of the Administration's effort to deal humanely with those fleeing violence in Haiti.

**Regional Options to Interdiction**

An appropriate regional site has long been the key to the successful and humane management of the Haitian refugee problem. Many of the problems noted above with respect to refugee

processing could be solved if the space available were not so constricted. On board processing is simply not likely to result in a fair procedure. Additionally, even the land-based site currently being considered in Turks and Caicos is likely to be too constricted unless an expansion can be negotiated. Space constraints lead to time constraints and the goal of 24 to 48 hour processing which, in turn, makes a fair and complete hearing and appeal impossible. Both for these reasons and to limit to the greatest degree possible the number of boat people who must be returned to Haiti, the Administration should continue to give a high priority to a land based site of adequate size and with satisfactory facilities.

### **Economic Sanctions**

With respect to the economic sanctions presently being maintained against Haiti, I want to express our serious concern about the potentially damaging effects of these sanctions on the Haitian people, especially the poor. For this reason, USCC/MRS, in the past, has preferred the use of selective sanctions. We recognize, of course, that the sanctions contain built-in humanitarian exceptions for food and medicine as well as for fuel to provide for the distribution of assistance to the most needy. It is our observation that most of this humanitarian aid by the United States to the Haitian people is being distributed and that, so far, it is preventing a bad situation from becoming a desperate one. Nevertheless, it is also clear that the already low health care and nutrition for the poor is declining. Sanctioning powers must be ever vigilant lest prolongation of sanctions against Haiti lead to grave or irremediable damage to the people or their land. Already there is a severe threat of damage to the Haitian economy and ecology which will be almost irreversible without massive investments. Additionally, the continuation of sanctions in the absence of strong political will to find a solution for Haiti would be morally unacceptable.

Given the poor state of the Haitian economy, we would urge that humanitarian, agricultural and ecological aid levels be adjusted upwards to meet the growing needs of the people. These needs will now be advancing sharply. As the leakage of goods across the Haitian border from the Dominican Republic is restricted, we find that much of that commerce was in foodstuffs with many Haitians in the border regions depending entirely on this trade for many basic food items. While these items are exempted under the embargo, for the time being, nothing is getting

through and food prices on many basic items are rising sharply. There is a serious question whether the humanitarian agencies can expand food deliveries sufficiently to meet the increasing needs created by the tighter embargo.

We recognize, of course, that the sanctions constitute one of the few tools available to the international community in this situation. However, the bishop's teaching requires that sanctions be linked with a feasible political strategy for implementing the return of democratically elected government to Haiti and with a political will to implement such a strategy. Thus, we believe that both the probability that the sanctions will be successful in helping to bring an acceptable political solution to Haiti and the extent of the damage being done to the Haitian population must be monitored continuously and intensively with a view to lifting or ameliorating these sanctions if they become either unlikely to achieve their purpose or unacceptably harmful.

### **In-Country Processing**

Currently the United States has three in-country refugee processing centers in Haiti. The USCC/MRS operates an office in the northern part of the country in Cap Haitien. The International Organization for Migration administers the largest office in Port-au-Prince, and World Relief manages the center in Les Cayes in the southern part of Haiti. The United States Immigration and Naturalization Service (INS) is based in Port-au-Prince, and the officers make periodic visits, approximately monthly, to Cap Haitien and Les Cayes to interview asylum seekers.

As of June 3, 1994, 8,374 principal applicants entered USCC/MRS' Cap Haitian office. Out of this number, INS interviewed 689 principal applicants, and approved 77 cases totaling 272 persons, including the applicants' families. The approval rate in Cap Haitien of those principal applicants actually interviewed by INS has been approximately 11 per cent, with the results in the last few months running somewhat higher than at the beginning of the program. From the three offices, approximately 11,109 principal applicants have been interviewed by INS out of which 822, or approximately 7 per cent, have been conditionally approved as of the end of January, the most recent statistics available.

The USCC/MRS staff includes 3 expatriates and 12 locally-hired persons. We believe with this

limited staff we have been able to do an excellent job preparing cases and people for INS interviews in spite of the difficult conditions caused by the sanctions.

We entered into this activity after some soul searching since in-country processing has a number of obvious deficiencies and we have always been strongly opposed to a policy which makes it the only avenue out of Haiti for the political refugee. Because in-country processing does provide relief for some, we agreed to assist.

We have been concerned about the risk to the refugees involved in a relatively long out processing time which includes refugees applying for a passport and submitting to fingerprinting by the police. Efforts have been made to smooth out this procedure and urgent cases can sometimes be moved within a week if all goes well. However, the average case takes about a month to process and some are delayed a good bit longer. While most out processing is accomplished without incident there have been cases of harassment of approved refugees and it is a worrisome period. Every effort should continue to be exerted to make out processing as smooth and trouble free as possible. A particular problem is presented by the HIV positive applicants approved for refugee status. While we are still hopeful that this can be solved, so far no HIV positive cases have been able to leave Haiti in this program.

There is concern that those politically active persons most in need of asylum might fear to enter a public facility such as those operated by the Department of State. We share this concern, and it is one of the reasons we continue to insist that in-country processing not be the only channel through which asylum can be sought.

Earlier this year, the Department of State revised its category system, which had been used to decide the order in which applicants will be seen by INS Interviewing Officers. This change was presented as a system better able to distinguish those applicants with the best claims to political refugee status. This would permit the system to address the urgent cases quickly in the face of a sharply growing volume of applications late last year. The new criteria system probably does provide greater guidance in identifying sensitive cases but it will be crucial to maintain the flexibility with which it appears to have been designed. However, this change will have only limited utility in sorting out sensitive cases from a large volume of applicants.



On the negative side of the new system is the fact that those persons not meeting the criteria are informed by letter that they are ineligible for the program. These applicants will never be given an INS interview. Nor is there any appeal for those who are "vetted-out". At the beginning of the program, the categories were simply seen as a means to mark the sensitive cases for early screening and adjudication. That is no longer the case and some worthy cases will never be interviewed.

Further, it should be noted that the new category system deals with the increased volume at the end of last year by not dealing with it but simply turning excess numbers away. If the volume of applications is not too high, most worthy cases, though certainly not all, could probably be spotted by either of the category systems. However, if the volume of applications returned to December 1994 levels, which stimulated the introduction of the new category system, many worthy cases would probably never be seen at all. It is still too early to predict the effect of refugee processing outside of Haiti, but one presumes that in-country applications may decline. If this proves not to be the case and the volume of applications return to December 1994 levels, the only way of assuring rapid attention to sensitive cases will be by an increase in Department of State, Joint Voluntary Agency, and INS resources in Haiti.

The Department of State has also indicated its intention to offer INS training to non-governmental agencies and individuals to help them identify and refer potential asylum seekers who might qualify under INS guidelines. While this may offer some promise, there are also a number of pitfalls in such a system. In particular, a referral system cannot be seen as an alternative to making adequate resources available to provide for whatever volume of Haitians desire to apply for political asylum at the processing facilities themselves.

As noted, the acceptance rate of applicants interviewed by INS has averaged about 11 percent since the opening of the Cap Haitian refugee processing facility. In initial INS visits to Cap Haitian, acceptances averaged 4-5 percent, but reversals by quality control officers and reinterviews brought this figure up a bit. Also, recent visits by INS to Cap Haitian have resulted in somewhat higher acceptance levels.

Nevertheless, these are very low acceptance figures. Our own staff reports that this is not entirely unreasonable. Many of those coming into our office provide no basis for a claim to political asylum. At the same time, while we certainly cannot expect INS to agree with us on every case, we have been troubled by the rejections of a considerable number of cases which have seemed strong ones to us. We have drawn these to the attention of INS, and we understand that our views are being considered.

One final comment on this issue. There has been considerable comment on the performance of INS interviewing officers in Haiti. INS has responded to this by introducing quality control officers in Port-au-Prince to review the work of interviewing officers. It has also developed a one week Haiti specific training course for officers before departure for Haiti. While it is too early to judge the effect of this training course, it is noteworthy that the assignment of interviewing officers to Haiti has been on a voluntary basis and that the great majority of such officers have had neither a background on Haiti nor experience in asylum work. Given the critical nature of these decisions to the asylum seekers, it can be questioned whether this was a satisfactory state of affairs.

Recently, INS has lengthened the tour of duty for an interviewing officer from one month to six months. Sixteen new officers, some Creole speakers, have been selected and trained. We are hopeful that these changes may result in a more satisfactory in-country processing program.

#### **Protection of Haitians in the United States**

USCC/MRS has also been very concerned about the situation of certain Haitian nationals in the United States. These Haitians can be broken down into three groups:

- A. Haitians who fled Haiti after the 1991 military coup and were subsequently paroled into the United States to pursue their claims to political asylum after their claims were pre-screened on U.S. vessels or at Guantanamo Bay, Cuba;
- B. Haitians who entered the U.S. directly and have been granted parole without pre-screening of their asylum claims; and
- C. Haitians who are in the United States in undocumented status.

While the avenues they have taken to enter the United States are very different, these three groups share a fear of return to Haiti because of the political turmoil, civil strife, and unchecked human rights abuses that have been so prevalent there since the military coup. USCC/MRS urges the Administration and Congress to do everything within their power to protect these individuals. U.S. immigration law and precedent executive designations for deserving nationalities allow a great deal of flexibility to provide such protection. For example, in recent years the United States has extended protection to Salvadorans, Liberians, Kuwaitis, Somalis, Bosnians, Lebanese and Chinese students fleeing political turmoil in their homelands. It is imperative that the United States do the same for Haitians.

USCC/MRS believes that the provisions contained in both H.R. 3663 and H.R. 4114 are a step in the right direction toward protecting Haitians who are physically present in the United States.

H.R. 3663 grants Temporary Protected Status (TPS) under section 244A(b) of the Immigration and Nationality Act to Haitians who have been in the United States since November 17, 1993. This protection is extended for 24 months or until the President certifies to Congress that a democratically-elected government is secure in Haiti.

H.R. 4114, on the other hand, extends TPS to Haitians in the United States or in the custody or control of the United States until the time that the President certifies that the democratically elected Haitian President has been reinstated or the Haitian military has met its obligations under the Governors Island Agreement. The protections under H.R. 4114, therefore, are offered indefinitely to Haitians and are not limited to those physically present in the U.S. by a certain cutoff date.

While USCC/MRS agrees with H.R. 4114's attempt to provide comprehensive protection to all Haitians, regardless of location or date of entrance into the United States, we also recognize that there is a legitimate rationale to the effort to prevent TPS from encouraging an unlimited number of Haitians to come to the United States. We, therefore, would offer a "friendly amendment" to establish a slightly more nuanced approach to the protection of Haitians outside of Haiti.

Like H.R. 3663 and H.R. 4114, our approach embraces the notion that all Haitians deserve protection. Some individuals, because of their well-founded fear of individualized persecution by the Haitian military, meet the criteria defining refugees and asylees contained in U.S. law and international law. These individuals should be afforded the full protections stipulated under those laws.

All Haitians, regardless of whether they meet the rigorous criteria for refugee and asylee status, have a legitimate fear of returning to the general civil strife and political turmoil in their homeland. TPS should therefore be extended to Haitians to ensure protection of those who fail to meet the criteria for refugee and asylum protection. USCC/MRS proposes that TPS such as envisioned in H.R. 3663, with a definitive cut-off date and limited to Haitians physically present in the U.S., should be established. The cut-off date of November 17, 1993 contained in H.R. 3663, however, should be moved to a more recent date to encompass as many Haitians already in the United States as possible.

For Haitians who enter the U.S. after the cutoff date or who are in U.S. custody or care outside our borders and who have not been deemed eligible for refugee or asylum protection, we would propose establishment of a regional safehaven. Negotiation of this center should become a top priority for State Department officials. Such individuals, after denial of refugee or asylee status, could then be offered the choice of return to Haiti or relocation to the regional safehaven.

Having laid out these broad parameters for protection of all Haitians who have fled their homeland, USCC/MRS urges Congress and the Administration to give special consideration to Haitians who have been paroled into the United States, i.e. groups "A" and "B" delineated above. These individuals have been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act, and thus have already been legally allowed to enter the United States. They have been resettled by voluntary agencies, such as USCC, under contract with the Community Relations Service of the Department of Justice while they wait for the outcome of their political asylum claims. Rather than to disrupt this resettlement system and the quasi-legal status already granted to these individuals, we would urge that they be given Cuban/Haitian Entrant Status.

Cuban/Haitian Entrant Status is a form of parole that was created in 1980 to meet the needs of two significant and simultaneous influxes of asylum-seekers from Cuba and Haiti. The Department of Justice at that time recognized that this sudden increase in asylum-seekers would overwhelm the asylum system just set up under the Refugee Act of 1980. Therefore, the decision was made to grant an extended parole to recently arrived Cubans and Haitians and to ask Congress to address their immigration status through special legislation. Congress did that when it granted Cuban/Haitian Entrants permanent residence under the Immigration Reform and Control Act of 1986.

If these individuals are ultimately denied political asylum, they could then apply for TPS, if eligible to do so, or choose to enter the regional safe haven zone or return to Haiti. Alternatively, Congress could grant them permanent residence as was done for their counterparts in 1986.

If the United States fails to protect Haitians in the United States, it will be setting a dangerous precedent for other nations faced with similar refugee crises. In addition, it will be sending a signal to the military leaders of Haiti that we do not feel strongly enough about the human rights situation in Haiti to protect those individuals subject to abuse.

The Administration has defended its failure to extend protection by stating that it has not actually deported anyone to Haiti since the military coup. It is more appropriate, however, to regularize the status of these individuals until they are granted political asylum or until conditions in Haiti become safe enough for their return and TPS can be safely rescinded.

#### **Funding for U.S. Resettlement**

The U.S. Catholic Conference has continued to resettle some number of Haitians in addition to Cubans coming to our shores directly who are permitted entry into the U.S. by the Immigration and Naturalization Service. Since 1961, USCC has resettled over 400,000 Cubans and over 25,000 Haitians. We were actively involved with our sister voluntary agencies in the 1980 Mariel Exodus of 125,000 Cubans. Along with Church World Service (CWS), we served the 10,000 Haitians who were brought to this country in 1992 through the Guantanamo resettlement

program. We continue to resettle arriving Cubans and Haitians through a program administered by the Community Relations Service (CRS) of the Department of Justice, generally referred to as the Cuban/Haitian Primary/Secondary Program. We receive funds from CRS to resettle these Haitian parolees, as well as Cuban rafters, who require the assistance that would normally be needed by refugees but who are not considered refugees by virtue of how they enter the U.S.

With the prospect of substantial numbers of Cuban and Haitian arrivals remaining in South Florida, this program is an important buffer between these arrivals and state and local agencies who would otherwise have to serve these persons. While recognizing the enormous contribution being made by the State and local jurisdictions, the ability of this program to screen arrivals to determine where they might be resettled, including the identification of sponsors and reunification with family outside South Florida, relieves the impact upon South Florida. USCC to date has involved 67 Catholic Charities agencies in various parts of the country in assisting these persons. In addition, we offer employment and language assistance as support services, the objective being to place these persons into employment as soon as possible after their arrival. The federal funding serves to supplement our locally generated resources so that we can offer a program of social services through this network of Catholic Charities.

#### **Trends/Funding**

Yearly arrivals for this program have been steadily increasing since 1990. In recent years during the fall and winter months, when ocean travel by raft and small boat is considered most hazardous, crossings were still high. For example, three times the number of Cubans and Haitians came in October 1993 through March 1994 than came during the same period the previous year (1,186 v. 3,671). As the political stability in both Haiti and Cuba deteriorate, we can anticipate that these arrival trends will continue.

This program, perhaps because of the difficulty in anticipating future arrivals, has traditionally been underfunded. In previous years when CRS expended its annual allocation of funds, USCC and CWS had been able to keep the program operational while CRS worked through the Department of Justice to secure additional emergency funding. Last year, for example, USCC/MRS carried the program for five (5) months until the government located additional funding. This was a very risky, disruptive and costly endeavor which we can no longer support.

We again find ourselves in the same difficult situation this year. At the time of budget preparation two years ago, CRS anticipated serving approximately 5,500 arrivals. More realistic estimates for this year are closer to 10,000. The two resettlement agencies serving these populations reached the 5,500 client level by mid-May. CRS again was forced to scramble to locate the additional monies while managing the possibility that the program would close precisely at a time when the arrival pace was picking up significantly. The monies CRS used will carry the resettlement agencies until the end of July when they again run out of funds to keep this program open. Both the government and private agencies are keenly concerned about the potential impact on South Florida should this program close due to lack of resources.

#### **Future Funding Needs**

We appreciate efforts made by Rep. Meek to address the fiscal instability of the Cuban/Haitian Program. Since the submission of H.R. 3663, arrival and funding estimates have changed. If trends hold, we can conservatively anticipate 12,000 Cubans and Haitians arriving in FY95. CRS would need approximately \$10.8 million for the Cuban/Haitian Primary/Secondary Program to serve that number of arrivals, based on an average cost of \$900 per person. The government and private agencies involved in the processing and resettlement of these individuals recognize that CRS' current FY95 budget request is inadequate to meet the anticipated need. We encourage increasing resources for this specific program to the level of \$10.8 million (an additional \$3.02 million) in order to adequately address the anticipated arrivals.

We further support Rep. Meek's initiative to establish a \$5 million emergency fund that could be used by CRS to address any dramatic, unanticipated increases in arrivals. This fund would avert one of the main complaints of the State of Florida, that the federal government needs to be equipped to operationalize more quickly in the case of an immigration emergency. This amount would allow the government to process and resettle an additional 5,500 Haitians and Cubans above the annual projection.

## Conclusion

In conclusion, Mr. Chairman, there is still much to be done to make United States policy on Haiti satisfactory. We must continue our efforts to improve in-country processing. We must continue and improve protection to Haitians in the United States. We must monitor closely the economic sanctions imposed on Haiti both from the perspective of their effect on the Haitian people and their relationship to our political goals for Haiti. And, above all, we must work hard to develop a regional arrangement that will make a full and fair implementation of the Administration's new policy of regional refugee processing possible and that will provide a temporary safehaven, at least, for those with a credible fear of persecution if returned to Haiti at this time.



Mr. MAZZOLI. Mr. Stein.

**STATEMENT OF DAN STEIN, EXECUTIVE DIRECTOR,  
FEDERATION FOR AMERICAN IMMIGRATION REFORM**

Mr. STEIN. Mr. Chairman, thank you very much for the opportunity to appear. We applaud your leadership in holding this very important hearing on a very difficult subject, and certainly after this Congress your leadership will be missed very much.

Mr. MAZZOLI. Thank you.

Mr. STEIN. We don't have all the answers to what is clearly a long-term and intractable challenge for the United States, but the proposals today that we are considering come against the backdrop of our concerns and warnings for a number of years about the special exemptions that Congress has allowed to stay on the books long after their timeliness was appropriate.

FAIR has over the years opposed the Lautenberg and Morrison provisions and has repeatedly requested, urgently requested that the Cuban Adjustment Act be repealed. It sets up a preferential program for Cuban nationals that stands in stark contrast to the treatment that is afforded virtually any other person from anywhere else on the globe.

We have now sown the wind. Now, we must reap the whirlwind. It certainly creates the appearance of disparate treatment between Cubans and Haitians and serves to undermine the moral authority under which our refugee program operates. It serves no identifiable purpose.

Clearly, someone from Cuba could still be judged a refugee or an asylee without the Cuban Adjustment Act. It adds no vital authority which is not inherently created in any other provision of the immigration laws of this country.

We believe it is urgent now more than ever that Congress move to immediately repeal this blatant preference.

Nevertheless, we concur with the administration that the three bills considered today need to be opposed because we are at a very delicate and dangerous moment in this debate. The existing legal framework of the INA, in our view, provides ample discretion, power and flexibility for the President to handle any asylum or war-related situation that may arise in the Caribbean. We are of the view that in matters of this kind it is important that the President's discretion as Commander in Chief and that the administration's discretion be respected.

In each bill contemplated in the hearing today there is no new power that would be created. Rather each bill is seeking to direct that an existing authority be exercised in a particular manner. There is no question that there are gross human rights abuses going on in Haiti now. They have been in varying degrees for quite some time.

The President already has authority to grant temporary protected status to Haitian nationals under the Immigration and Nationality Act. The President may also have alternative options to consider which we may not be aware of, but given the volatile nature of the situation presently in Haiti with its prospects for military intervention and conflict, the present case calls for deliberation and calm.

At this point the lines between international trade sanctions, war powers, refugee processing, and multilateral police powers seem blurred and somewhat confused. Congressional actions that seek to use these discretionary powers or direct the use of these discretionary powers are, in our view, unwise and imprudent.

Nevertheless, the administration has an obligation to the people of south Florida, and to the American people at large, to prevent an uncontrolled massive boatlift situation not only from Haiti but from virtually any other country, and we are concerned about the fact that the administration in making the announcement May 8 did not seem to be prepared for undertaking the task that the policy change entails.

The planning process has been somewhat chaotic over the last 30 days, and given the track record and history of the Guantanamo facility and its capacity to draw as a magnet, we do not at this point believe the administration has fully considered the logistical, financial and procedural obligations that are going to be involved in any long-term program of this kind, particularly as it affects reprogramming immigration officials from other parts of the country, the administration having made commitments in several other areas this year on important immigration matters.

Beyond that the administration has, we believe, a moral obligation to tell the American people whether or not the sanctions which have been enacted which are onerous, burdensome and likely to, in fact, produce greater outflows in the future are going to be followed by some kind of agreed upon strategic plan to remove the military regime and reinstate Aristide or call free elections or bring to closure some kind of political resolution.

Otherwise, the sanctions themselves seem to be producing no other immediate tangible effect than to create more misery, death, starvation and destruction.

We believe that if the administration had moved more aggressively to reform asylum laws so that we could either have set up facilities in this country to handle on a short-term basis a large number of people or worked multilaterally through the United Nations to set up large-scale facilities, we would not have to have an interdiction program of the type which we believe still must be kept in place.

There is still the overriding problem of the fact that, for people who are given asylum in the United States there is no effective way of enforcing departure once it is safe to go home.

And certainly the residents of Florida are now well aware that mass resettlement is not the answer. The State and local costs associated with absorbing a huge volume of international migrants has never been properly reimbursed by the Federal Government. Conditions for Miami for public education, housing, crime, congestion and other related factors that make up the American quality of life are affected and are declining.

Florida has filed suit now, as Representative Goss mentioned, to try and recover some of these costs, some of them going as far back as the 1980 Mariel boatlift. And there are still hundreds of millions of dollars more in State educational and health care costs that Florida and particularly Dade and Broward Counties have given up ever hoping to see from the Federal Government.

We know from the experience beginning in 1975 onward with—we had 60,000 Haitian boat people arrive in Florida. We have nothing to apologize for with respect to our Haitian immigration program. We have an extraordinarily generous program with respect to Haiti given the size of the population, 100,000 people a year.

And it is important that the American people recognize or be told that there is not an absolute bar for all people coming from Haiti, an impression which has been allowed to be created. There is, in fact, an extraordinarily generous immigration program from Haiti and has been for quite sometime.

But after the influx from Haiti and Cuba we saw Salvadorans, Nicaraguans come in. They were given safe haven and temporary status, but the results are always the same, de facto or official permanent status. Only a few Haitians returned, not a significant number after “Baby Doc” Duvalier fled to France. A few Salvadorans and Nicaraguans have gone home despite extensive periods of comparative peace.

The American people no longer believe, and this is really a tragic situation, but no longer believe that humanitarian temporary shelter will ever result in repatriation when the time comes to go home. This is a needless state of affairs which has been allowed to develop but which is contributing greatly to compassion fatigue being seen all over the country.

Years down the line advocates for the community emerge to fight repatriation on a variety of bases. In the case of Haiti, who will determine when it is time to go home? Aristide? What if Aristide turns out to be ineffective or worse? Does anyone truly believe that if Aristide is restored that he or his successor can so dramatically improve conditions in Haiti quickly enough to avoid a sustained outflow from Haiti?

We wish we had the solution. We wish that we could take everyone who wanted to come here, but we cannot.

In 1994, few residents of south Florida believed that if a sustained influx comes from Haiti that that extraordinary group of humanitarian admittees would ever return home with Aristide. And why should they return?

In my testimony I discuss the growing impact of population growth in many developing countries and its capacity to challenge and undermine the civil order of those nations. I have population pyramids in appendix A comparing Haiti and Rwanda and France.

These kind of situations produce a dramatic deterioration in the quality of life, civil disorder, a breakdown in the civil legal structure, an ecology in ruins, an economy in ruins, illiteracy rates as high as 80 percent. These kinds of situations can produce rapid movements of people very quickly.

We had a situation several weeks back where a representative from the U.S. Committee for Refugees was complimenting the Rwandans on their generosity in treating refugees from a nearby country only to find that 7 or 8 days later nearly half a million people were slaughtered there as a result of interethnic conflicts.

But we need to start looking, Mr. Chairman—we suggest the committee begin to look at this problem as a multilateral problem. Over the next several years, maybe over the next decade we are going to see several situations in our own hemisphere similar to

Haiti where there are large-scale convulsions as a result of a breakdown in civil order and rapid population growth.

Haiti is only one country on a list which the United Nations has said constitute the 17 potential "Somalias," and these include Afghanistan, Angola, Haiti, Iraq, Mozambique, Burma, Sudan, Zaire, Rwanda, Burundi, Georgia, Liberia, Tajikistan, the Chiapas Region in Mexico, Cuba, Haiti, Venezuela, possibly even broader disorder in Mexico.

The coming anarchy in these countries is likely to produce an annual flow of potentially hundreds of millions of migrants. Unless we change our perception as a nation to recognize that accommodating large-scale groups of people on a temporary basis near the point of origin with eventual repatriation is what is going to be required, and unless we, on a multilateral basis, undertake the financial commitment to recognize that this explosive migration volatility must be managed in a more effective way, we will continue to try to deal with situations like Haiti on a unilateral basis and find ourselves unable to cope.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you very much, Mr. Stein. I appreciate that. [The prepared statement of Mr. Stein follows:]

PREPARED STATEMENT OF DAN STEIN, EXECUTIVE DIRECTOR,  
FEDERATION FOR AMERICAN IMMIGRATION REFORM

Mr. Chairman and members of the subcommittee, please let me thank you for this opportunity to present the views of the Federation for American Immigration Reform (FAIR) on the proposed bills H.R. 3663, the Haitian Refugee Fairness Act, H.R. 4114, the Governors Island Reinforcement Act of 1994, and H.R. 4264, the "Conyers" bill. My name is Dan Stein, and I am the executive director of FAIR. FAIR is a national public interest group of concerned citizens who seek substantially reduced immigration. We seek immigration policies and laws that better serve the interests and needs of the American people. We support reduced immigration consistent with U.S. population stabilization, now seek a moratorium on immigration,<sup>1</sup> and want U.S. immigration policies to be fashioned based on our domestic needs as a national community.

Mr. Chairman, FAIR has sought to equalize treatment for refugee and asylum claimants over the past years. We have repeatedly called for the repeal of the Cuban

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<sup>1</sup>The Federation for American Immigration was formed in 1979 with the express purpose of advocating a "zero population growth" position for U.S. immigration quotas. Immigration has since skyrocketed, and, primarily as a result of immigration and resultant U.S. fertility upticks, the United States is now the most rapidly growing industrialized nation. We sought a cap of 300,000 beginning in 1988, and now, because of new Census projections and the sense that immigration to the U.S. is fundamentally out of control, seek a comprehensive moratorium on all but the most essential immigration. We are also of the view that immigration should be on something other than custom and habit: immigration should be undertaken only after periodic reviews of the question, "why have immigration at all?"

National polls suggest that the overwhelming majority of the American people agree with us that immigration needs to be reduced and limited, and that our laws must be enforced much more effectively.

FAIR is a non-partisan organization guided by a national Board of Directors and National Board of Advisors of distinguished Americans from all political persuasions and points of view. FAIR is funded by over forty foundations and have 50,000 dues paying members all across America.

Adjustment Act,<sup>2</sup> one of several laws that undermines the appearance of fairness and equity in the administration of U.S. immigration policy, as well as the so-called "Lautenberg" preferences, the Diversity Lotteries that favor Western Europeans in a preferential program, and blanket amnesties for selected groups. We have also recommended improvements to the U.S. asylum system to stop abuse of the asylum system.<sup>3</sup>

We again today call for the immediate repeal of the Cuban Adjustment Act. The Act has set up a preferential program for Cuban nationals that stands in stark contrast to the treatment accorded virtually every other person from anywhere on the globe. It certainly creates the appearance of disparate treatment between Cubans and Haitians, and undermines the moral authority under which our refugee programs operate. It serves no identifiable purpose; it adds no vital authority not inherently created in other provisions of the immigration laws of this nation. It is urgent, now more than ever, that Congress immediately repeal this blatant preference.

FAIR has always sought to ensure that immigration laws do not discriminate for

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<sup>2</sup>*See, e.g.*, Testimony of Dan Stein, on behalf of the Federation for American Immigration Reform, before the U.S. House Subcommittee on International Law, Immigration and Refugees, May 20, 1993. FAIR has several times sought to enjoin the unfair application of the Cuban Adjustment Act, and repeatedly sought the judicial aid in narrowing its application. FAIR has also opposed the so-called "Lautenberg-Morrison" amendments that, since 1990 have provided especial preferences for certain citizens of the former Soviet Union and selected Indochinese nations.

<sup>3</sup>*See, e.g.*, transcript of 60 Minutes, CBS News, air date, March 15, 1993, 7 p.m., e.s.t., segment "A" on political asylum abuse at JFK airport, with Leslie Stahl. FAIR endorses several bills pending before Congress that would accelerate the hearing process and provide for "summary denials" at ports of entry. FAIR has made comprehensive recommendations for restructuring of the entire U.S. asylum law and system. We are of the view that if the Clinton Administration had moved aggressively in its first year and a half to improve U.S. entry controls, lobbied Congress for summary exclusion authority in asylum hearings, and set up the facilities for large scale, short-term detention for asylum hearings (a "one shot" summary hearing procedure), the U.S. would have a much better capacity to handle emergent fluxes of persons in flight than we have today. We continue to urge enactment of comprehensive asylum reform.

or against any group on the basis of race, religion, national origin or ethnicity.<sup>4</sup>

In November 1991, FAIR recommended an off-site processing center similar to what was set up at Guantanamo Bay.<sup>5</sup> We suggested a "multilateral staging area, and a temporary housing facility." We proposed a number of principles to guide the processing of persons departing Haiti in small boats. It was soon apparent that the facility at Guantanamo was being overloaded, and shortly after the Bush Administration altered its policy in May 1992 calling for immediate repatriation, FAIR sent a study mission to Haiti in an effort to understand a) the general economic and political conditions in Haiti; b) general human rights conditions; c) human rights conditions of Haitian boat people who have been repatriated; and d) the viability of making "in-country" asylum claims. Our report was attached to the Amicus brief we provided to the Supreme Court in *McNary v. Haitian Centers Council* (November 1992), in support of reversing the lower court decision blocking the interdiction program. At that time, we concluded that the repatriations occurred without incident, and that the Guantanamo facility had become a magnet for economic migrants. We found no evidence that repatriates had been singled out for persecution, or that there was specific retribution related to departure in a leaky boat. At the time, the embargo was widely violated, and seemed to create its greatest hardship on the poorest people. We also concluded that the "in-country" processing program seemed to be the only viable alternative to a massive, uncontrolled outflow of

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<sup>4</sup>We know of no other organization in the United States that has consistently for fifteen years uniformly objected to programs that provide special preference on the basis of national origin or ethnicity than the Federation for American Immigration Reform.

<sup>5</sup>Testimony of Dan Stein, of the Federation for American Immigration Reform, before the Subcommittee on International Law, Immigration and Refugees, November 20, 1991, at 2.

economic migrants seeking a foothold in the United States.<sup>6</sup>

Since that report was issued, conditions have deteriorated in Haiti. The Clinton Administration, under domestic political pressure, has led international trade sanctions and a blockade to try to force the Haitian coup leaders to step down. Conditions have worsened, as the threat of starvation among Haiti's poorest looms large. The stated goals of the administration are to "restore democracy" to Haiti, and remove the coup's leaders. Beyond that, the U.S.-led embargo appears to be fueling increased desperation of the type that could lead to an even larger influx of boat people from Haiti. The coup leaders are hanging on tenaciously, hoping that a base appeal to national pride and anti-U.S. sentiment will rally the public behind them.

The key question becomes what kind of policy should prevail if a de facto state of war exists between the U.S. and Haiti, and what role other nations in the region and the world should play.

### The Proposed Bills

The bills being considered today seek to terminate U.S. interdiction efforts that repatriate Haitians to Haiti.

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<sup>6</sup>The report also found that Haiti is an ecological disaster. Virtual total deforestation of Haiti has created an ecological and agricultural disaster. Soil erosion threatens the livelihood of millions of poor Haitians who survive on subsistence farming. The loss of farmland is also contributing to massive urban migration, primarily to Port-au-Prince which lacks even the basic health and sanitation facilities to cope with its current population. McNary v. Haitian Centers Council, No. 92-344, FAIR Amicus Br. at 3a.



H.R. 3663, introduced by Representative Carrie Meek, seeks to prohibit the interdiction and repatriation of those intercepted in international waters. It provides "temporary protected status" for those present before November 17, 1993. It obligates federal expenditures to reimburse state and local costs, authorizes an additional \$6 million in direct resettlement costs, and authorizes an additional annual \$5 million for a Cuban/Haitian "emergency entrant fund."

H.R. 4114, by Chairman Dellums, is broader in scope. It would mandate certain sanctions against Haiti, create sanctions against countries that give aid to Haiti, enforce the border between the Dominican Republic and Haiti with a multi-national "border patrol." The bill would mandate by law the sanctity of the Governors Island agreement, by prohibiting any "officer or employee of the United States" from attempting to change or "reinterpret" the Governors Island Agreement. The bill also prohibits interdiction and repatriation, granting all Haitians "temporary protected status" until the President of the United States certifies that a "democratically-elected" president is reinstated in Haiti.

H.R. 4264, introduced by Representative John Conyers, would grant "temporary protected status" for Haitian nationals for any Haitian in the U.S. on the date the bill is enacted into law.

#### **FAIR'S position on the proposed bills**

Mr. Chairman, FAIR opposes all three proposed laws. The situation in Haiti is

extremely dangerous and delicate. The existing legal framework of the Immigration and Nationality Act (INA) provides ample discretion, power and flexibility for the President to handle any asylum or war-related situation that may arise in the Caribbean. We are of the view that in matters of this kind, it is important that the President's discretion as Commander-in-Chief be respected.

In each bill, no new power is created. Rather, each bill seeks to direct that an existing authority be exercised in a particular manner. The President already has the authority to grant Temporary Protected Status to Haitian nationals under the INA. The President may also have alternative options to consider that we may not be aware of. Given the volatile nature of the situation presently in Haiti, with its prospects for military intervention and conflict, the present case calls for deliberation and calm. At this point in time, the lines between international trade sanctions, war powers, refugee processing, and multilateral police powers seem blurred and confused. Congressional actions that seek to direct the use of these discretionary powers are unwise and imprudent.

The Supreme Court upheld the legality of the interdiction policies of the Clinton (and Bush) administrations on June 21, 1993<sup>7</sup>, and we continue to believe that maintenance of that power and authority is important. When President Bush implemented the interdiction and repatriation policy in May 1992, the result was a near-

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<sup>7</sup>*Sale v. Haitian Refugee Center*, 113 S.Ct. 2549. In this case, the court upheld the contention of the administration that in INA section 243(h) withholding of deportation, Congress did not intend that the provision have extraterritorial application. This case is even more important for its clear statement that in construing the obligations of U.S. authorities in the treatment of persons claiming entitlement to refugee status, it is the specific dictates of U.S. law that prevail, rather than the abstract, antecedent language of the Universal Declaration of Human Rights (1948) or the 1951 UN refugee convention.

immediate cessation of new boats. Whether the program should continue when a state of war exists between the U.S. and Haiti is obviously a policy open to question, but the authority should remain with the President.<sup>8</sup>

Even the consideration of bills such as these is likely to be misinterpreted in a country like Haiti. There is an inevitable magnet effect as news of possible enactment of such a broadly-based immigration benefit such as that proposed in each of these bills is contemplated. Given the volatility of the situation, can we afford to do that?

Moreover, is it wise policy? The Cuban Adjustment Act and the other permanent special, "temporary" programs enacted by Congress over the years have proven the unwise consequences of congressional exceptionalism. Asylum and refugee policy can never enjoy the support of the American people and the long-term commitment of all taxpayers if the impression is created that the policies are subject to political bickering or persistent ideological attack.

We support the retention of the principle that refugee and asylum decisions must be made on a case-by-case basis. We oppose the statutory authority for blanket refugee

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<sup>8</sup>It should be noted here that President Clinton continued the interdiction program of the Bush Administration despite campaign promises to the contrary, no doubt because once he took office he determined it to be, as we found, the only practicable course of action. He maintained this program — with an application process available in Port-au-Prince — for a year and a half, until May 8, 1994. He maintained this program despite considerable turmoil within Haiti itself. Between January 21, 1993 and May 8, 1994, the Haitian Minister of Justice was murdered, and the U.S. was prevented from landing the U.S.S. *Harlan County* on October 12, 1993. The President seemed to change the policy only when faced with domestic political pressure from President-in-exile Jean Bertrande Aristide and U.S.-based lobbyists on his behalf. In fact, the evidence suggests that Aristide has used his residence in the United States and the "boat people" issue as a lever to maintain his pressure on this administration. Of course, the administration has allowed that to happen.

determinations, such as the current statutory provisions for "temporary protected status" enacted in 1990. FAIR's position is that refugees should be admitted to the U.S. only after determinations of refugee status are made outside the U.S. We should take only our fair share, and, if provisions are not made for enforcing departure after a temporary period of time, corresponding numerical cuts should be made out of regular immigration channels to compensate for the emergency flow.

We concur with the assessment of the UN High Commissioner for Refugees that permanent resettlement of many refugees in a country like the United States is not a feasible or practical approach to mass resettlement. Eventual repatriation and local integration are the only options for most refugees around the world.<sup>9</sup>

#### The "temporariness" problem

Certainly the residents of Florida are well aware that mass resettlement is not the answer. The state and local costs associated with absorbing a huge volume of international migrants have never been properly reimbursed by the federal government. The conditions in Miami for public education, housing, congestion, crime and other related factors that make up the American quality of life are declining. Florida has filed

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<sup>9</sup>According to the UNHCR: "There are a variety of reasons why many states are reluctant to offer resettlement places, and why the numbers have been dropping over the past few years. While on the surface, resettlement appears to be a straightforward humanitarian response to special, clearly identifiable needs, in reality it has always been problematic. One reason for this is that resettlement is very expensive. It involves arranging international transport, as well as helping to integrate the refugees in the resettlement country and, in some cases, paying for costly follow-up treatment, such as medical care and counseling. It is also labor-intensive and requires highly trained staff. In an age of overburdened asylum systems, and emergency and repatriation operations involving millions of refugees, donors tend to shy away from solutions which, on a per capita basis, far exceed the costs of other durable solutions -- voluntary repatriation and local integration." Refugees (official publication of the UNHCR), "Resettlement still vital after all these years," December 1993, at 5.

suit against the federal government to try to recover some of these costs; but there are hundreds of millions of dollars still owed Florida from the 1980 Mariel boatlift, and hundreds of millions more in state educational costs and health care costs that Florida is absorbing without any hope of reimbursement. Education and health care in Dade and Broward Counties, in particular, have suffered as a result.

It is apparent also that people who come rarely go home. Between 1977 and 1981, 60,000 Haitian boat people arrived in Florida. Shortly thereafter, we saw a great surge of Salvadorans and Nicaraguans arrive in the United States. Cubans have continued to come throughout the period. These groups and many others have all entered under the banner of "safe haven" or "temporary resident." But the result is always the same: permanent residence. Few Haitians returned to Haiti after Baby Doc Duvalier fled to France. Few Salvadorans or Nicaraguans have gone home, despite extended periods of comparative peace in those beleaguered nations.

Americans no longer believe that offers of humanitarian temporary shelter will result in repatriation when the time comes to go home. A few years down the line, advocates for the community emerge to fight repatriation -- this time claiming that repatriation would cause an undue hardship on the former refugees. Now the claim is based on equities such as close relatives in the U.S., strong community ties, ownership of property and U.S. citizen children.

In the case of Haiti, who will determine when it is time to go home? Aristide?

And what if Aristide turns out to be ineffective or worse? Does anyone truly believe that if Aristide is restored that he, or his successor, can so dramatically improve conditions in Haiti quickly enough to avoid a sustained outflow from Haiti? In 1994, few residents of South Florida believe that if a sustained influx comes from Haiti -- an influx above and beyond the usual 100,000 legal Haitian immigrants each decade<sup>10</sup> -- that this extraordinary group of humanitarian admittees will return home with Aristide. None of these bills provides for any form of enforced departure at any point in the future. A realistic view tells us that few of those who climb into leaky boats are likely ever to return to Haiti. What would they return for?

#### The situation in Haiti -- compared to Rwanda

Why should they return? In the United States, we celebrate the one who leaves, who "cuts and runs." We do not encourage those who can to "stay and fight" to make things better. Haiti today is a very poor nation of 6.3 million. It has a rapidly growing population (2.3 percent per annum), and a population doubling time of 30 years. From a population under 5 million in 1980, its extraordinary growth will cause it to exceed 7.6 million people by the year 2000. In appendix A, the "population pyramid" of Haiti is compared to that of Rwanda and France. The parallels between Haiti and Rwanda are striking, as are their differences with France. France today enjoys a stable demographic

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<sup>10</sup>It is not commonly acknowledged by the advocates for the Haitians that the U.S. has maintained an extraordinarily generous program for Haitian immigrants, about 100,000 a decade. These immigrants come in through the normal family and occupational preferences of the INA. Perhaps a tenth of the entire native born population of Haiti is already in the United States. Given the size of the country, this is a considerable flow. To hear some political leaders talk about Haitian migrants, one would believe that there is a total bar to immigration from Haiti -- a bar that operates only against Haiti and no other country. This rhetoric is surely inflaming racial tensions in the United States where there need be none. We would do better to recognize that the age when mass migrations could be used to solve human problems has ended. Most must "bloom where they're planted."

profile, a high standard of living, and the political stability that accompanies healthy national institutions. Today, most of Haiti's civilian legal structure is dysfunctional, its economy is in ruins, and the nation lacks even the ability to enforce its own frontiers. It is an ecological disaster, and the poverty/illiteracy rate is over 80 percent. The rapid growth of young people (particularly young males) into such an unstable and overcrowded situation can throw a nation into anarchy.

But Haiti is not unique. Its troubles are part of a pattern emerging worldwide. As the political situation deteriorates, general civil violence erupts. Power and influence are spread about each community as local thugs control access to necessities of life. Official and unofficial corruption merge and blur into a generalized pattern of bribery, favoritism and fraud. As more and more young people enter their teenage years (as a result of very rapid population growth), they are recruited into what amount to street gangs. Central political control collapses into generalized anarchy and civil war. In the coming decades, scholars and the United Nations suggest, this scenario will repeat itself over and over in country after country.

### The "Good old days"

In fact, these are still the "good old days." Several weeks ago, the United Nations named 17 nations as "potential Somalias."<sup>11</sup> These are nations that are in danger of

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<sup>11</sup>UN Names 17 Nations as "Potential Somalias," *International Herald Tribune*, June 3, 1994, at 5 (AP-London dispatch, by Edith Lederer). The report says that 17 countries could face collapse, including Mexico, Egypt, Nigeria, and Algeria. Thirteen are already in various stages of crisis, including Afghanistan, Angola, Haiti, Iraq, Mozambique, Burma, Sudan, Zaire, Rwanda, Burundi, Georgia, Liberia and Tajikistan. The Chiapas region in Mexico is considered extremely volatile. We consider Cuba, Haiti, Venezuela and Mexico to be the most significant Hemispheric migration threats.

falling into complete and total anarchy. Haiti is only one country on the list. Robert Kaplan's February cover story in the *Atlantic Monthly* entitled "The Coming Anarchy" provided a glimpse of this same phenomenon: a breakdown in civil order, a large, growing, poorly-educated and dissatisfied population in danger of starvation. Civil war, social breakdown and large refugee flows. This is the scenario we have been warned for many years was coming. It was brought on by rapid, uncontrolled population growth in high-risk nations -- nearly a billion more people a decade. It is a pattern that has already caused an explosion in the number of refugees worldwide, and, over the next thirty years, is going to generate the most unregulated flow of migrants in the history of the human race. The most recent estimates provided by the UNHCR suggest there are 19.7 million refugees who live outside their home countries (eight times the number two decades ago), and another 24 million displaced within their own borders.<sup>12</sup>

The coming anarchy is likely to produce hundreds of millions of potential migrants. Encouraged by stories of the high standard of living available in a select group of countries, migrants will seek the aid of sophisticated international smuggling rings to help them get physically into one of these countries. In the face of this explosive migration volatility, we cannot, as a nation, treat the crisis in Haiti as a one-time phenomenon. It is going to be a recurrent, chronic problem that must be dealt with in a

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<sup>12</sup>*Washington Post*, "World's Welcome Strained by 20 Million Refugees," November 10, 1993, at A32. This article by James Rupert leaves us with the impression that the UNHCR's response to the strains caused by these unprecedented movements of people is to accuse the wealthy nations of "xenophobia," a term that is supposed to intimidate the few nations that want to protect a high standard of living into relinquishing border controls to the UN.



realistic way.<sup>13</sup>

### What to do now?

We must support our President. He is trying to find a way to prevent avoidable death and destruction. He is trying to find a way to restore the democratically-elected President of Haiti. He is trying to set up temporary facilities in Jamaica and at the islands of Turks and Caicos for Haitians who flee. But again questions must be raised as to the magnet effects these changes in processing will have down the line. Why did the administration abandon a policy it maintained in place for eighteen months without explanation? What happens when these new facilities are overloaded? What kind of processing will satisfy the need to deter frivolous claims, while meeting the unrealistic and inflexible demands of asylum advocates? And what happens if there is an uncontrolled outflow as a result of heightened civil violence or starvation?

We do not have the answers to all these questions. But we believe our obligation to provide protection for true refugees can be met through a brief, one-shot administrative hearing and temporary detention in facilities outside the United States. Asylum is not a backdoor immigration program. It is a method to enable people to wait for safe repatriation and to work for positive political change at home. We believe that

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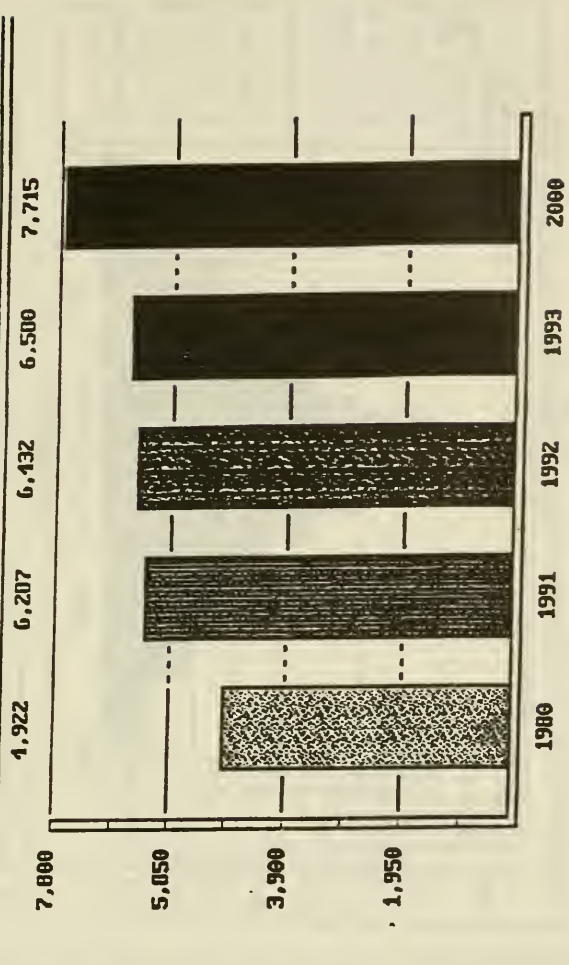
<sup>13</sup>Unfortunately, international agreements provide little guidance here. The 1948 Universal Declaration of Human Rights, the 1967 UN Declaration on Territorial Asylum, and the 1951 refugee convention seem to suggest that each nation is obligated to consider the asylum claims of anyone able to obtain physical presence in that country, and to prevent the return of anyone who asserts a plausible-sounding claim of persecution. The procedural process required to conform to the abstract spirit and language of these agreements is so unrealistic that it can never be a practical reality in the future. More effective methods of preventing uncontrolled refugee movements must be developed, otherwise nations will simply shut their doors to all refugees. That would be unfortunate.

if Haitians are admitted as refugees or asylees, and they are ultimately allowed to stay permanently, that those numbers should be deducted from overall immigration quotas. We also believe that the member nations of the Organization of American States have failed miserably to help the United States resolve Haiti's problems.

We further believe the interests of the American people should be consulted here -- indeed they should be primary. We believe that the only major security interest we have in Haiti is the prevention of a massive uncontrolled boatlift to Florida. To that end, democracy is more than just handing out ballots. It requires the long-term development of stable political, cultural and economic institutions (including those that respect private property). It requires sustainable economic development. To that end, it is difficult to understand how the administration can justify dangerous and punitive economic policies that may -- in the long run -- produce exactly the result they say they seek to avoid. We will just have to wait and see.

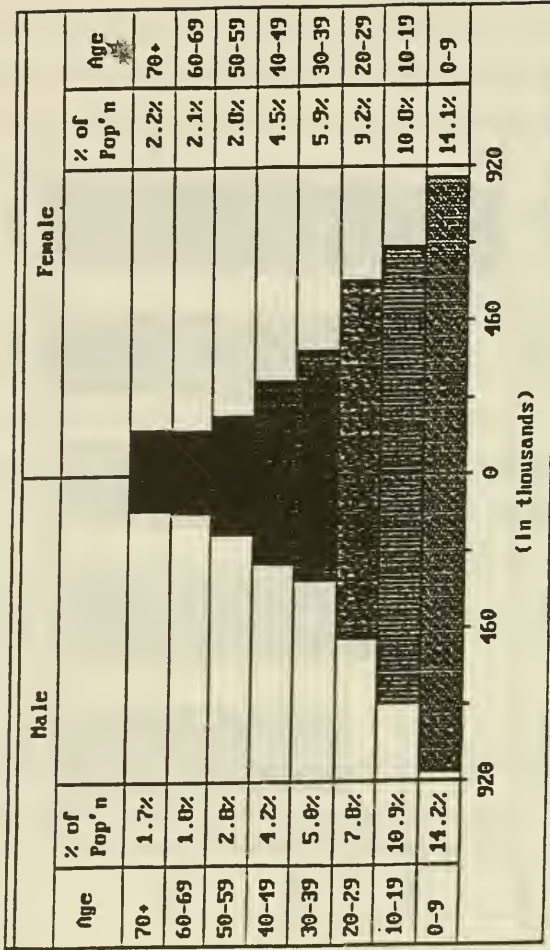
Mr. Chairman, thank you again for the opportunity to testify on behalf of the Federation for American Immigration Reform. I would be happy to answer any questions you may have.

**INDIA**  
Population (in thousands)



- Annual Pop'n Growth: 2.3%
- Pop'n Doubling Time: 30 years
- Pop'n Density: 507 Inhab./sq mi
- Urbanization: 20.6%

**INDIA**  
**Age Distribution**



- Total Population: 6,207,000
- Total Male Pop'n: 3,043,000
- Total Female Pop'n: 3,244,000
- Life Expectancy (Male): 52 years
- Life Expectancy (Female): 55 years

## HONDI

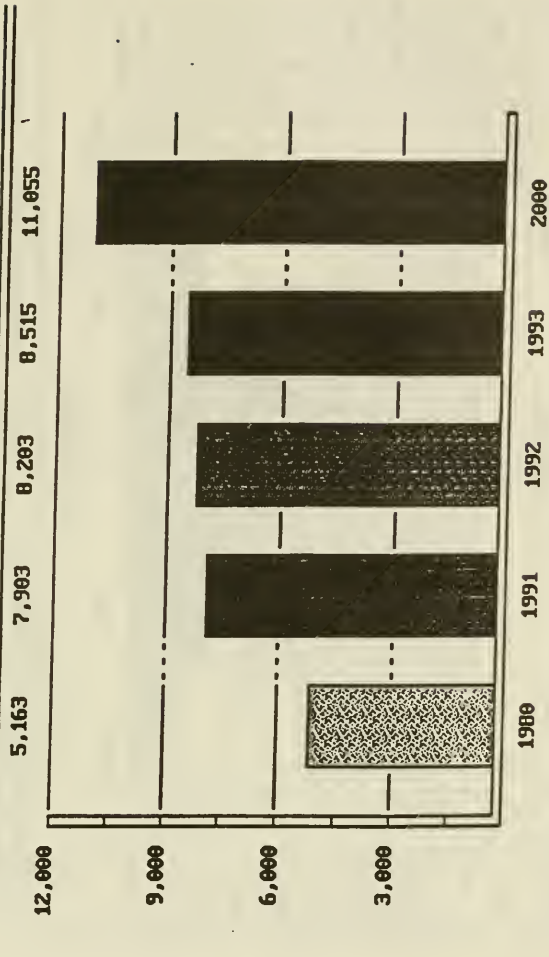
Health Statistics		
Life Expectancy (Male):	52 yrs	
Life Expectancy (Female):	55 yrs	
Crude Birth Rate:	43/1000	
Crude Death Rate:	15/1000	
Infant Mortality:	106/1000	
	Number	Pop'n per
Hospitals	07	72,264
Hospital Beds	4,566	1,377
Physicians	944	6,660
Dentists	90	64,153
Pharmacists	6	1,047,033
Nurses	657	9,569

## HAITI

Major Imports	Major Exports
Foodstuffs Livestock Machinery Vehicles Consumer Goods Petroleum Products Chemicals	Electronics Sporting Goods Clothing Coffee Sisal & Twine Essential Oils Cocoa
* Balance of Trade (1990): -\$96,000,000	

**RWANDA**

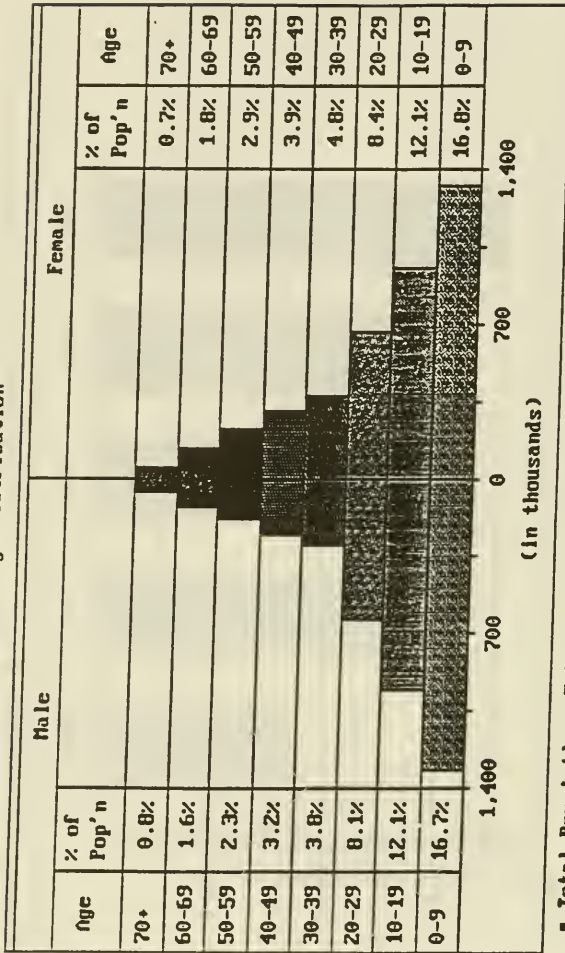
**Population (In thousands)**



- Annual Pop'n Growth: 3.8%
- Pop'n Density: 777 Inhab./sq mi
- Pop'n Doubling Time: 19 years
- Urbanization: 7.6%

159

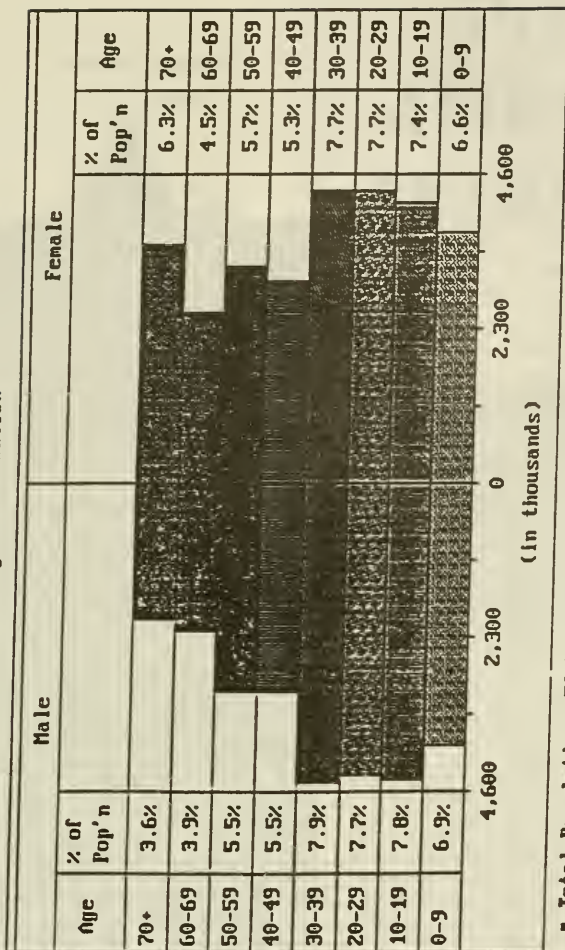
**RWANDA**  
Age Distribution



- Total Population: 7,503,000
- Total Male Pop'n: 3,041,000
- Total Female Pop'n: 4,062,000
- Life Expectancy (Male): 51 years
- Life Expectancy (Female): 54 years



FRANCE  
Age Distribution



■ Total Population: 56,596,000

■ Total Male Pop'n: 27,619,000

■ Total Female Pop'n: 20,977,000

■ Life Expectancy (Male): 74 years

■ Life Expectancy (Female): 82 years

# THE COMING ANARCHY

by ROBERT D. KAPLAN

*How scarcity,  
crime, overpopulation,  
tribalism, and disease  
are rapidly destroying the social  
fabric of our planet*

# T

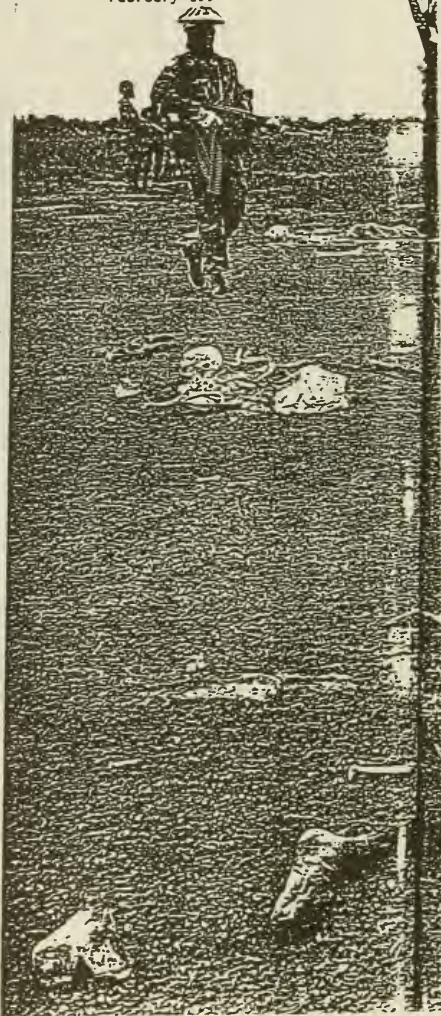
HE Minister's eyes were like egg yolks, an aftereffect of some of the many illnesses, malaria especially, endemic in his country. There was also an irrefutable sadness in his eyes. He spoke in a slow and creaking voice, the voice of hope about to expire. Flame trees, coconut palms, and a ballpoint-blue Atlantic composed the background. None of it seemed beautiful, though. "In forty-five years I have never seen things so bad. We did not manage ourselves well after the British departed. But what we have now is something worse—the revenge of the poor, of the social failures, of the people least able to bring up children in a modern society." Then he referred to the recent coup in the West African country Sierra Leone. "The boys who took power in Sierra Leone come from houses like

this." The Minister jabbed his finger at a corrugated metal shack teeming with children. "In three months these boys confiscated all the official Mercedes, Volvos, and BMWs

*Right: outside Monrovia, Liberia, civilian victims of civil war, dumped near the airport. Far right: government troops in Sierra Leone recapture a rebel position*

The Atlantic Monthly

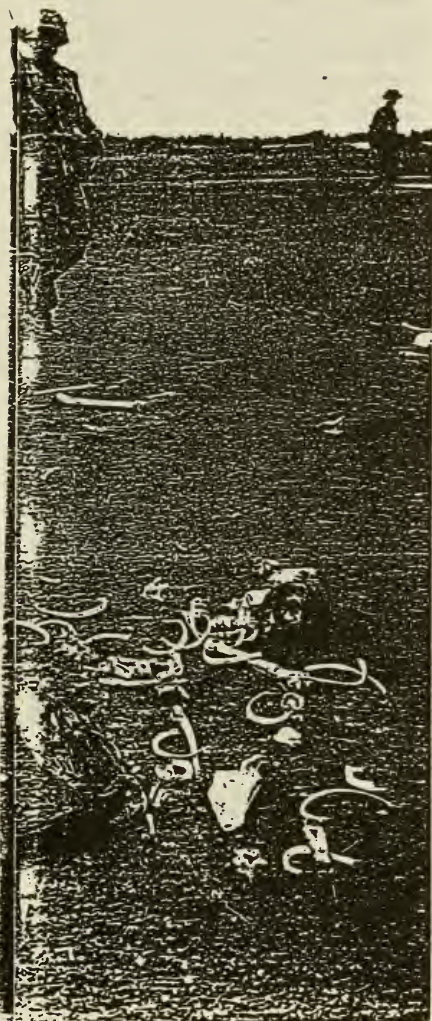
February 1994



and willfully wrecked them on the road." The Minister mentioned one of the coup's leaders, Solomon Amunoy Joseph Musa, who shot the people who had paid for his schooling, "in order to erase the humiliation and mitigate the power his middle-class sponsors held over him."

Tyranny is nothing new in Sierra Leone or in the rest of West Africa. But it is now part and parcel of an increasing lawlessness that is far more significant than any coup, rebel incursion, or episodic experiment in democracy. Crime was what my friend—a top-ranking African official whose life would be threatened were I to identify him more precisely—really wanted to talk about. Crime is what makes West Africa a natural point of departure for my report on what the political character of our planet is likely to be in the twenty-first century.

The cities of West Africa at night are some of the unsafe places in the world. Streets are unlit; the police often lack gasoline for their vehicles; armed burglars, carjackers, and muggers proliferate. "The government in Sierra Leone has



no writ after dark," says a foreign resident, shrugging. When I was in the capital, Freetown, last September, eight men armed with AK-47s broke into the house of an American man. They tied him up and stole everything of value. Forget Miami: direct flights between the United States and the Muratala Muhammed Airport, in neighboring Nigeria's largest city, Lagos, have been suspended by order of the U.S. Secretary of Transportation because of ineffective security at the terminal and its environs. A State Department report cited the airport for "extortion by law-enforcement and immigration officials." This is one of the few times that the U.S. government has embargoed a foreign airport for reasons that are linked purely to crime. In Abidjan, effectively the capital of the Côte d'Ivoire, or Ivory Coast, restaurants have stick- and gun-wielding guards who walk you the fifteen feet or so between your car and the entrance, giving you an eerie taste of what American cities might be like in the future. An Italian ambassador was killed by gunfire when robbers invaded an Abidjan restaurant. The family of the Nigerian ambassador

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was tied up and robbed at gunpoint in the ambassador's residence. After university students in the Ivory Coast caught bandits who had been plugging their dorms, they executed them by hanging tires around their necks and setting the tires on fire. In one instance Ivorian policemen stood by and watched the "necklacings," afraid to intervene. Each time I went to the Abidjan bus terminal, groups of young men with restless, scanning eyes surrounded my taxi, putting their hands all over the windows, demanding "tips" for carrying my luggage even though I had only a rucksack. In cities in six West African countries I saw similar young men everywhere—hordes of them. They were like loose molecules in a very unstable social fluid, a fluid that was clearly on the verge of igniting.

"You see," my friend the Minister told me, "in the villages of Africa it is perfectly natural to feed at any table and lodge in any hut. But in the cities this communal existence no longer holds. You must pay for lodging and be invited for food. When young men find out that their relations cannot put them up, they become lost. They join other migrants and slip gradually into the criminal process."

"In the poor quarters of Arab North Africa," he continued, "there is much less crime, because Islam provides a social anchor: of education and indoctrination. Here in West Africa we have a lot of superficial Islam and superficial Christianity. Western religion is undermined by animist beliefs not suitable to a moral society, because they are based on irrational spirit power. Here spirits are used to wreak vengeance by one person against another, or one group against another." Many of the atrocities in the Liberian civil war have been tied to belief in *juju* spirits, and the BBC has reported, in its magazine *Focus on Africa*, that in the civil fighting in adjacent Sierra Leone, rebels were said to have "a young woman with them who would go to the front naked, always walking backwards and looking in a mirror to see where she was going. This made her invisible, so that she

could cross to the army's positions and there bury charms . . . to improve the rebels' chances of success."

Finally my friend the Minister mentioned polygamy. Designed for a pastoral way of life, polygamy continues to thrive in sub-Saharan Africa even though it is increasingly uncommon in Arab North Africa. Most youths I met on the road in West Africa told me that they were from "extended" families, with a mother in one place and a father in another. Translated to an urban environment, loose family structures are largely responsible for the world's highest birth rates and the explosion of the HIV virus on the continent. Like the communalism and animism, they provide a weak shield against the corrosive social effects of life in cities. In those cities African culture is being redefined while desertification and deforestation—also tied to overpopulation—drive more and more African peasants out of the countryside.

A PREMONITION OF  
THE FUTURE

**W**EST Africa is becoming the symbol of worldwide demographic, environmental, and societal stress, in which criminal anarchy emerges as the real "strategic" danger. Disease, overpopulation, unprovoked crime, scarcity of resources, refugee migrations, the increasing erosion of nation-states and international borders, and the empowerment of private armies, security firms, and international drug cartels are now most tellingly demonstrated through a West African prism. West Africa provides an appropriate introduction to the issues, often extremely unpleasant to discuss, that will soon confront our civilization. To remap the political earth the way it will be a few decades hence—as I intend to do in this article—I find I must begin with West Africa.

There is no other place on the planet where political maps are so deceptive—where, in fact, they tell such lies—as in West Africa. Start with Sierra Leone. According to the map, it is a nation-state of defined borders, with a government in control of its territory. In truth the Sierra Leonian government, run by a twenty-seven-year-old army captain, Valentine Strasser, controls Freetown by day and by day also controls part of the rural interior. In the government's territory the national army is an unruly rabble threatening drivers and passengers at most checkpoints. In the other part of the country units of two separate armies from the war in Liberia have taken up residence, as has an army of Sierra Leonian rebels. The government force fighting the rebels is full of renegade commanders who have aligned themselves with disaffected village chiefs. A premodern futility governs the battlefield, evoking the wars in medieval Europe prior to the 1648 Peace of Westphalia, which ushered in the era of organized nation-states.

As a consequence, roughly 400,000 Sierra Leonians are internally displaced, 280,000 more have fled to neighboring Guinea, and another 100,000 have fled to Liberia, even as

400,000 Liberians have fled to Sierra Leone. The third largest city in Sierra Leone, Gondama, is a displaced-persons camp. With an additional 600,000 Liberians in Guinea and 250,000 in the Ivory Coast, the borders dividing these four countries have become largely meaningless. Even in quiet zones none of the governments except the Ivory Coast's maintains the schools, bridges, roads, and police forces in a manner necessary for functional sovereignty. The Koranko ethnic group in northeastern Sierra Leone does all its trading in Guinea. Sierra Leonean diamonds are more likely to be sold in Liberia than in Freetown. In the eastern

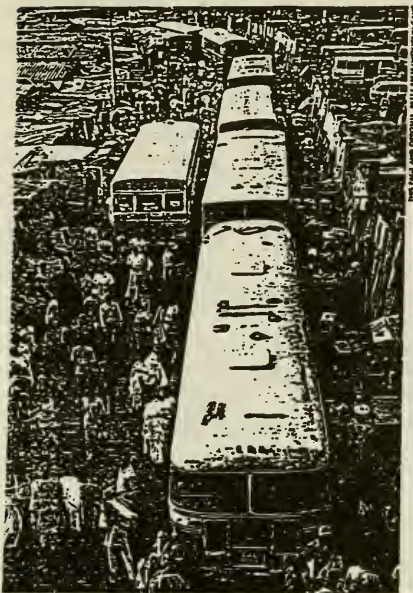
more mosquitoes. Virtually everyone in the West African interior has some form of malaria.

Sierra Leone is a microcosm of what is occurring, albeit in a more tempered and gradual manner, throughout West Africa and much of the underdeveloped world: the withering away of central governments, the rise of tribal and regional domains, the unchecked spread of disease, and the growing pervasiveness of war. West Africa is reverting to the Africa of the Victorian atlas. It consists now of a series of coastal trading posts, such as Freetown and Conakry, and an interior that, owing to violence, volatility, and disease, is again becoming, as Graham Greene once observed, "blank" and "unexplored." However, whereas Greene's vision implies a certain romance, as in the somnolent and charmingly seedy Freetown of his celebrated novel *The Heart of the Matter*, it is Thomas Malthus, the philosopher of demographic doom, who is now the prophet of West Africa's future. And West Africa's future, eventually, will also be that of most of the rest of the world.

CONSIDER "Chicago." I refer not to Chicago, Illinois, but to a slum district of Abidjan, which the young toughs in the area have named after the American city. ("Washington" is another poor section of Abidjan.) Although Sierra Leone is widely regarded as beyond salvage, the Ivory Coast has been considered an African success story, and Abidjan has been called "the Paris of West Africa." Success, however, was built on two artificial factors: the high price of cocoa, of which the Ivory Coast is the world's leading producer, and the talents of a French expatriate community, whose members have helped run the government and the private sector. The expanding cocoa economy made the Ivory Coast a magnet for migrant workers from all over West Africa: between a third and a half of the country's population is now non-Ivorian, and the figure could be as high as 75 percent in Abidjan. During the 1980s cocoa prices fell and the French began to leave. The skyscrapers of the Paris of West Africa are a façade. Perhaps 15 percent of Abidjan's population of three million people live in shantytowns like Chicago and Washington, and the vast majority live in places that are not much better. Not all of these places appear on any of the readily available maps. This is another indication of how political maps are the products of tired conventional wisdom and, in the Ivory Coast's case, of an elite that will ultimately be forced to relinquish power.

Chicago, like more and more of Abidjan, is a slum in the bush: a checkerwork of corrugated zinc roofs and walls made of cardboard and black plastic wrap. It is located in a gully teeming with coconut palms and oil palms, and is ravaged by flooding. Few residents have easy access to electricity, a sewage system, or a clean water supply. The crumbly red

*The press of population. Right: along the beach in a lagoon in Abidjan, the Ivory Coast. Left: the nearly impenetrable downtown of Lagos, Nigeria.*



provinces of Sierra Leone you can buy Liberian beer but not the local brand.

In Sierra Leone, as in Guinea, as in the Ivory Coast, as in Ghana, most of the primary rain forest and the secondary bush is being destroyed at an alarming rate. I saw convoys of trucks bearing majestic hardwood trunks to coastal ports. When Sierra Leone achieved its independence, in 1961, as much as 60 percent of the country was primary rain forest. Now six percent is. In the Ivory Coast the proportion has fallen from 38 percent to eight percent. The deforestation has led to soil erosion, which has led to more flooding and

luminous earth crawls with four-long lizards both inside and outside the shacks. Children defecate in a stream filled with garbage and pigs, droning with malarial mosquitoes. In this stream women do the washing. Young unemployed men spend their time drinking beer, palm wine, and gin while gambling on pinball games constructed out of rotting wood and rusty nails. These are the same youths who rob houses in more prosperous Ivorian neighborhoods at night. One man I met, Damba Tesele, came to Chicago from Burkina Faso in 1963. A cook by profession, he has four wives and thirty-two children, not one of whom has made it to high school. He has

demographic present—and even more of the future—than any idyllic junglescape of women balancing earthen jugs on their heads, illustrates why the Ivory Coast, once a model of Third World success, is becoming a case study in Third World catastrophe.

President Félix Houphouët-Boigny, who died last December at the age of about ninety, left behind a weak cluster of political parties and a leaden bureaucracy that discourages foreign investment. Because the military is small and the non-Ivorian population large, there is neither an obvious force to maintain order nor a sense of nationhood that would lessen



seen his shanty community destroyed by municipal authorities seven times since coming to the area. Each time he and his neighbors rebuild. Chicago is the latest incarnation.

Fifty-five percent of the Ivory Coast's population is urban, and the proportion is expected to reach 62 percent by 2000. The yearly net population growth is 3.6 percent. This means that the Ivory Coast's 13.5 million people will become 39 million by 2025. When much of the population will consist of urbanized peasants like those of Chicago. But don't count on the Ivory Coast's still existing then. Chicago, which is more indicative of Africa's and the Third World's

the need for such enforcement. The economy has been shrinking since the mid-1980s. Though the French are working assiduously to preserve stability, the Ivory Coast faces a possibility worse than a coup: an anarchic implosion of criminal violence—an urbanized version of what has already happened in Somalia. Or it may become an African Yugoslavia, but one without mini-states to replace the whole.

Because the demographic reality of West Africa is a countryside draining into dense slums by the coast, ultimately the region's rulers will come to reflect the values of these shanty-towns. There are signs of this already in Sierra Leone—

and in Togo, where the dictator Etienne Eyadema, in power since 1967, was nearly toppled in 1991, not by democrats but by thousands of youths whom the London-based magazine *West Africa* described as "Soweto-like stone-throwing adolescents." Their behavior may herald a regime more brutal than Eyadema's repressive one.

The fragility of these West African "countries" impressed itself on me when I took a series of bush taxis along the Gulf of Guinea, from the Togolese capital of Lomé, across Ghana, to Abidjan. The 400-mile journey required two full days of driving, because of stops at two border crossings and an additional eleven customs stations, at each of which my fellow passengers had their bags searched. I had to change money twice and repeatedly fill in currency-declaration forms. I had to bribe a Togolese immigration official with the equivalent of eighteen dollars before he would agree to put an exit stamp on my passport. Nevertheless, smuggling across these borders is rampant. *The London Observer* has reported that in 1992 the equivalent of \$856 million left West Africa for Europe in the form of "hot cash" assumed to be laundered drug money. International cartels have discovered the utility of weak, financially strapped West African regimes.

The more fictitious the actual sovereignty, the more severe border authorities seem to be in trying to prove otherwise. Getting visas for these states can be as hard as crossing their borders. The Washington embassies of Sierra Leone and Guinea—the two poorest nations on earth, according to a 1993 United Nations report on "human development"—asked for letters from my bank (in lieu of prepaid round-trip tickets) and also personal references, in order to prove that I had sufficient means to sustain myself during my visits. I was reminded of my visa and currency hassles while traveling to the communist states of Eastern Europe, particularly East Germany and Czechoslovakia, before those states collapsed.

Ali A. Mazrui, the director of the Institute of Global Cultural Studies at the State University of New York at Binghamton, predicts that West Africa—indeed, the whole continent—is on the verge of large-scale border upheaval. Mazrui writes,

In the 21st century France will be withdrawing from West Africa as she gets increasingly involved in the affairs [of Europe]. France's West African sphere of influence will be filled by Nigeria—a more natural hegemonic power. . . . It will be under those circumstances that Nigeria's own boundaries are likely to expand to incorporate the Republic of Niger (the Hausa link), the Republic of Benin (the Yoruba link) and conceivably Cameroon.

**T**HE future could be more tumultuous, and bloodier, than Mazrui dares to say. France will withdraw from former colonies like Benin, Togo, Niger, and the Ivory Coast, where it has been propping up local currencies. It will do so not only because its attention will be diverted to new challenges

in Europe and Russia but also because younger French officials lack the older generation's emotional ties to the ex-colonies. However, even as Nigeria attempts to expand, it, too, is likely to split into several pieces. The State Department's Bureau of Intelligence and Research recently made the following points in an analysis of Nigeria:

Prospects for a transition to civilian rule and democratization are slim. . . . The repressive apparatus of the state security service . . . will be difficult for any future civilian government to control. . . . The country is becoming increasingly ungovernable. . . . Ethnic and regional splits are deepening, a situation made worse by an increase in the number of states from 19 to 30 and a doubling in the number of local governing authorities; religious cleavages are more serious; Muslim fundamentalism and evangelical Christian militancy are on the rise; and northern Muslim anxiety over southern [Christian] control of the economy is intense. . . . the will to keep Nigeria together is now very weak.

Given that oil-rich Nigeria is a bellwether for the region—its population of roughly 90 million equals the populations of all the other West African states combined—it is apparent that Africa faces cataclysms that could make the Ethiopian and Somali famines pale in comparison. This is especially so because Nigeria's population, including that of its largest city, Lagos, whose crime, pollution, and overcrowding make it the cliché par excellence of Third World urban dysfunction, is set to double during the next twenty-five years, while the country continues to deplete its natural resources.

Part of West Africa's quandary is that although its population belts are horizontal, with habitation densities increasing as one travels south away from the Sahara and toward the tropical abundance of the Atlantic littoral, the borders erected by European colonialists are vertical, and therefore at cross-purposes with demography and topography. Satellite photos depict the same reality I experienced in the bush taxi: the Lomé-Abidjan coastal corridor—indeed, the entire stretch of coast from Abidjan eastward to Lagos—is one burgeoning megalopolis that by any rational economic and geographical standard should constitute a single sovereignty, rather than the five (the Ivory Coast, Ghana, Togo, Benin, and Nigeria) into which it is currently divided.

As many internal African borders begin to crumble, a more impenetrable boundary is being erected that threatens to isolate the continent as a whole: the wall of disease. Merely to visit West Africa in some degree of safety, I spent about \$500 for a hepatitis B vaccination series and other disease prophylaxis. Africa may today be more dangerous in this regard than it was in 1862, before antibiotics, when the explorer Sir Richard Francis Burton described the health situation on the continent as "deadly, a Golgotha, a Jehannum." Of the approximately 12 million people worldwide whose blood is HIV-positive, 8 million are in Africa. In the capital of the Ivory Coast, whose modern road system only

helps to spread the disease. 10 percent of the population is HIV-positive. And war and refugee movements help the virus break through to more-remote areas of Africa. Alan Greenberg, M.D., a representative of the Centers for Disease Control in Abidjan, explains that in Africa the HIV virus and tuberculosis are now "fast-forwarding each other." Of the approximately 4,000 newly diagnosed tuberculosis patients in Abidjan, 45 percent were also found to be HIV-positive. As African birth rates soar and slums proliferate, some experts worry that viral mutations and hybridizations might, just conceivably, result in a form of the AIDS virus that is easier to catch than the present strain.

It is malaria that is most responsible for the disease wall that threatens to separate Africa and other parts of the Third World from more-developed regions of the planet in the twenty-first century. Carried by mosquitoes, malaria, unlike AIDS, is easy to catch. Most people in sub-Saharan Africa have recurring bouts of the disease throughout their entire lives, and it is mutating into increasingly deadly forms.

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The great gift of Malaria is utter apathy," wrote Sir Richard Burton, accurately portraying the situation in much of the Third World today. Visitors to malaria-afflicted parts of the planet are protected by a new drug, mefloquine, a side effect of which is vivid, even violent, dreams. But a strain of cerebral malaria resistant to mefloquine is now on the offensive. Consequently, defending oneself against malaria in Africa is becoming more and more like defending oneself against violent crime. You engage in "behavior modification": not going out at dusk, wearing mosquito repellent all the time.

And the cities keep growing. I got a general sense of the future while driving from the airport to downtown Conakry, the capital of Guinea. The forty-five-minute journey in heavy traffic was through one never-ending shantytown: a nightmarish Dickensian spectacle to which Dickens himself would never have given credence. The corrugated metal shacks and scabrous walls were coated with black slime. Stores were built out of

rusty shipping containers, junked cars, and jumbles of wire mesh. The streets were one long puddle of floating garbage. Mosquitoes and flies were everywhere. Children, many of whom had protruding bellies, seemed as numerous as ants. When the tide went out, dead rats and the skeletons of cars were exposed on the mucky beach. In twenty-eight years Guinea's population will double if growth goes on at current rates. Hardwood logging continues at a madcap speed, and people flee the Guinean countryside for Conakry. It seemed to me that here, as elsewhere in Africa and the Third World, man is challenging nature far beyond its limits, and nature is now beginning to take its revenge.

**A**FRICA may be as relevant to the future character of world politics as the Balkans were a hundred years ago, prior to the two Balkan wars and the First World War. Then the threat was the collapse of empires and the birth of nations based solely on tribe. Now the threat is more elemental: *nature unchecked*. Africa's immediate future could be very bad. The coming upheaval, in which foreign embassies are shut down, states collapse, and contact with the outside world takes place through dangerous, disease-ridden coastal trading posts, will loom large in the century we are entering. (Nine of twenty-one U.S. foreign-aid missions to be closed over the next three years are in Africa—a prologue to a consolidation of U.S. embassies themselves.) Precisely because much of Africa is set to go over the edge at a time when the Cold War has ended, when environmental and demographic stress in other parts of the globe is becoming critical, and when the post-First World War system of nation-states—not just in the Balkans but perhaps also in the Middle East—is about to be toppled, Africa suggests what war, borders, and ethnic politics will be like a few decades hence.

To understand the events of the next fifty years, then, one must understand environmental scarcity, cultural and racial clash, geographic destiny, and the transformation of war. The order in which I have named these is not accidental. Each concept except the first relies partly on the one or ones before it, meaning that the last two—new approaches to mapmaking and to warfare—are the most important. They are also the least understood. I will now look at each idea, drawing upon the work of specialists and also my own travel experiences in various parts of the globe besides Africa, in order to fill in the blanks of a new political atlas.

#### THE ENVIRONMENT AS A HOSTILE POWER

**F**OR a while the media will continue to ascribe riots and other violent upheavals abroad mainly to ethnic and religious conflict. But as these conflicts multiply, it will become apparent that something else is afoot, making more and more places like Nigeria, India, and Brazil ungovernable.



Mention "the environment" or "diminishing natural resources" in foreign-policy circles and you meet a brick wall of skepticism or boredom. To conservatives especially, the very terms seem flaky. Public-policy foundations have contributed to the lack of interest, by funding narrowly focused environmental studies replete with technical jargon which foreign-affairs experts just let pile up on their desks.

It is time to understand "the environment" for what it is: the national-security issue of the early twenty-first century. The political and strategic impact of surging populations, spreading disease, deforestation and soil erosion, water de-

tween Hungary and Slovakia over the damming of the Danube, a classic case of how environmental disputes fuse with ethnic and historical ones. The political scientist and erstwhile Clinton adviser Michael Mandelbaum has said, "We have a foreign policy today in the shape of a doughnut—lots of peripherical interests but nothing at the center." The environment, I will argue, is part of a terrifying array of problems that will define a new threat to our security, filling the hole in Mandelbaum's doughnut and allowing a post-Cold War foreign policy to emerge inexorably by need rather than by design.



pletion, air pollution, and, possibly, rising sea levels in critical, overcrowded regions like the Nile Delta and Bangladesh—developments that will prompt mass migrations and, in turn, incite group conflicts—will be the core foreign-policy challenge from which most others will ultimately emanate, arousing the public and uniting assorted interests left over from the Cold War. In the twenty-first century water will be in dangerously short supply in such diverse locales as Saudi Arabia, Central Asia, and the southwestern United States. A war could erupt between Egypt and Ethiopia over Nile River water. Even in Europe tensions have arisen be-

**O**UR Cold War foreign policy truly began with George F. Kennan's famous article, signed "X," published in *Foreign Affairs* in July of 1947, in which Kennan argued for a "firm and vigilant containment" of a Soviet Union that was imperially, rather than ideologically, motivated. It may be that our post-Cold War foreign policy will one day be seen to have had its beginnings in an even bolder and more detailed piece of written analysis: one that appeared in the journal *International Security*. The article, published in the fall of 1991 by Thomas Fraser Homer-Dixon, who is the head of the Peace and Conflict Studies Program at the University of

Toronto, was titled "On the Threshold: Environmental Changes as Causes of Acute Conflict." Homer-Dixon has more successfully than other analysts integrated two hitherto separate fields—military-conflict studies and the study of the physical environment.

In Homer-Dixon's view, future wars and civil violence will often arise from scarcities of resources such as water, cropland, forests, and fish. Just as there will be environmentally driven wars and refugee flows, there will be environmentally induced praetorian regimes—or, as he puts it, "hard regimes." Countries with the highest probability of acquiring hard regimes, according to Homer-Dixon, are those that are threatened by a declining resource base yet also have "a history of state (read 'military') strength." Candidates include Indonesia, Brazil, and, of course, Nigeria. Though each of these nations has exhibited democratizing tendencies of late, Homer-Dixon argues that such tendencies are likely to be superficial "epiphenomena" having nothing to do with long-term processes that include soaring populations and shrinking raw materials. Democracy is problematic; scarcity is more certain.

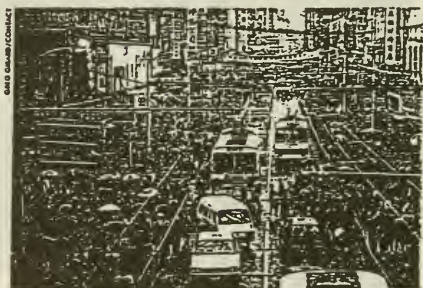
Indeed, the Saddam Husseins of the future will have more, not fewer, opportunities. In addition to engendering tribal strife, scarcer resources will place a great strain on many peoples who never had much of a democratic or institutional tradition to begin with. Over the next fifty years the earth's population will soar from 5.5 billion to more than nine billion. Though optimists have hopes for new resource technologies and free-market development in the global village, they fail to note that, as the National Academy of Sciences has pointed out, 95 percent of the population increase will be in the poorest regions of the world, where governments now—just look at Arica—show little ability to function, let alone to implement even marginal improvements. Homer-Dixon writes, ominously, "Neo-Malthusians may underestimate human adaptability in today's environmental-social system, but as time passes their analysis may become ever more compelling."

While a minority of the human population will be, as Francis Fukuyama would put it, sufficiently sheltered so as to enter a "post-historical" realm, living in cities and suburbs in which the environment has been mastered and ethnic animosities have been quelled by bourgeois prosperity, an increasingly large number of people will be stuck in history, living in shantytowns where attempts to rise above poverty, cultural dysfunction, and ethnic strife will be doomed by a lack of water to drink, soil to till, and space to survive in. In the developing world environmental stress will present people

with a choice that is increasingly among totalitarianism (as in Iraq), fascist-tending mini-states (as in Serb-held Bosnia), and road-warrior cultures (as in Somalia). Homer-

Dixon concludes that "as environmental degradation proceeds, the size of the potential social disruption will increase."

Tad Homer-Dixon is an unlikely Jeremiah. Today a boyish thirty-seven, he grew up amid the spruce forests of Vancouver Island, attending private day schools. His speech is calm, perfectly even, and crisply enunciated. There is nothing in his background or manner that would indicate a bent toward pessimism. A Canadian Anglican who spends his summers canoeing on the lakes of northern Ontario, and who talks about the benign mountains, black bears, and Douglas firs of his youth, he is the opposite of the intellectually



Left: El Playón, El Salvador, repository of garbage and death-aquid citizens. Right: Rio de Janeiro (top) and Shanghai, crowded and still growing.

severe neoconservative, the kind at home with conflict scenarios. Nor is he an environmentalist who opposes development. "My father was a logger who thought about ecologically safe forestry before others," he says. "He logged, planted, logged, and planted. He got out of the business just as the issue was being polarized by environmentalists. They have changed ecosystems. But human beings, just by carrying seeds around, change the natural world." As an only child whose playground was a virtually untouched wilderness and seacoast, Homer-Dixon has a familiarity with the natural world that permits him to see a reality that most pol-

icy analysts—children of suburbia and city streets—are blind to.

"We need to bring nature back in," he argues. "We have to stop separating politics from the physical world—the climate, public health, and the environment." Quoting Daniel Deudney, another pioneering expert on the security aspects of the environment, Homer-Dixon says that "for too long we've been prisoners of 'social-social' theory, which assumes there are only social causes for social and political changes, rather than natural causes, too. This social-social mentality emerged with the Industrial Revolution, which separated us from nature. But nature is coming back with a vengeance, tied to population growth. It will have incredible security implications.

"Think of a stretch limo in the potholed streets of New York City, where homeless beggars live. Inside the limo are the air-conditioned post-industrial regions of North America, Europe, the emerging Pacific Rim, and a few other isolated places, with their trade summery and computer-information highways. Outside is the rest of mankind, going in a completely different direction."

**W**E are entering a bifurcated world. Part of the globe is inhabited by Hegel's and Fukuyama's Last Man, healthy, well fed, and pampered by technology. The other, larger, part is inhabited by Hobbes's First Man, condemned to a life that is "poor, nasty, brutish, and short." Although both parts will be threatened by environmental stress, the Last Man will be able to master it; the First Man will not.

The Last Man will adjust to the loss of underground water tables in the western United States. He will build dikes to save Cape Hatteras and the Chesapeake beaches from rising sea levels, even as the Maldiv Islands, off the coast of India, sink into oblivion, and the shorelines of Egypt, Bangladesh, and Southeast Asia recede, driving tens of millions of people inland where there is no room for them, and thus sharpening ethnic divisions.

Homer-Dixon points to a world map of soil degradation in his Toronto office. "The darker the map color, the worse the degradation," he explains. The West African coast, the Middle East, the Indian subcontinent, China, and Central America have the darkest shades, signifying all manner of degradation, related to winds, chemicals, and water problems. "The worst degradation is generally where the population is highest. The population is generally highest where the soil is the best. So we're degrading earth's best soil."

China, in Homer-Dixon's view, is the quintessential example of environmental degradation. Its current economic "success" masks deeper problems. "China's fourteen percent growth rate does not mean it's going to be a world power. It means that coastal China, where the economic growth is taking place, is joining the rest of the Pacific Rim. The disparity with inland China is intensifying." Referring to the envi-

ronmental research of his colleague, the Czech-born ecologist Vaclav Smil, Homer-Dixon explains how the per capita availability of arable land in interior China has rapidly declined at the same time that the quality of that land has been destroyed by deforestation, loss of topsoil, and salinization. He mentions the loss and contamination of water supplies, the exhaustion of wells, the plugging of irrigation systems and reservoirs with eroded silt, and a population of 1.54 billion by the year 2025; it is a misconception that China has gotten its population under control. Large-scale population movements are under way, from inland China to coastal China and from villages to cities, leading to a crime surge like the one in Africa and to growing regional disparities and conflicts in a land with a strong tradition of warriorism and a weak tradition of central government—again as in Africa. "We will probably see the center challenged and fractured, and China will not remain the same on the map," Homer-Dixon says.

Environmental scarcity will inflame existing hatreds and affect power relationships, at which we now look.

#### SKINHEAD COSSACKS, JUJU WARRIORS

**I**N the summer, 1993, issue of *Foreign Affairs*, Samuel P. Huntington, of Harvard's Olin Institute for Strategic Studies, published a thought-provoking article called "The Clash of Civilizations?" The world, he argues, has been moving during the course of this century from nation-state conflict to ideological conflict to, finally, cultural conflict. I would add that as refugee flows increase and as peasants continue migrating to cities around the world—turning them into sprawling villages—national borders will mean less, even as more power will fall into the hands of less educated, less sophisticated groups. In the eyes of these uneducated but newly empowered millions, the real borders are the most tangible and intractable ones: those of culture and tribe. Huntington writes, "First, differences among civilizations are not only real; they are basic," involving, among other things, history, language, and religion. "Second . . . interactions between peoples of different civilizations are increasing; these increasing interactions intensify civilization consciousness." Economic modernization is not necessarily a panacea, since it fuels individual and group ambitions while weakening traditional loyalties to the state. It is worth noting, for example, that it is precisely the wealthiest and fastest-developing city in India, Bombay, that has seen the worst intercommunal violence between Hindus and Muslims. Consider that Indian cities, like African and Chinese ones, are ecological time bombs—Delhi and Calcutta, and also Beijing, suffer the worst air quality of any cities in the world—and it is apparent how surging populations, environmental degradation, and ethnic conflict are deeply related.

FEBRUARY 1994

Huntington points to interlocking conflicts among Hindu, Muslim, Slavic Orthodox, Western, Japanese, Confucian, Latin American, and possibly African civilizations: for instance, Hindus clashing with Muslims in India, Turkic Muslims clashing with Slavic Orthodox Russians in Central Asian cities, the West clashing with Asia. (Even in the United States, African-Americans find themselves besieged by an influx of competing Latinos.) Whatever the laws, refugees find a way to crash official borders, bringing their passions with them, meaning that Europe and the United States will be weakened by cultural disputes.

Because Huntington's brush is broad, his specifics are vulnerable to attack. In a rebuttal of Huntington's argument the Johns Hopkins professor Fouad Ajami, a Lebanese-born Shi'ite who certainly knows the world beyond suburbia, writes in the September-October, 1993, issue of *Foreign Affairs*.

The world of Islam divides and subdivides. The battle lines in the Caucasus . . . are not coextensive with civilizational fault lines. The lines follow the interests of states. Where Huntington sees a civilizational duel between Armenia and Azerbaijan, the Iranian state has cast religious zeal . . . to the wind . . . in that battle the Iranians have tilted toward Christian Armenia.

True, Huntington's hypothesized war between Islam and Orthodox Christianity is not borne out by the alliance network in the Caucasus. But that is only because he has misidentified which cultural war is occurring there. A recent visit to Azerbaijan made clear to me that Azeri Turks, the world's most secular Shi'ite Muslims, see their cultural identity in terms not of religion but of their Turkic race. The Armenians, likewise, fight the Azeris not because the latter are Muslims but because they are Turks, related to the same Turks who massacred Armenians in 1915. Turkic culture (secular and based on languages employing a Latin script) is battling Iranian culture (religiously militant as defined by Tehran, and wedded to an Arabic script) across the whole swath of Central Asia and the Caucasus. The Armenians are, therefore, natural allies of their fellow Indo-Europeans the Iranians.

Huntington is correct that the Caucasus is a flashpoint of cultural and racial war. But, as Ajami observes, Huntington's plate tectonics are too simple. Two months of recent travel throughout Turkey revealed to me that although the Turks are developing a deep distrust, bordering on hatred, of fellow-Muslim Iran, they are also, especially in the shantytowns that are coming to dominate Turkish public opinion, revising their group identity, increasingly seeing themselves as Muslims being deserted by a West that does little to help besieged Muslims in Bosnia and that attacks Turkish Muslims in the streets of Germany.

*In Bosnia, the former Yugoslavs, compatriots add one more victim of civil war to a mass grave*

In other words, the Balkans, a powder keg for nation-state war at the beginning of the twentieth century, could



be a powder keg for cultural war at the turn of the twenty-first: between Orthodox Christianity (represented by the Serbs and a classic Byzantine configuration of Greeks, Russians, and Romanians) and the House of Islam. Yet in the Caucasus that House of Islam is falling into a clash between Turkic and Iranian civilizations. Ajami asserts that this very subdivision, not to mention all the divisions within the Arab world, indicates that the West, including the United States, is not threatened by Huntington's scenario. As the Gulf War demonstrated, the West has proved capable of playing one part of the House of Islam against another.

True. However, whether he is aware of it or not, Ajami is describing a world even more dangerous than the one Huntington envisions, especially when one takes into account Homer-Dixon's research on environmental scarcity. Outside the stretch limo would be a rundown, crowded planet of skinhead Cossacks and *juju* warriors, influenced by the worst refuse of Western pop culture and ancient tribal hatreds, and battling over scraps of overused earth in guerrilla

## THE PAST IS DEAD



conflicts that ripple across continents and intersect in no discernible pattern—meaning there's no easy-to-define threat. Kennan's world of one adversary seems as distant as the world of Herodotus.

Most people believe that the political earth since 1989 has undergone immense change. But it is minor compared with what is yet to come. The breaking apart and remaking of the atlas is only now beginning. The crack-up of the Soviet empire and the coming end of Arab-Israeli military confrontation are merely prologues to the really big changes that lie ahead. Michael Vlahos, a long-range thinker for the U.S. Navy, warns, "We are not in charge of the environment and the world is not following us. It is going in many directions. Do not assume that democratic capitalism is the last word in human social evolution."

Before addressing the questions of maps and of warfare, I want to take a closer look at the interaction of religion, culture, demographic shifts, and the distribution of natural resources in a specific area of the world: the Middle East.

**B**UILT on steep, muddy hills, the shantytowns of Ankara, the Turkish capital, exude visual drama. Altıdag, or "Golden Mountain," is a pyramid of dreams, fashioned from cinder blocks and corrugated iron, rising as though each shack were built on top of another, all reaching awkwardly and painfully toward heaven—the heaven of wealthier Turks who live elsewhere in the city. Nowhere else on the planet have I found such a poignant architectural symbol of man's striving, with gaps in house walls plugged with rusted cans, and leeks and onions growing on verandas assembled from planks of rotting wood. For reasons that I will explain, the Turkish shantytown is a psychological universe away from the African one.

To see the twenty-first century truly, one's eyes must learn a different set of aesthetics. One must reject the overly stylized images of travel magazines, with their inviting photographs of exotic villages and glamorous downtowns. There are far too many millions whose dreams are more vulgar, more real—whose raw energies and desires will overwhelm the visions of the elites, remaking the future into something frighteningly new. But in Turkey I learned that shantytowns are not all bad.

Slum quarters in Abidjan terrify and repel the outsider. In Turkey it is the opposite. The closer I got to Golden Mountain the better it looked, and the safer I felt. I had \$1,500 worth of Turkish lira in one pocket and \$1,000 in traveler's checks in the other, yet I felt no fear. Golden Mountain was a real neighborhood. The inside of one house told the story: The architectural bedlam of cinder block and sheet metal and cardboard walls was deceiving. Inside was a *home*—order, that is, bespeaking dignity. I saw a working refrigerator, a television, a wall cabinet with a few books and lots of family pictures, a few plants by a window, and a stove. Though the streets become rivers of mud when it rains, the floors inside this house were spicily.

Other houses were like this too. Schoolchildren ran along with briefcases strapped to their backs, trucks delivered cooking gas, a few men sat inside a café sipping tea. One man sipped beer. Alcohol is easy to obtain in Turkey, a secular state where 99 percent of the population is Muslim. Yet there is little problem of alcoholism. Crime against persons is infinitesimal. Poverty and illiteracy are watered-down versions of what obtains in Algeria and Egypt (to say nothing of West Africa), making it that much harder for religious extremists to gain a foothold.

My point in bringing up a rather wholesome, crime-free slum is this: its existence demonstrates how formidable is the fabric of which Turkish Muslim culture is made. A culture this strong has the potential to dominate the Middle East once again. Slums are litmus tests for innate cultural strengths and weaknesses. Those peoples whose cultures can harbor extensive slum life without decomposing will be, relatively speak-

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ing, the future's winners. Those whose cultures cannot will be the future's victims. Slums—in the sociological sense—do not exist in Turkish cities. The mortar between people and family groups is stronger here than in Africa. Resurgent Islam and Turkic cultural identity have produced a civilization with natural muscle tone. Turks, history's perennial nomads, take disruption in stride.

The future of the Middle East is quietly being written inside the heads of Golden Mountain's inhabitants. Think of an Ottoman military encampment on the eve of the destruction of Greek Constantinople in 1453. That is Golden Mountain. "We brought the village here. But in the village we worked harder—in the field, all day. So we couldn't fast during [the holy month of] Ramadan. Here we fast. Here we are more religious." Aishe Tanrikulu, along with half a dozen other women, was stuffing rice into vine leaves from a crude plastic bowl. She asked me to join her under the shade of a piece of sheet metal. Each

of these women had her hair covered by a kerchief. In the city they were encountering television for the first time. "We are traditional, religious people. The programs offend us," Aishe said. Another woman complained about the schools. Though her children had educational options unavailable in the village, they had to compete with wealthier, secular Turks. "The kids from rich families with connections—they get all the places." More opportunities, more tensions, in other words.

My guidebook to Golden Mountain was an untypical one: *Tales From the Garbage Hills*, a brutally realistic novel by a Turkish writer, Latife Tekin, about life in the shantytowns, which in Turkey are called *gecekondus* ("built in a night"). "He listened to the earth and wept uselessly for water, for work and for the cure of the illnesses spread by the garbage and the factory waste," Tekin writes. In the most revealing passage of *Tales From the Garbage Hills* the squatters are told "about a certain 'Ottoman Empire' . . . that where they now lived there had once been an empire of this name." This history "confounded" the squatters. It was the first they had

heard of it. Though one of them knew "that his grandfather and his dog died fighting the Greeks," nationalism and an encompassing sense of Turkish history are the province of the Turkish middle and upper classes, and of foreigners like me who feel required to have a notion of "Turkey."

But what did the Golden Mountain squatters know about the armies of Turkish migrants that had come before their own—namely, Seljuks and Ottomans? For these recently urbanized peasants, and their counterparts in Africa, the Arab world, India, and so many other places, the world is new, to adapt V. S. Naipaul's phrase. As Naipaul wrote of urban refugees in *India: A Wounded Civilization*, "They saw themselves at the beginning of things: unaccommodated men making a claim on their land for the first time, and out of chaos evolving their own philosophy of community and self-help. For them the past was dead; they had left it behind in the villages."

Everywhere in the developing world at the turn of the twenty-first century these new men and women, rushing into the cities, are remaking civilizations and redefining their identities in terms of religion and tribal ethnicity which do not coincide with the borders of existing states.

**I**N Turkey several things are happening at once. In 1980, 44 percent of Turks lived in cities; in 1990 it was 61 percent. By the year 2000 the figure is expected to be 67 percent. Villages are emptying out as concentric rings of *gecekondus* developments grow around Turkish cities. This is the real political and demographic revolution in Turkey and elsewhere, and foreign correspondents usually don't write about it.

Whereas rural poverty is age-old and almost a "normal" part of the social fabric, urban poverty is socially destabilizing. As Iran has shown, Islamic extremism is the psychological defense mechanism of many urbanized peasants threatened with the loss of traditions in pseudo-modern cities where their values are under attack, where basic services like water and electricity are unavailable, and where they are assaulted by a physically unhealthy environment. The American ethnologist and orientalist Carleton Stevens Coon wrote in 1951 that Islam "has made possible the optimum survival and happiness of millions of human beings in an increasingly impoverished environment over a fourteen-hundred-year period." Beyond its stark, clearly articulated message, Islam's very militancy makes it attractive to the downtrodden. It is the one religion that is prepared to fight. A political era driven by environmental stress, increased cultural sensitivity, unregulated urbanization, and refugee migrations is an era divinely created for the spread and intensification of Islam, already the world's fastest-growing religion. (Though Islam is spreading in West Africa, it is being hobbled by syncretization with animism: this makes new converts less apt to become anti-Western extremists, but it also makes for a weakened version of the faith, which is less effective as an antidote to crime.)

In Turkey, however, Islam is painfully and awkwardly forging a consensus with modernization, a trend that is less apparent in the Arab and Persian worlds (and virtually invisible in Africa). In Iran the oil boom—because it put development and urbanization on a fast track, making the culture shock more intense—fueled the 1978 Islamic Revolution. But Turkey, unlike Iran and the Arab world, has little oil. Therefore its development and urbanization have been more gradual. Islamists have been integrated into the parliamentary system for decades. The tensions I noticed in Golden Mountain are natural, creative ones: the kind immigrants face the world



PHOTO: ARAB SPRING / AP / GETTY IMAGES



over. While the world has focused on religious perversity in Algeria, a nation rich in natural gas, and in Egypt, parts of whose capital city, Cairo, evince worse crowding than I have seen even in Calcutta, Turkey has been living through the Muslim equivalent of the Protestant Reformation.

Resource distribution is strengthening Turks in another way vis-à-vis Arabs and Persians. Turks may have little oil, but their Anatolian heartland has lots of water—the most important fluid of the twenty-first century. Turkey's Southeast Anatolia Project, involving twenty-two major dams and irrigation systems, is impounding the waters of the Tigris and

Euphrates rivers. Much of the water that Arabs and perhaps Israelis will need to drink in the future is controlled by Turks. The project's centerpiece is the mile-wide, sixteen-story Atatürk Dam, upon which are emblazoned the words of modern Turkey's founder: "*Ne Müllu Türküm Diyene*" ("Lucky is the one who is a Turk").

Unlike Egypt's Aswan High Dam, on the Nile, and Syria's Revolution Dam, on the Euphrates, both of which were built largely by Russians, the Atatürk Dam is a predominantly Turkish affair, with Turkish engineers and companies in charge. On a recent visit my eyes took in the immaculate offices and their gardens, the high-voltage electric grids and phone switching stations, the dizzying sweep of giant humming transformers, the poured-concrete spillways, and the prim unfolding suburbia, complete with schools, for dam employees. The emerging power of the Turks was palpable.

Erduhan Bayindir, the site manager at the dam, told me that "while oil can be shipped abroad to enrich only elites, water has to be spread more evenly within the society. . . . It is true, we can stop the flow of water into Syria and Iraq for up to eight months without the same water overflowing our dams, in order to regulate their political behavior."

Power is certainly moving north in the Middle East, from the oil fields of Dhalran, on the Persian Gulf, to the water plain of Harran, in southern Anatolia—near the site of the Atatürk Dam. But will the nation-state of Turkey, as presently constituted, be the inheritor of this wealth?

I very much doubt it.

#### THE LIES OF MAPMAKERS

WHEREAS West Africa represents the least stable part of political reality outside Homer-Dixon's stretch limo, Turkey, an organic outgrowth of two Turkish empires that ruled Anatolia for 850 years, has been among the most stable. Turkey's borders were established not by colonial powers but in a war of independence, in the early 1920s. Kemal Atatürk provided Turkey with a secular nation-building myth that most Arab and African states, burdened by artificially drawn borders, lack. That lack will leave many Arab states defenseless against a wave of Islam that will eat away at their legitimacy and frontiers in coming years. Yet even as regards Turkey, maps deceive.

It is not only African shantytowns that don't appear on urban maps. Many shantytowns in Turkey and elsewhere are also missing—as are the considerable territories controlled by guerrilla armies and urban mafias. Traveling with Eritrean guerrillas in what, according to the map, was northern Ethiopia, traveling in "northern Iraq" with Kurdish guerrillas, and staying in a hotel in the Caucasus controlled

*Opposite page: Kurds in Turkey defy the government by hindering oil and gas. Above: a Kurdish guerrilla fighter; Kurdish children with spent shells.*

by a local mafia—to say nothing of my experiences in West Africa—led me to develop a healthy skepticism toward maps, which, I began to realize, create a conceptual barrier that prevents us from comprehending the political crack-up just beginning to occur worldwide.

Consider the map of the world, with its 190 or so countries, each signified by a bold and uniform color; this map, with which all of us have grown up, is generally an invention of modernism, specifically of European colonialism. Modernism, in the sense of which I speak, began with the rise of nation-states in Europe and was confirmed by the death of feudalism

of treating facts by ordering the way we look at the world.

In his book *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, Benedict Anderson, of Cornell University, demonstrates that the map enabled colonialists to think about their holdings in terms of a "totalizing classificatory grid. . . . It was bounded, determinate, and therefore—in principle—countable." To the colonialist, country maps were the equivalent of an accountant's ledger books. Maps, Anderson explains, "shaped the grammar" that would make possible such questionable concepts as Iraq, Indonesia, Sierra Leone, and Nigeria. The state, recall, is a



at the end of the Thirty Years' War—an event that was interposed between the Renaissance and the Enlightenment, which together gave birth to modern science. People were suddenly flush with an enthusiasm to categorize, to define. The map, based on scientific techniques of measurement, offered a way to classify new national organisms, making a jigsaw puzzle of neat pieces without transition zones between them. "Frontier" is itself a modern concept that didn't exist in the feudal mind.

European nations carved out far-flung domains at the same time that print technology was making the reproduction of maps possible. Cartography came into its own as a way

purely Western notion, one that until the twentieth century applied to countries covering only three percent of the earth's land area. Nor is the evidence compelling that the state, as a governing ideal, can be successfully transported to areas outside the industrialized world. Even the United States of America, in the words of one of our best living poets, Gary Snyder, consists of "arbitrary and inaccurate impositions on what is really here."

Yet this inflexible, artificial reality staggers on, not only in the United Nations but in various geographic and travel publications (themselves by-products of an age of elite touring



which colonialism made possible) that still report on and photograph the world according to "country." Newspapers, this magazine, and this writer are not innocent of the tendency.

According to the map, the great hydropower complex emblemized by the Ataturk Dam is sited in Turkey. Forget the map. This southeastern region of Turkey is populated almost completely by Kurds. About half of the world's 20 million Kurds live in "Turkey." The Kurds are predominant in an ellipse of territory that overlaps not only with Turkey but also with Iraq, Iran, Syria, and the former Soviet Union. The Western-enforced Kurdish enclave in northern Iraq, a consequence of the 1991 Gulf War, has already exposed the fictitious nature of that supposed nation-state.

On a recent visit to the Turkish-Iranian border, it occurred to me what a risky idea the nation-state is. Here I was on the legal fault line between two clashing civilizations, Turkic and Iranian. Yet the reality was more subtle: as in West Africa, the border was porous and smuggling abounded, but here the people doing the smuggling, on both sides of the border, were

Kurds. In such a moonscape, over which peoples have migrated and settled in patterns that obliterate borders, the end of the Cold War will bring on a cruel process of natural selection among existing states. No longer will these states be so firmly propped up by the West or the Soviet Union. Because the Kurds overlap with nearly everybody in the Middle East, on account of their being cheated out of a state in the post-First World War peace treaties, they are emerging, in effect, as the natural selector—the ultimate reality check. They have destabilized Iraq and may continue to disrupt states that do not offer them adequate breathing space, while strengthening states that do.

Because the Turks, owing to their water resources, their growing economy, and the social cohesion evinced by the most crime-free shams I have encountered, are on the verge of big-power status, and because the 10 million Kurds within Turkey threaten that status, the outcome of the Turkish-Kurdish dispute will

be more critical to the future of the Middle East than the eventual outcome of the recent Israeli-Palestinian agreement.

AMERICA'S fascination with the Israeli-Palestinian issue, coupled with its lack of interest in the Turkish-Kurdish one, is a function of its own domestic and ethnic obsessions, not of the cartographic reality that is about to transform the Middle East. The diplomatic process involving Israelis and Palestinians will, I believe, have little effect on the early- and mid-twenty-first-century map of the region. Israel, with a 6.6 percent economic growth rate based increasingly on high-tech exports, is about to enter Homer-Dixon's stretch limo, fortified by a well-defined political community that is an organic outgrowth of history and ethnicity. Like prosperous and peaceful Japan on the one hand, and war-torn and poverty-wracked Armenia on the other, Israel is a classic national-ethnic organism. Much of the Arab world, however, will undergo alteration, as Islam spreads across artificial frontiers, fueled by mass migrations into the cities and a soaring birth rate of more than 3.2 percent. Seventy percent of the Arab population has been born since 1970—youths with little historical memory of anticolonial independence struggles, post-colonial attempts at nation-building, or any of the Arab-Israeli wars. The most distant recollection of these youths will be the West's humiliation of colonialist-invented Iraq in 1991. Today seventeen out of twenty-two Arab states have a declining gross national product; in the next twenty years, at current growth rates, the population of many Arab countries will double. These states, like most African ones, will be ungovernable through conventional secular ideologies. The Middle East analyst Christine M. Helms explains,

Declaring Arab nationalism "bankrupt," the political "disinherited" are not rationalizing the failure of Arabism . . . or reformulating it. Alternative solutions are not contemplated. They have simply opted for the political paradigm at the other end of the political spectrum with which they are familiar—Islam.

Like the borders of West Africa, the colonial borders of Syria, Iraq, Jordan, Algeria, and other Arab states are often contrary to cultural and political reality. As state control mechanisms wicker in the face of environmental and demographic stress, "hard" Islamic city-states or shantytown-states are likely to emerge. The fiction that the impoverished city of Algiers, on the Mediterranean, controls Tamanrasset, deep in the Algerian Sahara, cannot obtain forever. Whatever the outcome of the peace process, Israel is destined to be a Jewish ethnic fortress amid a vast and volatile realm of Islam. In that realm, the violent youth culture of the Gaza shantytowns may be indicative of the coming era.

The destiny of Turks and Kurds is far less certain, but far more relevant to the kind of map that will explain our future world. The Kurds suggest a geographic reality that cannot be shown in two-dimensional space. The issue in Turkey is not simply a matter of giving autonomy or even independence to

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Kurds in the southeast. This isn't the Balkans or the Caucasus, where regions are merely subdividing into smaller units, Abkhazia breaking off from Georgia, and so on. Federalism is not the answer. Kurds are found everywhere in Turkey, including the shanty districts of Istanbul and Ankara. Turkey's problem is that its Anatolian land mass is the home of two cultures and languages, Turkish and Kurdish. Identity in Turkey, as in India, Africa, and elsewhere, is more complex and subtle than conventional cartography can display.

#### A NEW KIND OF WAR

To appreciate fully the political and cartographic implications of postmodernism—an epoch of themeless juxtapositions, in which the classificatory grid of nation-states is going to be replaced by a jagged-glass pattern of city-states, shanty-states, nebulous and anarchic regionalisms—it is necessary to consider, finally, the whole question of war.

"Oh, what a relief to fight, to fight enemies who defend themselves, enemies who are awake!" André Malraux wrote in *Man's Fate*. I cannot think of a more suitable battle cry for many combatants in the early decades of the twenty-first century. The intense savagery of the fighting in such diverse cultural settings as Liberia, Bosnia, the Caucasus, and Sri Lanka—to say nothing of what obtains in American inner cities—indicates something very troubling that those of us inside the stretch limo, concerned with issues like middle-class entitlements and the future of interactive cable television, lack the stomach to contemplate. It is this: a large number of people on this planet, to whom the comfort and stability of a middle-class life is utterly unknown, find war and a barracks existence a step up rather than a step down.

"Just as it makes no sense to ask 'why people eat' or 'what they sleep for,'" writes Martin van Creveld, a military historian at the Hebrew University in Jerusalem, in *The Transformation of War*, "so fighting in many ways is not a means but an end. Throughout history, for every person who has expressed his horror of war there is another who found in it the most marvelous of all the experiences that are vouchsafed to man, even to the point that he later spent a lifetime boring his descendants by recounting his exploits." When I asked Pentagon officials about the nature of war in the twenty-first century, the answer I frequently got was "Read Van Creveld." The top brass are enamored of this historian not because his writings justify their existence but, rather, the opposite: Van Creveld warns them that huge state military machines like the Pentagon's are dinosaurs about to go extinct, and that something far more terrible awaits us.

The degree to which Van Creveld's *Transformation of War* complements Homer-Dixon's work on the environment, Huntington's thoughts on cultural clash, my own realizations in traveling by foot, bus, and bush taxi in more than sixty countries, and America's sobering comeuppances in intractable-culture zones like Haiti and Somalia is startling. The book begins by demolishing the notion that men don't like to fight. "By compelling the senses to focus themselves on the here and now," Van Creveld writes, war "can cause a man to take his leave of them." As anybody who has had experience with Chechens in Serbia, "technicals" in Somalia, Tomsons Macouses in Haiti, or soldiers in Sierra Leone can tell you, in places where the Western Enlightenment has not penetrated and where there has always been mass poverty, people find liberation in violence. In Afghanistan and elsewhere, I vicariously experienced this phenomenon: worrying about mines and ambushes frees you from worrying about mundane details of daily existence. If my own experience is

too subjective, there is a wealth of data showing the sheer frequency of war, especially in the developing world since the Second World War. Physical aggression is a part

*In Liberia, summary justice meted out against a soldier (above) and unspiced thistles (below right). Above right: a scene in Yakoar, the former Yaguelo.*

of being human. Only when people attain a certain economic, educational, and cultural standard is this trait tranquilized. In light of the fact that 95 percent of the earth's population growth will be in the poorest areas of the globe, the question is not whether there will be war (there will be a lot of it) but what kind of war. And who will fight whom?

Debunking the great military strategist Carl von Clausewitz, Van Creveld, who may be the most original thinker on war since that early-nineteenth-century Prussian, writes, "Clausewitz's ideas . . . were wholly rooted in the fact that, ever since 1648, war had been waged overwhelmingly by states." But, as Van Creveld explains, the period of nation-states and, therefore, of state conflict is now ending, and with it the clear "threefold division into government, army, and people" which state-directed wars enforce. Thus, to see the future, the first step is to look back to the past immediately prior to the birth of modernism—the wars in medieval Europe which began during the Reformation and reached their culmination in the Thirty Years' War.

Van Creveld writes,

In all these struggles political, social, economic, and religious motives were hopelessly entangled. Since this was an age when armies consisted of mercenaries, all were also attended by swarms of military entrepreneurs. . . . Many of them paid little but lip service to the organizations for whom they had contracted to fight. Instead, they robbed the countryside on their own behalf. . . .

Given such conditions, any fine distinctions . . . between armies on the one hand and peoples on the other were bound to break down. Engulfed by war, civilians suffered terrible atrocities.

**B**ACK then, in other words, there was no "politics" as we have come to understand the term, just as there is less and less "politics" today in Liberia, Sierra Leone, Somalia, Sri Lanka, the Balkans, and the Caucasus, among other places.

Because, as Van Creveld notes, the radius of trust within tribal societies is narrowed to one's immediate family and guerrilla comrades, truces arranged with one Bosnian commander, say, may be broken immediately by another Bosnian commander. The plethora of short-lived cessesfires in the Balkans and the Caucasus constitute proof that we are no longer in a world where the old rules of state warfare apply. More evidence is provided by the destruction of medieval monuments in the Croatian port of Dubrovnik: when cultures, rather than states, fight, then cultural and religious monuments are weapons of war, making them fair game.

Also, war-making entities will no longer be restricted to a specific territory. Loose and shadowy organisms such as Islamic terrorist organizations suggest why borders will mean increasingly little and sedimentary layers of tribalistic identity and control will mean more. "From the vantage point of the present, there appears every prospect that religious . . . fanaticisms will play a larger role in the motivation of armed

conflict" in the West than at any time "in the last 500 years," Van Creveld writes. This is why analysts like Michael Vlahos are closely monitoring religious riots. Vlahos says, "An ideology that challenges us may not take familiar form, like the old Nazis or Commies. It may not even engage us initially in ways that fit old threat markings." Van Creveld concludes, "Armed conflict will be waged by men on earth, not robots in space. It will have more in common with the struggles of primitive tribes than with large-scale conventional war." While another military historian, John Keegan, in his new book *A History of Warfare*, draws a more benign portrait of primitive man, it is important to point out that what Van Creveld really means is *re-primitivized* man: warrior societies operating at a time of unprecedented resource scarcity and planetary overcrowding.

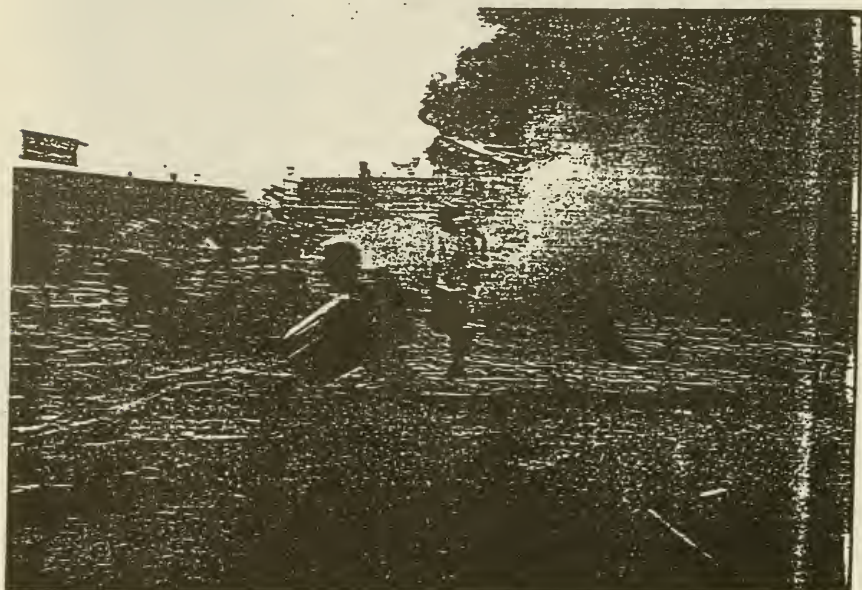
Van Creveld's pre-Westphalian vision of worldwide low-intensity conflict is not a superficial "back to the future" scenario. First of all technology will be used toward primitive ends. In Liberia the guerrilla leader Prince Johnson didn't



just cut off the ears of President Samuel Doe before Doe was tortured to death in 1996—Jonsson made a video of it, which has circulated throughout West Africa. In December of 1992, when plotters of a failed coup against the Strasser regime in Sierra Leone had their ears cut off at Freetown's Hamilton Beach prior to being killed, it was seen by many to be a copycat execution. Considering, as I've explained earlier, that the Strasser regime is not really a government and that Sierra Leone is not really a nation-state, listen closely to Van Creveld: "Once the legal monopoly of armed force, long claimed by the state, is wrested out of its hands, exist-

ence is in peril, being gradually replaced by a booming private security business, as in West Africa and by urban mafias, especially in the former communist world, who may be better equipped than municipal police forces to grant physical protection to local inhabitants.

Future wars will be those of communal survival, aggravated or, in many cases, caused by environmental scarcity. These wars will be subnational, meaning that it will be hard for states and local governments to protect their own citizens physically. This is how many states will ultimately die. As state power fades—and with it the state's ability to help



ing distinctions between war and crime will break down much as is already the case today in . . . Lebanon, Sri Lanka, El Salvador, Peru, or Colombia."

If crime and war become indistinguishable, then "national defense" may in the future be viewed as a local concept. As crime continues to grow in our cities and the ability of state governments and criminal-justice systems to protect their citizens diminishes, urban crime may, according to Van Creveld, "develop into low-intensity conflict by coalescing along racial, religious, social, and political lines." As small-scale violence multiplies at home and abroad, state armies will con-

weaker groups within society, not to mention other states—peoples and cultures around the world will be thrown back upon their own strengths and weaknesses, with fewer equalizing mechanisms to protect them. Whereas the distant future will probably see the emergence of a racially hybrid, globalized man, the coming decades will see us more aware of our differences than of our similarities. To the average person, political values will mean less, personal security more. The belief that we are all equal is liable to be replaced by the overriding obsession of the ancient Greek travelers: Why the differences between peoples?

## THE LAST MAP

**I**n *Geography and the Human Spirit*, Ane Buttner, a professor at University College, Dublin, recalls the work of an early-nineteenth-century German geographer, Carl Ritter, whose work implied "a divine plan for humanity" based on regionalism and a constant, living flow of form. The map of the future, to the extent that a map is even possible, will represent a perverse twisting of Ritter's vision. Imagine cartography in three dimensions, as if in a hologram. In this hologram would be the overlapping sediments of group and other identities atop the merely two-dimensional color markings of city-states and the remaining nations, themselves confused in places by shadowy tentacles, hovering overhead, indicating the power of drug cartels, mafias, and private security agencies. Instead of borders, there would be moving "centers" of power, as in the Middle Ages. Many of these layers would be in motion. Replacing fixed and abrupt lines on a flat space would be a shifting pantheon of buffer entities, like the Kurdish and Azeri buffer entities between Turkey and Iran, the Turkic Uighur buffer entity between Central Asia and Inner China (itself distinct from coastal China), and the Latino buffer entity replacing a precise U.S.-Mexican border. To this prosaic cartographic hologram one must add other factors, such as migrations of populations, explosions of birth rates, vectors of disease. Henceforward the map of the world will never be static. This future map—in a sense, the "Last Map"—will be an ever-mutating representation of chaos.

The Indian subcontinent offers examples of what is happening. For different reasons, both India and Pakistan are increasingly dysfunctional. The argument over democracy in these places is less and less relevant to the larger issue of governability. In India's case the question arises, Is one unwieldy bureaucracy in New Delhi the best available mechanism for promoting the lives of 866 million people of diverse languages, religions, and ethnic groups? In 1950, when the Indian population was much less than half as large and nation-building idealism was still strong, the argument for democracy was more impressive than it is now. Given that in 2025 India's population could be close to 1.5 billion, that much of its economy rests on a shrinking natural-resource base, including dramatically declining water levels, and that communal violence and urbanization are spiraling upward, it is difficult to imagine that the Indian state will survive the next century. India's oft-trumpeted Green Revolution has been achieved by overworking its croplands and depleting its watershed. Norman Myers, a British development consultant, worries that Indians have "been feeding themselves today by borrowing against their children's food sources."

Pakistan's problem is more basic still: like much of Africa, the country makes no geographic or demographic sense. It was founded as a homeland for the Muslims of the subcon-

tinent, yet there are more subcontinental Muslims outside Pakistan than within it. Like Yugoslavia, Pakistan is a patchwork of ethnic groups, increasingly in violent conflict with one another. While the Western media gushes over the fact that the country has a woman Prime Minister, Benazir Bhutto, Karachi is becoming a subcontinental version of Lagos. In eight visits to Pakistan, I have never gotten a sense of a cohesive national identity. With as much as 65 percent of its land dependent on intensive irrigation, with wide-scale deforestation, and with a yearly population growth of 2.7 percent (which ensures that the amount of cultivated land per rural inhabitant will plummet), Pakistan is becoming a more and more desperate place. As irrigation in the Indus River basin intensifies to serve two growing populations, Muslim-Hindu strife over falling water tables may be unavoidable.

"India and Pakistan will probably fall apart," Homer-Dixon predicts. "Their secular governments have less and less legitimacy as well as less management ability over people and resources." Rather than one bold line dividing the subcontinent into two parts, the future will likely see a lot of thinner lines and smaller parts, with the ethnic entities of Pakhunanistan and Punjab gradually replacing Pakistan in the space between the Central Asian plateau and the heart of the subcontinent.

None of this even takes into account climatic change, which, if it occurs in the next century, will further erode the capacity of existing states to cope. India, for instance, receives 70 percent of its precipitation from the monsoon cycle, which planetary warming could disrupt.

Not only will the three-dimensional aspects of the Last Map be in constant motion, but its two-dimensional base may change too. The National Academy of Sciences reports that as many as one billion people, or 20 per cent of the world's population, live on lands likely to be inundated or dramatically changed by rising waters. . . . Low-lying countries in the developing world such as Egypt and Bangladesh, where rivers are large and the deltas extensive and densely populated, will be hardest hit. . . . Where the rivers are dammed, as in the case of the Nile, the effects . . . will be especially severe.

Egypt could be where climatic upheaval—to say nothing of the more immediate threat of increasing population—will incite religious upheaval in truly biblical fashion. Natural catastrophes, such as the October, 1992, Cairo earthquake, in which the government failed to deliver relief aid and slum residents were in many instances helped by their local mosques, can only strengthen the position of Islamic factions. In a statement about greenhouse warming which could refer to any of a variety of natural catastrophes, the environmental expert Jessica Tuchman Mathews warns that many of us underestimate the extent to which political systems, in affluent societies as well as in places like Egypt, "depend on the underpinning of natural systems." She adds, "The fact that one can move with ease from Vermont to Miami has nothing to say about the consequences of Vermont acquiring Miami's climate."

*Aron and looting in Los Angeles after the acquittal of police officers in the Rodney King case*

THE ATLANTIC MONTHLY

Indeed, it is not clear that the United States will survive the next century in exactly its present form. Because America is a multi-ethnic society, the nation-state has always been more fragile than it is in more homogeneous societies like Germany and Japan. James Kurth, in an article published in *The National Interest* in 1992, explains that whereas nation-state societies tend to be built around a mass-conscription army and a standardized public school system, "multicultural regimes" feature a high-tech, all-volunteer army (and, I would add, private schools that teach competing values), operating in a culture in which the international media and entertainment industry has more influence than the "national political class." In other words, a nation-state is a place where everyone has been educated along similar lines, where people take their cues from national leaders, and where everyone (every male, at least) has gone through the crucible of military service, making patriotism a simpler issue. Writing about his immigrant family in turn-of-the-century Chicago, Saul Bellow states, "The country took us over. It was a country then, not a collection of 'cultures.'"

During the Second World War and the decade following it, the United States reached its apogee as a classic nation-state. During the 1960s, as is now clear, America began a slow but unmistakable process of transformation. The signs hardly need belaboring: racial polarity, educational dysfunction, social fragmentation of many and various kinds. William Irwin Thompson, in *Passages About Earth: An Exploration of the New Planetary Culture*, writes, "The educational system that had worked on the Jews or the Irish could no longer work on the blacks; and when Jewish teachers in New York tried to take black children away from their parents exactly in the way they had been taken from theirs, they were shocked to encounter a violent affirmation of negritude."

Issues like West Africa could yet emerge as a new kind of foreign-policy issue, further eroding America's domestic peace. The spectacle of several West African nations collapsing at once could reinforce the worst racial stereotypes here at home. That is another reason why Africa matters. We must not kid ourselves: the sensitivity factor is higher than ever. The Washington, D.C., public school system is already experimenting with an Afrocentric curriculum. Summits between African leaders and prominent African-Americans are becoming frequent, as are Pollyanna-ish prognostications about multiparty elections in Africa that do not factor in crime, surging birth rates, and resource depletion. The Congressional Black Caucus was among those urging U.S. involvement in Somalia and in Haiti. At the *Los Angeles Times* minority staffers have protested against, among other things, what they allege to be the racist tone of the newspaper's Africa coverage, allegations that the editor of the "World Report" section, Dan Fisher, denies, saying essentially that Africa should be viewed through the same rigorous analytical lens as other parts of the world.

Africa may be marginal in terms of conventional late-twentieth-century conceptions of strategy, but in an age of

cultural and racial clash, when national defense is increasingly local, Africa's distress will exert a destabilizing influence on the United States.

This and many other factors will make the United States less of a nation than it is today, even as it gains territory following the peaceful dissolution of Canada. Quebec, based on the bedrock of Roman Catholicism and Francophone ethnicity, could yet turn out to be North America's most cohesive and crime-free nation-state. (It may be a smaller Quebec, though, since aboriginal peoples may lop off northern parts of the province.) "Patriotism" will become increasingly regional as people in Alberta and Montana discover that they have far more in common with each other than they do with Ottawa or Washington, and Spanish-speakers in the Southwest discover a greater commonality with Mexico City. (*The Nine Nations of North America*, by Joel Garreau, a book about the continent's regionalization, is more relevant now than when it was published, in 1981.) As Washington's influence wanes, and with it the traditional symbols of American patriotism, North Americans will take psychological refuge in their insulated communities and cultures.

**R**ETURNING from West Africa last fall was an illuminating ordeal. After leaving Abidjan, my Air Afrique flight landed in Dakar, Senegal, where all passengers had to disembark in order to go through another security check, this one demanded by U.S. authorities before they would permit the flight to set out for New York. Once we were in New York, despite the midnight hour, immigration officials at Kennedy Airport held up disembarkation by conducting quick interrogations of the aircraft's passengers—this was in addition to all the normal immigration and customs procedures. It was apparent that drug smuggling, disease, and other factors had contributed to the toughest security procedures I have ever encountered when returning from overseas.

Then, for the first time in over a month, I spotted businesspeople with attaché cases and laptop computers. When I had left New York for Abidjan, all the businesspeople were boarding planes for Seoul and Tokyo, which departed from gates near Air Afrique's. The only non-Africans off to West Africa had been relief workers in T-shirts and khakis. Although the borders within West Africa are increasingly unreal, those separating West Africa from the outside world are in various ways becoming more impenetrable.

But Afrocentrists are right in one respect: we ignore this dying region at our own risk. When the Berlin Wall was falling, in November of 1989, I happened to be in Kosovo, covering a riot between Serbs and Albanians. The future was in Kosovo, I told myself that night, not in Berlin. The same day that Yitzhak Rabin and Yasser Arafat clasped hands on the White House lawn, my Air Afrique plane was approaching Bamako, Mali, revealing corrugated-zinc shacks at the edge of an expanding desert. The real news wasn't at the White House, I realized. It was right below. ☉

Mr. MAZZOLI. Mr. Swartz.

**STATEMENT OF RICK SWARTZ, ESQ., SWARTZ & ASSOCIATES,  
WASHINGTON, DC**

Mr. SWARTZ. Mr. Chairman, thank you very much for inviting me to testify today.

Before I begin I would also like to thank you for your years of service as chairman of this subcommittee and as a leader in the Congress and the Nation on among the most important issues we face as a people, what do we do about immigrants and refugees?

You and I have not agreed on every particular issue that has been presented over the years, but the very first time I testified in Congress was before you on the topic of Haitian refugees back in, I think it was 1981.

Mr. MAZZOLI. Eighty-one. Nineteen eighty-one.

Mr. SWARTZ. And you have provided real service to your colleagues and to the Nation, and I wanted to thank you for that.

Mr. MAZZOLI. Thank you, sir.

Mr. SWARTZ. And, Mr. Conyers, on Haitian refugees likewise you have been a stalwart leader, and your determination is exactly what we need to achieve a simple goal, which is justice.

I am here today not to testify that we should admit all Haitians who may be in need. I am here to emphasize what I think is in the national interest, which is justice, and to promote and encourage a policy that I believe will help achieve the practical needs and goals of our country with regard to the first asylum phenomena and to achieve justice for Haitians.

First, I don't think that as a nation we are threatened by Haitian refugees. I don't believe that our national security is at risk because of Haitian refugees. I don't believe that the State of Florida will be in trauma because of Haitian refugees.

I believe that we have a serious policy question, and that we need to address it in pragmatic and sensible ways. But I think it is important that we step back a little bit and keep this all in perspective.

After the coup which overthrew President Aristide, in the approximately 9 months—8 or 9 months before President Bush instituted his Executive order to automatically repatriate Haitian boat people, about 38,000 Haitians who fled by boat were interdicted and screened at Guantanamo; 10,000 were brought forward and the rest were repatriated.

That is a lot of people, almost 40,000 people. But I don't think it threatens the United States. I think we are a great Nation and that we can find a way to both be humanitarian and to manage a migration situation of this character.

I think we just need to keep the rhetoric under control. When Mr. Goss earlier talked about millions of Haitians are going to take to the boats, I think it is totally unrealistic. It didn't happen after the coup, we are talking about 40,000 people over 8 months, and I don't think it will happen in the future.

Secondly, I think it is important that we recognize that our Haitian policy has been eroding American leadership on both refugee matters and human rights issues around the world. I was particularly struck by a paragraph in Father Ryscavage's written testi-

mony—Father, I think I can get it right—where you noted that representatives of other countries around the world in the past, in trying to deal with refugee crises, their first instinct has been let's go see the American Ambassador, whether it was in Thailand or in Africa or in Eastern Europe. Let's talk to the American Ambassador and see what we can do together in organizing the international community to respond to a humanitarian and refugee crisis.

Apparently in the last couple of years, particularly since the policy of automatic repatriation of Haitians, the rest of the world doesn't seem to be as confident in our leadership or credibility or our fairness when it comes to people in refugee or refugee-like situations. It is hard to measure what the consequences have been in terms of eroding our authority worldwide. But I know that I personally have heard from representatives of other countries, don't ask us to provide safe haven to Soviet Jews or to people from Bosnia, or to people who may be suffering great tragedies around our countries when you are turning back Haitians automatically. So, I think we have more at stake here than simply the fate of the Haitians in terms of American national interests.

I am going to try to be very brief, and I know you want to ask questions, and emphasize a couple of points. On the facts, we need to keep this issue of numbers in perspective. Forty thousand people over 8 months is a lot of people but it doesn't overwhelm us.

You have heard a lot of statistical debate today. I think it is important for the committee to fully recognize, that indeed the vast, vast majority of Haitians applying for refugee status inside country don't even get interviewed, much less have a chance to really present their claim.

When the Bush administration had a process on Guantanamo of screening Haitians, not quite a third were screened in by INS officials as having a credible fear of persecution, and were brought forward. About 10,000 out of 36,000 or 37,000.

We had lots of litigation over those people on Guantanamo who didn't have access to lawyers. They didn't have the help they needed to really make out their claim, and yet under tough circumstances almost a third were determined by our Immigration Service to have some reason to be afraid to go back to Haiti. So, clearly some fair proportion of Haitians may well be in danger.

When it comes to the law, on these disputes over the law, the Cuban Adjustment Act and otherwise, the point I want to emphasize is that the Cuban Adjustment Act only applies to Cuban nationals after they have been in the country a year.

It does not directly affect how we treat those who seek asylum, whether we interdict Cuban boats on the high seas. It only really imposes requirements on the executive branch after Cubans have been here a year. Accordingly, we do have the discretion today, in other words, to treat Cubans who might be picked up at sea the same way we treat Haitians who might be picked up at sea.

And what I would like to do in closing is emphasize what I think the right policy is. It is outlined quite in detail in an attachment to my testimony, which is a letter, dated December 1, 1992, that about 15 national organizations sent to President Clinton during the transition in anticipation that he was going to uphold his cam-



paign commitments, and we were trying to help him devise a policy that could be effectively implemented when he took office.

Now, the signatories to these letters include the NAACP and TransAfrica, and the AFL-CIO, and a good range of American institutions in the mainstream who have long been involved in trying to protect asylum-seekers and refugees.

That policy is the policy I think we ought to adopt. It is not what the Clinton administration is currently doing. Let me outline why.

First, the policy would not require—that a single Haitian be brought to the United States. I want to emphasize that. I think we can protect Haitians under current circumstances without admitting them, and that we will protect many more by following the kind of policy outlined in this December 1 letter than what the administration is about to do.

I am glad that the President announced he is going to end the policy of automatic repatriation. I think what they are now planning is quite flawed for the following reasons.

We are going to have a strict refugee definition. We are going to apply that criteria, as far as we can tell, strictly. There is at best uncertainty about whether lawyers or others are going to be allowed to counsel individual Haitians and help them meet this individualized, strict standard of a well-founded fear of persecution. We will see what happens over the next few weeks.

But I fear that what is being set up here will result, as Sandy Berger predicted on "Meet the Press," I think it was, 95 percent rejection over a period of a couple of days, and that we will not have fair proceedings.

I think we can have fair proceedings, including letting lawyers help Haitians, without compromising the Government's interest in repatriating those who cannot meet a credible fear standard that they might be in danger if sent back.

More specifically, I think we ought to use Guantanamo and use it today. It is a land-based site that is available immediately. It was available last week. It was available last month. It was available the day President Clinton took office. And it was used by President Bush in a process that was not perfect but whereby we screened people on land and screened in about 30 percent of them. While we are trying to make arrangements with the Turks and Caicos or while we are looking for other land-based sites in the region for safe havens, we ought to use the land that we control, which is Guantanamo, even if it is on an interim basis.

I don't see any reason for doing these proceedings on boats, which is going to create a lot of uncertainty, if not allegations of unfairness, when Guantanamo is immediately available and immediately accessible to lawyers and others who want to help.

Now, finally, for those who cannot meet a credible fear, standard, as unhappy as it makes me, as much as it breaks my heart almost, I think it can be just to have a policy of repatriation of those who cannot meet a reasonable standard, but only if the proceedings are fair, and only if they have the opportunity to be assisted by lawyers and church groups and others who are volunteering at no expense to the Government to assist them, and only if we have in place in Haiti reasonable means to actually monitor what happens in Haiti and happens to those sent back.

I don't think we have those circumstances in place, but I think we can adopt a regional safe haven approach and protect many more Haitians from danger than the Clinton administration policy will do, as I imagine it playing out, without admitting Haitians under current circumstances to the United States.

Thank you.

Mr. MAZZOLI. Well, thank you very much.

[The prepared statement of Mr. Swartz follows:]

PREPARED STATEMENT OF RICK SWARTZ, ESQ., SWARTZ &  
ASSOCIATES, WASHINGTON, DC

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify today on HR 3663, HR 4114, HR 4264, and related issues concerning Haitian asylum seekers.

My testimony today is organized in six parts:

- Summary
- Background
- Facts
- Issues
- Analysis of Clinton policy, pending bills and other options.
- Conclusion and Recommendations

Summary

For over 15 years, Haitian refugees have been subjected to extraordinary and discriminatory policies, while certain other groups have enjoyed the benefit of favorable refugee policies adopted by Congress or by executive action. It is unprecedented in our history to blockade a country to prevent its people from fleeing widespread human rights abuses and violence. It is important to American values and international leadership on refugees and human rights that President Clinton finally has decided to end the policy of interdiction and automatic repatriation.

U.S. policy towards Haitian nationals seeking safehaven, asylum, and refugee protection is of importance not only as a humanitarian challenge, but also because of its implications for the practices of other countries worldwide and race and ethnic relations in the United States. It is difficult for the United States to persuade other countries to provide temporary safehaven or fair asylum procedures when we practice automatic repatriation of all Haitians, despite the widespread violence and persecution in Haiti. It is difficult to persuade American citizens to provide safehaven and refuge to others in need when it is widely believed that Haitians are rejected, at least in part, because of their race.

1. Equity requires that Haitians should be treated like others in similar situations. U.S. policy for Haitian refugees can and should be equally applied to Cuban nationals and others who may flee for the United States by boat. The Cuban Adjustment Act only applies to Cuban nationals after they have been in the United States for one year. The reformulation of the policy towards Haitians should anticipate that the same policies can and should be applied to others on a non discriminatory basis.

2. The new Clinton policy is a positive step, but flawed. Based on press accounts and information from U.S. government officials, the Clinton Administration's plans to implement a new policy towards Haitians will not result in fair proceedings and equal treatment. "Screening" will take place on boats without adequate assurances that Haitian will have access to the assistance of voluntary agencies and volunteer lawyers to help them prepare their claims. A strict "well founded fear" standard will be applied, although President Bush applied a more relaxed "credible fear standard" at Guantanamo, and the Clinton administration and Congress have adopted a "credible fear standard" for certain religious minorities in the former Soviet Union and Indochina seeking admission to the United States as refugees.

3. More Haitians are in danger and fewer will flee than the Government admits. An objective assessment of the facts indicates that more Haitians face a credible danger of retaliation, violence and persecution than the U. S. government will admit, and that far fewer Haitians are likely to flee by boat than the government, Florida officials and anti-immigration groups claim. In January of 1993 the State Department and even President Clinton asserted that over 150,000 might imminently depart, but at the same time Coast Guard officials at Port of Prince stated that at most several thousands might depart over a number of weeks.

4. Guantanamo should be used immediately for land based screening. Guantanamo Bay is immediately available for land processing of Haitians, as well as Cubans and other who might flee by boat in the future. Guantanamo should be used immediately during an interim period while other land based sights in the region are secured. Approximately 12,500 Haitians were housed at Guantanamo in 1991-1992, and facilities could be significantly expanded. I understand that the Pentagon prefers the use of Guantanamo to shipboard screening.

5. Safe Haven in the region should be granted to those who meet a credible fear standard in fair proceedings. The best policy, in the national interest, would be to use a "credible fear standard" to screen Haitians and others on land with the full assistance of voluntary agencies and lawyers to help them prepare their claims. Those who cannot meet

this standard after fair proceedings could be repatriated, but only if significant safeguards and monitoring capability are in place in Haiti to ensure protection. Those "screened in" should be provided safehaven in the region or until democracy has been restored and it is safe to return.

6. In Country Processing must be improved dramatically. Persons who flee by boat can be protected in the region without admission to the United States, thus discouraging boat departure of those who are not in danger but are seeking admission to the United States. The in-country processing program must be dramatically improved to provide a fair process for Haitians who should be allowed to seek admission to the United States through a fair in-country processing program. Again, under current law a similar program can and should be applied to other nationalities in similar circumstances.

7. Temporary legal status should be granted Haitians now in the U. S. and impact aid provided to local governments. Haitians currently in the United States should be accorded temporary legal status, for example humanitarian parole, which was granted Haitians "screened in" at Guantanamo under President Bush. The federal government should provide impact aid for reimbursement for state and localities where Haitians and others in similar situations reside in significant numbers.

#### A. Background

Since 1990 I have run a public policy consulting firm addressing trade, tax, economic and international policy issues including migration matters.

I have worked on Haitian refugee issues for over 15 years. From 1978-1982, while an attorney for the Lawyers Committee for Civil Rights Under the Law, I was co-counsel in *Haitian Refugee Center v. Civiletti*. Brought on behalf of over 4,000 Haitians who had claimed political asylum, this case was the first major class action to protect the rights and ensure due process for Haitian nationals seeking political asylum.

Judge James Lawrence King, a Nixon appointment to the U.S. District Court for Southern Florida, ruled that the U.S. government intentionally had discriminated against Haitians, violated their due process and equal protection rights, and intentionally violated a range of statutory rights related to assistance of counsel and arbitrary denial of legitimate asylum applications. Judge King made substantial findings of fact, including determinations that Haitians deported to their homeland faced a "pattern of persecution" and that the State Department's reports to the contrary were "unworthy of belief".

In 1980, I worked closely with the Carter White House to develop the "Cuban

Haitian Entrant Program", which provided temporary status to approximately 35,000 Haitians and over 100,000 Cubans who had come to the United States from the port of Mariel. I also worked closely with Congressman Fascell and Senator Stone to draft and secure enactment of legislation which provided federal social service eligibility for Cuban and Haitian nationals, and federal reimbursement to states and localities.

In 1982 I founded the National Immigration Forum and served as its President until 1990. During this period I worked on IRCA, including provisions related to Cubans and Haitians, and helped Congressman Moakley establish the Temporary Protected Status provisions of the 1990 Immigration Act. I worked closely with Nicaraguans and Chinese nationals seeking temporary protection, as well as Salvadorans.

More recently, in 1991-92 I advised informally the Bush White House on matters related to Haitian refugees, working with Charles Kolb, Deputy Assistant to President Bush for Domestic Policy. I urged the development of "credible fear screening" of Haitians at Guantanamo Bay, and strongly objected when President Bush issued his May 24, 1992 Executive Order requiring the automatic repatriation of all Haitians interdicted by U.S. forces.

During 1992, I informally advised the Clinton campaign on Haitian refugees working with Sandy Berger, now Deputy National Security Advisor. During the transition I had a number of meetings with senior officials, and strongly protested the decision to extend and expand the policy of automatic repatriation. Since then I have worked with others to urge President Clinton to rescind this policy and to provide Haitians a full and fair opportunity to seek protection from the widespread violence and the human rights abuses that have terrorized the Haitian people since the September 30, 1992 coup and forced exile of President Aristide.

Throughout these activities, I have consulted closely with a range of organizations and interests, including senior officials from the State of Florida, Miami and Dade county. I have not formally been involved in litigation on behalf of the Haitian since 1982. The work I have undertaken the past 20 months has been on a pro-bono basis.

#### B. Facts:

For years, sharp disagreement over the facts has complicated policy disputes regarding Haitian refugees. In 1980 federal courts found that deported Haitians faced a pattern of persecution, rejecting State Department testimony there was "no" evidence of persecution as "unworthy of belief".

Under the Bush administration, the State Department contended that very few Haitians faced persecution, but INS adjudicators found that nearly one third, or over 10,000 of the 36,000 Haitians screened at Guantanamo had a "credible fear of persecution" and should not be repatriated. In early 1993, President Clinton asserted that 150,000 Haitians were preparing to leave Haiti by boat in order to justify reversal of his campaign position, but the head of the Coast Guard in Port of Prince stated at the same time that at most several thousand Haitians might depart by boat over a period of weeks.

For the past two years the State Department has asserted that "in country processing" in Haiti provides a fair opportunity to seek refugee protection and admission to the United States. But, human rights groups have documented clearly that this program is a maze which denies most applicants an opportunity even to be interviewed, and discourages those in greatest danger from coming forward. See attachments.

Some politicians and anti-immigrant groups warn that if we don't turn back all Haitians a million or more will seek entry to the United States. But in the 8 months between the September 30, 1991 coup and the May 24, 1992 Bush Executive Order, approximately 36,000 Haitians were interdicted. And while President Aristide was in office, more Haitians returned to Haiti than left.

### C. Issues:

The primary policy issue is how to protect from persecution Haitians who have a legitimate fear, ensure fair and equal treatment compared to other groups, and discourage boat departures by persons who are not in danger.

Related issues involve the implications of refugee policy towards Haitians for Cubans and others in the region who have or may flee their homelands by boat, and how to maintain U.S. credibility and leadership worldwide on refugee matters. Also relevant are the capacity of local communities to resettle Haitians and others who may be admitted, and the fiscal costs of interdiction and related activities.

Of particular importance is the need to end and reform policies which discriminate against Haitians and create strong perceptions that they are denied a fair opportunity to seek asylum because of their race.

### D. Analysis of Clinton policies, pending bills and alternatives:

I applaud President Clinton's recent decision to end automatic repatriation and institute hearings in the region for Haitians who flee by boat.

I regret, however, that the Administration's implementation plans will subject Haitians to a higher substantive standard than President Bush applied to Haitians screened at Guantanamo, that Haitians will be denied effective assistance of lawyers and others in preparing their claims, and that the administration has rejected proposals to establish a safehaven in the region rather than a highly restrictive refugee admissions program.

I support strongly those provisions of pending bills which would end the policy of automatic repatriation and provide temporary status, at least to Haitian nationals currently in the United States. This might best be accomplished through extension of "humanitarian parole" as well as extension of temporary protected status, or TPS. I also support provisions of Congresswoman Meek's bill providing impact assistant to states and localities.

The current in-country processing (ICP) system needs fundamental reform, for the reasons set forth in the attached report from U.S. Committee for Refugees and similar reports America's Watch, the National Coalition for Haitian Refugees and the American Immigration Law Foundation. As currently structured and managed, ICP is not a credible alternative to boat departures for Haitians in danger, except for a small and select number who "may be" given a chance simply to be interviewed.

#### E. Conclusion and Recommendations:

The policy alternative I support has been set forth in letters to and meetings with the Clinton administration since the transition. For example, attached is a December 1, 1992 letter to President Clinton signed by over 15 major American organizations including the AFL-CIO, NAACP and Transafrica. The ideas this letter presents have been reiterated in communications with the Administration over the past several months.

The key proposal is to establish a safehaven enclave at Guantanamo Bay and other landsites where Haitians can be provided protection, without admission to the United States. Such safehaven should be provided to all unless and until it is clearly safe to return to Haiti, or undeniably fair procedures are established that might justify repatriation of those Haitians who, in a fair proceeding, cannot establish they would face any danger if returned.

Fair procedures require a land based operation where voluntary agencies and volunteer attorneys, as well as UNHCR, can provide effective assistance to Haitians to fully develop an application for safehaven protection. The substantive standard should be a "credible fear test", akin to that used by the Bush administration for Guantanamo screening and the standard the Congress has provided, with support from the Bush and Clinton administrations, under the "Lautenberg Amendment" related to refugee processing of

religious minorities from the former Soviet Union and Indochina.

The virtue of this approach is that it would protect more Haitians, not result in admission to the United States for an indefinite period, discourage boat departures of persons who are not in danger but seek to reach the United States, and reduce if not eliminate discrimination against Haitians compared to treatment of certain other groups.

Another advantage is that such a policy could equally be applied to Cubans and others in the Caribbean who may flee by boat, reducing the risk that the United States may face another Mariel crisis or a significant exodus from the Dominican Republic, given its potential for political instability.

In this regard, it is important to note that the Cuban Adjustment Act only provides special rights to Cuban nationals after they have been in the United States for one year. It does not prohibit a policy, as outlined above, where Cuban as well as Haitian boat people would be protected in a safehaven enclave in the region.

Finally, the historical record demonstrates clearly that the best solution to the Haitian refugee issue is the restoration of President Aristide, democratic government and civic peace and stability in Haiti.



## National Coalition For HAITIAN REFUGEES

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December 1, 1992

Bill Clinton  
 President-Elect  
 Little Rock, Arkansas

Dear President-Elect Clinton,

For years our organizations and communities have supported fair treatment of Haitian asylum-seekers, human rights and democracy in Haiti. Many of us are directly involved in providing services to Haitian refugees and other assistance within Haiti, and worldwide.

You have properly recognized that a key element in solving the Haitian refugee problem is the prompt restoration of the elected government in Haiti. Indeed, the current tragedy of Haitians fleeing their homeland in small boats began in September 1991, when the Haitian military overthrew the country's first democratically-elected president, Jean-Bertrand Aristide. As political terror spread in Haiti, more than 38,000 risked their lives at sea in the first six months following the coup d'état. In contrast, under the Aristide presidency, few Haitians left.

We believe that if your administration signals early and clearly its determination to achieve the prompt re-establishment of the democratically-elected government of Haiti, it will be able to avert a renewed and uncontrolled refugee outflow from Haiti.

The immediate appointment of a special envoy of high visibility and broad powers to maximize diplomatic efforts would be such a signal. The envoy's mandate should include involving the international community, including the UN, the OAS, the European community and nations in the region, in the implementation of measures to restore the democratic government, institute protection for human rights in Haiti, and address the refugee problem.

With respect to Haitian refugee protection and processing imperatives, we believe that there are interim steps that, consistent with international law and standards, could immediately be implemented.

16 East 42nd Street, 3rd Floor ○ New York, NY 10017 ○ (212) 867-0020 ○ FAX (212) 86

These interim steps should include the following:

- **END AUTOMATIC REPATRIATION:** Rescind immediately President Bush's Executive Order No. 12,807 which dictates automatic repatriation without a determination of eligibility for asylum or refugee status in the U.S. or elsewhere.
- **EXPAND IN-COUNTRY REFUGEE PROCESSING:** Establish additional sites in each Haitian province to process requests for refugees status. The only site in which processing is currently done is in Port-au-Prince, Haiti's capital. Experienced U.S. voluntary agencies, assisted by international human rights monitors, should process the refugee claims for adjudication by INS officers. If such processing is conducted fairly with attendant procedural safeguards, it will provide a safe and realistic alternative for those who otherwise would flee the country in unseaworthy vessels. Other nations such as France and Canada should be strongly encouraged to adopt a similar approach and to cooperate in providing protection.
- **INCREASE NUMBER OF REFUGEE SLOTS FOR HAITIANS:** In-country processing should be promoted as a meaningful and practical option. An increased allocation of refugee admissions from Haiti should be set, in consultation with Congress.
- **OPEN UP A SAFE HAVEN ENCLAVE IN THE CARIBBEAN BASIN:** If the Coast Guard continues to be authorized to intercept Haitian boat people on the high seas, interviews for refugee eligibility must be conducted on land. Coast Guard cutter processing is simply not viable as demonstrated by a screening rejection rate of 99.9% since 1981.

International cooperation and burden-sharing should be secured to address refugee protection. We recommend that, in consultation with other countries in the region, a "safe haven enclave" be established for fleeing Haitians. Such a safe haven enclave could be located in a third country or countries, if necessary at Guantanamo, or as a last resort, within Haiti if international protection is assured. Such a measure could be coupled with the announcement that no processing for refugee resettlement will take place at this site for at least six months, at which time a review of refugee processing in light of country conditions and progress towards the restoration of democracy in Haiti will occur. Accordingly, it should be announced that this safe haven site:

- Will only tend to the basic humanitarian needs of those benefitting from temporary safe haven.
  - Does not entitle any of its occupants to admission in the United States or in any other country; nor might it ever lead to admission anywhere;
  - Will provide for the repatriation under UNHCR auspices of those who voluntarily wish to return home.
  - Is an interim measure adopted as part of the effort to restore democracy in Haiti.
- **EXPAND VOA'S HAITIAN CREOLE PROGRAMMING:** The United States should use the Voice of America (VOA) and other communication channels repeatedly to inform Haitians of your commitment to democracy, human rights, and the policies outlined above.

- **SETTLE PENDING LITIGATION AND UPHOLD THE LAW:** Voluntarily dismiss and settle pending litigation challenging the Bush Administration's Haitian refugee policy. Admit the small numbers of refugees now held in Guantanamo. The courts repeatedly have invalidated Reagan and Bush Administration policies toward Haitians and other asylum-seekers. It is essential to establish policies that uphold statutory, constitutional and international requirements of *non-refoulement*, fair procedures and equal treatment.
- **PROVIDE TEMPORARY STATUS TO HAITIANS CURRENTLY IN THE U.S.:** Grant Cuban-Haitian Entrant status to the 11,000 Haitian refugees paroled into the U.S. after the coup d'etat and suspend their pending asylum and exclusion proceedings. Appropriate temporary status to other Haitians currently in the U.S. should also be provided. To assist local communities and provide essential services, existing emergency immigration funds should be released. In addition to providing humanitarian relief, these measures will also alleviate pressure on an already overburdened asylum system.

We believe that these initiatives can achieve an effective and just resolution of many of the immediate issues involving Haitian refugees. The American people will support these policies if the facts and values at stake are frankly and clearly explained. Haitians themselves will have more faith in the United States' determination to support democratic life in Haiti.

We respectfully request an opportunity to discuss these matters with you or your representatives as soon as conveniently possible. We recognize that statements, consideration of options and actions by our organizations and your Administration can have immediate and long-term consequences. We are prepared to assist in any way we can.

We look forward to a discussion of these matters. Your staff may contact Jocelyn McCalla, executive director of the National Coalition for Haitian Refugees at (212) 867-0020, for further information and/or to arrange follow-up meetings.

Sincerely,

Organizations which have endorsed this letter include:

AFL-CIO  
 Amalgamated Clothing & Textiles Workers Union  
 American Council for Nationalities Services  
 American Friends Service Committee  
 American Immigration Lawyers Association  
 American Jewish Committee  
 Church World Service  
 Florida Rural Legal Services (coordinating all Haitian-Guantanamo cases in Florida)  
 Human Rights Watch  
 International Ladies Garment Workers Union  
 International Rescue Committee  
 Lawyers Committee for Human Rights  
 Lutheran Immigration and Refugee Services  
 National Association for the Advancement of Colored People  
 National Coalition for Haitian Refugees  
 National Council of La Raza  
 TransAfrica  
 U.S. Committee for Refugees

# The Miami Herald

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## Let Haitians have counsel

**T**wo days from now, the economic noose encircling Haiti will grow both tighter and broader. The United Nations Security Council's worldwide embargo on commerce with Haiti starts on Saturday. It could prostrate an economy and a people already on their knees.

Look for the global embargo to cause the effect unintended by either the Security Council or the United States, which pushed for it. For the embargo follows President Clinton's May 8 announcement that the United States soon will resume shipboard asylum hearings for interdicted Haitian refugees.

The two events dovetail in a way perhaps also unintended. Mr. Clinton's promise of hearings for Haitians, hence a chance to win political asylum, caused a surge in interdictions. In the five days ended on Tuesday, the Coast Guard returned 768 Haitians without hearings. How much greater might the exodus be now that, commendably, the Immigration and Naturalization Service will grant Haitians hearings?

This embargo and the hope of asylum will give Haitians even more impetus to flee. Haiti's masses, poor and uneducated, cannot escape the economic garrote even if their army and its thuggish civilian "attaches" might.

Army commander Lt. Gen. Raoul Cedras got a deserved upbraiding on Monday. Robert Malval, Haiti's caretaker prime minister until the "president" installed last week dismissed him, accused General Cedras of disgracing his uniform. "The time has come for you to leave so that a new dawn may break for the Haitian people," Mr. Malval said. "Morally, you are not worthy of the title of commander in chief. . . ."

### IN ASYLUM SCREENINGS It's crucial because they'll have to meet the toughest test for asylum, not the easier one applied to Haitians at Guantanamo.

But INS Commissioner Doris Meissner yesterday said that the hearings won't resume until "appropriate facilities have been established and qualified personnel assigned."

The hearings also will apply the toughest test for asylum, requiring Haitians to establish a "well-founded fear of persecution." Haitians detained at Guantanamo a couple of years ago had to meet only a "credible fear" standard to gain admittance to the United States to pursue asylum claims.

No more. Detained Haitians will have their status determined *outside* U.S. territory, on land if a site can be found, aboard ship if not. Those deemed true refugees "will be resettled or provided refuge outside Haiti, not necessarily in the United States," the INS said yesterday. "Those who do not qualify will be returned to Haiti."

The finality of this one-stop procedure is a compelling reason for President Clinton to let the Haitians have legal counsel at their hearings. U.S. law doesn't require it for asylum hearings held outside U.S. territory. But America's moral conscience certainly should require it.

President Clinton did the right thing by reinstating hearings for all interdicted Haitians. He was morally right even if his action caused, as it seems to have, the past week's spurt in Haitians fleeing. He now should do the next morally right thing and let the Haitians have legal counsel at their hearings.

Strong words, those. And brave: Many a Haitian has died for uttering lesser truths more mildly.

The first chartered ship on which asylum hearings could take place, the Ukrainian vessel *Gruziya*, will be available on Monday.

# Refugee Reports

A News Service of the U.S. Committee for Refugees  
1717 Massachusetts Avenue NW, Suite 701 Washington, DC 20036 (202) 347-3507

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May 31, 1994

## CHANGING U.S.-HAITIAN REFUGEE POLICY: NEW IN-COUNTRY PROCESSING SYSTEM; SHIPBOARD ADJUDICATIONS RESUME

*Refugee Reports* co-editor Bill Frelick recently returned from a site visit to Haiti and the Dominican Republic. He reports on recent developments in the in-country refugee processing program.

President Clinton caused a stir in Haiti, as well as the United States, on May 8, when he announced his intention to change the policy of summarily returning Haitians interdicted on the high seas. Saying that human rights violations in Haiti had reached "alarming new proportions," the President announced that he would revise the policy on repatriations to "shield the most vulnerable Haitians."

Clinton said, however, that the United States would not be "broadening the criteria" in determining who is a refugee and left vague most details of the new procedure.

The United States also intensified its pressure on the military regime in Haiti to step down, imposing a fuller commercial embargo on the country with exceptions only for food, medicine, and propane gas for cooking, and hinting that military intervention was now a viable option if other measures failed to dislodge the de facto government.

*Refugee Reports* went to Haiti in May, arriving shortly after the President's announcement when there was still uncertainty, even among U.S. officials, about the new refugee policy.

There are, in effect, two refugee policies at issue. While President Clinton addressed the question of how to handle asylum seekers aboard boats interdicted on the high seas, the other program, about which less was being said, involves the procedure for identifying prospective refugee claimants from within Haiti and admitting them into the United States as part of the U.S. overseas refugee resettlement program. The latter program was undergoing significant change even as the President was announcing his intention to change the former.

The new procedure for in-country refugee processing had only been off the ground since February 8, and, at the time of the *Refugee Reports* visit, officials were still

adjusting to that change.

In-country processing (ICP) began in Haiti in February 1992. After a slow start (only 54 persons were admitted in FY 92; 1,307 in FY 93), the program became overwhelmed with applicants as human rights conditions plummeted in October 1993 with the failure of the Governors Island Agreement and the non-return of Haitian President Jean-Bertrand Aristide.

According to U.S. embassy sources, up to 800 persons a day approached the ICP at that time. Prospective applicants continued arriving in November and December at a rate of about 500 per day.

The program was also criticized by refugee rights advocates for its low approval rate. As of January 21, a total of 817 cases (as distinct from individuals) had been approved as refugees, and 9,827 denied, for an approval rate of 7.7 percent.

An interagency team headed by the National Security Council visited Haiti in January with the task of recommending better management of the program.

The team initiated several major changes in the way processing occurs. First, it said that all persons filling out preliminary questionnaires would be required to provide a photograph and identification document.

Second, for applicants in Port-au-Prince, the preliminary questionnaires would no longer be filled out at the downtown offices of the International Organization for Migration (IOM), but instead would be completed at the Rex Theater, a movie theater on one of the city's main squares.

Third, processing was to place emphasis on "referred cases," people recommended for the program from private agencies operating within Haiti.

Most fundamentally, however, the team decided to drop the system of placing applicants into three categories (Category A: high risk cases; Category B: cases with viable claims; and Category C: cases where no refugee claim is made). Under the old category system, A cases would have expedited interviews; B cases would be scheduled for interviews (usually, months after applying—in December 1993, interviews in Port-au-Prince were being scheduled for June 1994 and in Les Cayes for February 1995); and C cases would not be scheduled for interviews at all.

Under the new system, an IOM interview

would only be granted to persons meeting one of the five following criteria:

- senior and mid-level Aristide government officials;
- close Aristide associates;
- journalists and educational activists who have experienced significant and persistent harassment by the de facto authorities, or who have a credible fear because of their activities;
- high profile members of political/development/social organizations who have experienced significant and persistent harassment by the de facto authorities, or who have a credible fear because of their activities; and
- others of compelling concern to the United States and in immediate danger because of their actual or perceived political beliefs or activities.

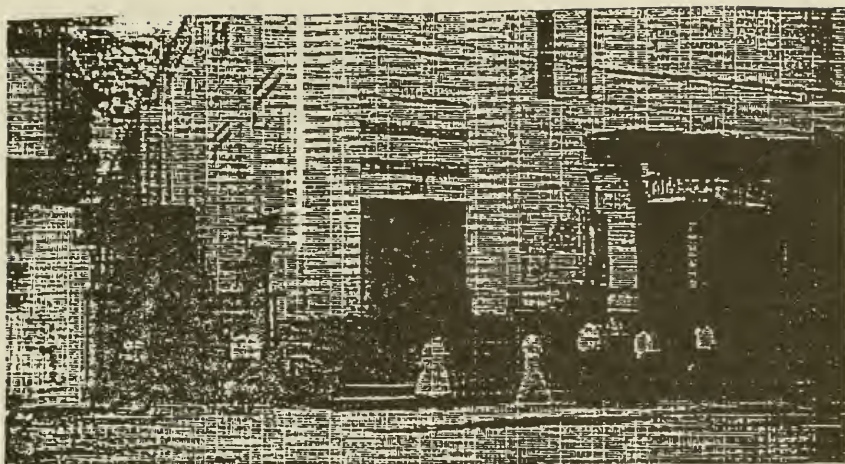
**Preliminary Questionnaires** As mentioned above, in Port-au-Prince, preliminary questionnaires are now filled out at the Rex Theater. Applicants who have a photograph and identification document are ushered into the movie theater early in the morning and given an orientation session within the darkened theater itself.

One-by-one the applicants are then called into the theater lobby where form-fillers, locally hired Haitians, interview the applicants and fill out the preliminary questionnaires.

Perhaps due to the lack of electricity, the form-fillers make use of the natural sunshine coming in through the gridwork separating the lobby from the sidewalk outside. Anyone standing on the sidewalk can see the goings on inside the lobby (there is no glass in the windows), which is on the same level as the street. Both the applicants and the locally hired form-fillers are identifiable to persons standing outside the building.

On the day *Refugee Reports* visited, people were casually standing about on the sidewalk outside the theater. Directly across from the theater are reserved parking places for the police. Across from the Rex Theater is a square; on the other side of the square is another military facility.

Although when the Rex Theater first opened for refugee processing, about 200 people



The Rex Theater in Port-au-Prince, site where in-country refugee processing applicants first fill out preliminary questionnaires. Form-filling is conducted in the theater lobby (behind the large, gridded doorways) on the same level as passersby on the street. Photo: USCR/B. Frelick

per day were showing up, the number in May was about 60 to 70 per day.

On the day of the *Refugee Reports* visit, more than usual showed up because it was a holiday week. Of about 100 persons who came to the theater, about 90 were turned away because they lacked a photograph and/or identification document. About 65 persons were admitted to the theater for the orientation session and to fill out their preliminary questionnaires.

Since the beginning of in-country processing in February 1992, 54,219 preliminary questionnaires have been filled out, representing nearly 105,000 individuals.

Preliminary Questionnaires (through April 1994)	Cases	Individuals
Port-au-Prince/IOM	45,094	84,405
Les Cayes/World Relief	7,269	18,085
Cap Haïtien/U.S. Cath. Conf.	1,656	3,432
TOTAL	54,219	105,942

"Vetting" of Preliminary Questionnaires Under the new system, the preliminary question-

naires are "vetted" by part-time, contract employees of the U.S. embassy according to whether applicants meet any of the five new criteria. The questionnaires are normally vetted in a single day.

The vetting is done on the basis of the paper questionnaire form itself without a face-to-face interview with the applicant.

Under the new system about 17 percent of the cases are being vetted in in Port-au-Prince. Officials working in the program call this being "screened in."

B category cases that had been scheduled for interviews, but who had not yet been interviewed by the time the new system went into effect, are being vetted retroactively. Cases are being "declassified" if they do not meet the higher vetting criteria, and their interviews are cancelled. This includes persons who were considered earlier to have viable claims to refugee status on the basis of a well-founded fear of persecution, but who are not now considered high profile enough to warrant an interview.

**RPC Interview** If the applicant is vetted in, he or she then becomes eligible to come to one of three Refugee Processing Centers (RPCs) operated by the Intergovernmental Organization for Migration in Port-au-Prince (which began working for the ICP in October 1992); the U.S. Catholic Conference in Cap-Haitien (which started in May 1993); or World Relief in Les Cayes (which started in April 1993).

At this stage in the process, several more forms are filled out, largely consisting of demographic information.

On the applicant's third official trip in pursuit of refugee status (assuming he or she had the requisite photograph and identification on the first visit), he or she has a "case presentation interview" with an RPC caseworker. In Port-au-Prince, this interview takes place at a bank building in the downtown area, about a block from military headquarters. In order to be admitted past the locked gate and private security guards, applicants must produce an appointment slip. After passing through the outside door, the applicant must walk up several flights of stairs, and pass through a metal detector and several more private security guards before being admitted to the IOM office. Another locked door admits the applicant to one of two waiting rooms. The inner office is also locked.

In Les Cayes, the RPC is located on rue Gabon, where, a short distance down the street, the Headquarters of the Military Department of the South is also situated.

At this interview, generally the lengthiest one during the process—from a half hour to two hours, usually without an interpreter (since the RPC caseworkers speak Creole)—the RPC caseworker attempts to prepare the applicant for the INS interview, and to determine how serious the case might be in terms of scheduling the interview for the INS adjudicator. "The person would at least have to have been arrested once to get an INS interview," said a source involved in the process.

A U.S. embassy source involved in the refugee program said, "We decide who gets placed into line [for an INS interview] and how to move cases that are INS-approved. If you are in a neighborhood that has been victimized en masse, you will not have a chance under U.S. law. You need to show individual targeting."

**The INS Interview** On the fourth official visit, the applicant is interviewed by an INS officer to determine whether he or she qualifies as a refugee according to the standard of a "well-founded fear of persecution" on account of race, religion, nationality, membership in a particular social group, or political opinion. The INS officers use interpreters and circuit ride to the Les Cayes and Cap-Haitien RPCs.

Until the recent procedural changes, INS adjudicators generally rotated into Haiti on 60-day details. Under the new system, they are to spend six months in the country. There are usually six to ten INS adjudicators in Haiti at any one time, and the officers average six cases per day after they have completed their training period. They are drawn from all parts of the INS, and generally do not come from the asylum corps. They receive a week of training in Washington before arriving, and are considered to be in training for their first week after arrival.

Short-term "quality assurance" officers--INS attorneys--review each decision. It generally takes about three-to-four weeks for a decision to go through quality assurance and for a grant or denial to be issued. The final INS decision is given to the RPC to deliver.

Since the postal system in Haiti is poor to nonexistent, however, applicants, in effect, have to re-approach the RPC to find out the results of their interviews, for at least their fifth visit, and perhaps more times if the decision has not yet been rendered.

The INS says that it conducts off-site interviews for persons who are in too great a danger to come to the offices. When pressed on the question, an INS source said that more than 10 and less than 100 such interviews had taken place in the past year.

Persons who are denied by the INS can write a letter asking for reconsideration. Those letters are reviewed and an answer is usually provided within one-to-five months.

In the two months since the new vetting system has gone into effect, the approval rate at the INS interview has risen from 7.7 percent to about 30 percent.

While that appears at first glance to be a significant increase, the vetting criteria themselves represent a standard higher than that of a



## HAITIANS IN THE DOMINICAN REPUBLIC

While international attention has been focused on the movement of goods from the Dominican Republic (DR) into Haiti in violation of the international embargo, less attention has been paid to the movement of Haitians into the Dominican Republic.

There are no accurate statistics on the number of Haitians living in the DR. Estimates range from 100,000 to one million.

Since the September 1991 coup d'état that overthrew President Jean-Bertrand Aristide, an estimated 30,000 Haitians have entered the DR, including some 2,500 to 3,000 since the abortive return of President Aristide in October 1993.

The question of Haiti, including the matter of Haitians living in the DR, was one of the hot issues in the Dominican presidential election, which occurred during the *Refugee Reports* visit.

Supporters of President Joaquín Balaguer accused his main challenger, José Francisco Peña Gómez, who is black, of secretly being a Haitian intent on merging the two countries into one.

Although final electoral results were still in dispute at the time *Refugee Reports* left, it appeared as though the Balaguer government would retain its hold on the presidency.

*Refugee Reports* visited four of the *bateyes*, the sugar cane plantations where Haitian migrant laborers live and work. Conditions varied among them. Some of the migrant camps, such as the Reventon *batey*, appeared in good order, with electricity, schools, and small garden plots for the residents.

Others, such as Mamey and San Isidro, were far less developed, lacking minimal sanitation, with residents looking malnourished, and living conditions, squalid and overcrowded.

An estimated 80 percent of *batey* residents have no legal documents of any kind, which makes them vulnerable to labor exploitation and other abuses.

Distinguishing economic migrants from refugees who may have fled persecution or the threat of persecution is difficult; and, in the *bateyes*, at least, no attempt is made to identify persons who might be in refugee-like circumstances.

A priest who has been organizing parishes in the border region to provide assistance to Haitians, said, "For many, many years there has been the problem of cane workers. And this is different than the political causes of flight." He said, how-

ever, that many of these people were summarily deported by the Balaguer government in 1991 as part of its efforts to destabilize the Aristide regime. "Many of them felt wounded in dignity and spirit," he said, "and said they would never come back. But since the coup, with the repression, these same people were obliged to return in great numbers."

The priest said, "It is so difficult [for Haitian asylum seekers] to convince UNHCR that they are refugees. It is lamentable that UNHCR does not recognize the changing profile of the refugees—that refugees don't have to wear suits and ties, but can be peasant leaders persecuted for their political activities."

UNHCR has maintained an office in Santo Domingo since late 1992. The office, in an upscale neighborhood, is located near a major police station. To enter the building, one must pass through four separate locked gates.

On the day of *Refugee Reports*' visit, there were two private security guards and three uniformed and armed members of the Dominican National Police stationed in the courtyard and inside the UNHCR building. At the time of the visit, not a single Haitian was present.

Since the 1991 coup, a total of 2,762 Haitians have sought refugee status at the UNHCR office in Santo Domingo, as of May 18, of whom 1,346 have been recognized under UNHCR's mandate.

However, the Dominican government agency responsible for refugees, CONARE, has only granted refugee status to 35 persons. The last time CONARE met to consider cases was in September 1993.

Part of the reason for the tight security is that the office has been occupied four times by irate Haitians. This happened most recently on April 26. The office was occupied for five days by a group of 67 persons who wanted blanket recognition for Haitians in the DR as refugees, and wanted improved financial assistance from UNHCR for recognized refugees.

Because the incident played into the heightened tensions of Dominican politics, some observers speculated that the protesters were infiltrated by agents provocateurs who wanted to stir up anti-Haitian sentiment during the election campaign.

(For further information, see USCR's June 1992 issue paper, *Stone of Refuge: Haitian Refugees in the Dominican Republic*, available from USCR for \$4.00.)

well-founded fear of persecution, suggesting that the 70 percent of those being denied are found by the INS not to be credible.

An INS source in Port-au-Prince said that the training of the adjudicators—conducted by INS lawyers—focuses on the question of credibility. The source said that any documents produced by the applicants are unreliable, and that, therefore, "All we have to go on is what they say."

When asked whether nongovernmental human rights reports on Haiti are circulated among INS officers, the source said, "We try to circulate them when we get them. We don't have a copy machine that works."

**INS-Approved Cases** If approved by the INS, applicants must then go through standard refugee processing procedures for medical clearance, sponsorship assurance, issuance of Haitian passports and U.S. visas, and travel arrangements. This is done by the IOM office in Port-au-Prince, so that persons living closer to the Cap Haitien or Les Cayes offices either have to travel back and forth to Port-au-Prince multiple times, or find a place to stay there.

According to the Embassy, in exceptional cases, this whole process can occur in seven or eight days. At the time of the mid-May visit, the Embassy said that lower priority cases were being scheduled for interviews in early June.

At the time of the visit, the Embassy said that more than 600 INS-approved cases were in the pipeline awaiting departure.

Moving approved cases is complicated by several factors. At this point, the RPCs have to figure out the number of "family add-ons" to the approved refugee. This is complicated by the large number of common-law marriages in Haiti, and by male refugees who may want to bring their children born to different mothers.

It has also been found at the time of the medical examinations that about 6 percent of the INS-approved cases are HIV-positive. IOM said that it needs to receive supporting documents from sponsoring agencies in the United States for these cases. The Administrative Appeals Unit at the INS is currently reviewing these cases.

Obtaining a Haitian passport is also tricky, and Haitian sources told *Refugee Reports* that some would-be refugee claimants do not enter the system at all because they are convinced that even if approved they would have to then turn themselves into the authorities.

IOM has found a discrete way for passports to be issued without endangering the applicants.

**What Will Happen Aboard Ships?** By the time readers see this article, this question should be

answered. At the time of the visit, there was still uncertainty what the new procedure for persons interdicted on the high seas would entail.

It appeared clear, at that time, that full refugee determinations were intended, aboard ship, based on the standard of a "well-founded fear of persecution" rather than the "credible fear" standard used during the Bush Administration in the aftermath of the coup for screening persons in to the United States for full asylum adjudications.

It also appeared clear that, although the program would be structured according to overseas refugee admissions procedures, U.S. officials were not preparing to use the new vetting criteria currently being used for in-country processing. With all boat persons being eligible for an INS interview, and in-country applicants subjected to the strict vetting criteria, the predictable result will be higher INS approval rates for in-country applicants and lower approval rates for boat persons. This is a result U.S. officials are hoping for, as it is anticipated that the low shipboard approvals (and higher ICP approvals) will deter would-be boat people from embarking on the risky sea journey.

It was also suggested that the U.S. government would be prepared to admit refugees if no other countries show a willingness to admit them. It did not appear that the regional ceiling on the number of refugees that can be admitted would be an obstacle, as the President would be able to request emergency admissions numbers if the situation so requires.

Although the details of its involvement have not been divulged, it appeared that the UN High Commissioner for Refugees would participate in the program, probably assisting in training of adjudicators, monitoring the process, counseling Haitian asylum seekers prior to their INS interviews, seeking third country partners for resettlement, and monitoring the repatriation of screened-out cases.

U.S. officials appeared to reject the idea of a safe haven in the Caribbean, preferring to adjudicate cases, resettle recognized refugees, and return those not meeting refugee criteria to Haiti. It looked as though cases would be adjudicated on board a ship that would be anchored in the port of a third country; a hospital ship was being outfitted to accommodate the anticipated asylum seekers.

At the time of the *Refugee Reports* visit, the National Security Council was briefing a group of NGOs in Washington, and said that they anticipated that only 5 percent of the boat asylum seekers would be approved as refugees.

In any event, the new procedure, not yet off the ground, or, in the water, as the case may be, was still "fluid" and could yet develop differently.

Mr. MAZZOLI. And thank all of you gentlemen. Excellent testimonies.

Let me just yield myself a couple of minutes, and if my colleague wishes to ask questions he is certainly welcome.

It was kind of interested, the sort of underlying byplay between Mr. Stein and Mr. Swartz in the sense that Mr. Stein was saying that there is a need to internationalize and multilateralize these problems, and I think that Mr. Swartz said somewhat the same thing but said let's use Guantanamo.

Well, one of the problems, I guess, is—I am not part of this administration, but one of the problems, I guess, is that Guantanamo is U.S. land, U.S. soil, and because of the way our asylum laws work, once you land somebody on U.S. soil there are a range of—or there is a range of rights that somehow trigger which could complicate the process of having what I would consider to be fair and reasonable but not extensive and lengthy and duplicative kinds of hearings.

I think that that probably is one of the driving reasons behind why the administration is going through all these contortions by having Ukrainian ships and setting them down in Kingston and talking to the Turks and Caicos Islands and what have you is because ultimately we are fearful, we are scared to death, we are paralyzed with fear about landing these people on anything that resembles U.S. soil.

So what goes down is so, one of my feelings is that a lot of our travail here would have been ended if we can ever change our asylum laws so that people have a fair hearing but they don't have multiple appeals and all of the other redtape.

And so until and unless we change those asylum laws, we will have these convoluted mechanisms that are almost ad hoc to try to satisfy these problems.

It seems to me that we would, if we were to take on the responsibility of the Haitians, whether at Guantanamo or whether anyplace, we then veer away from the idea that this is a regional problem. I think that is one of the other constraints on the administration.

If they do too much for themselves on U.S. land or U.S. possessions with U.S. people, I think we give it the texture of a U.S. problem, and I think the administration tries to insist that this is an international, or at least a regional problem.

So, it seems to me that we have additional problems here that we would not normally have. I would be happy to have some comments.

But I think that we have normal difficult situations any time land masses are within 80 or 90 miles of us, as in the case of Cuba. But those are really made much more difficult because of the way our laws are structured now. And if they weren't that way, we might have a little easier way.

Anyway, the two of you might address it and I have one other question.

Mr. SWARTZ. Briefly, if I may.

Mr. MAZZOLI. Certainly.

Mr. SWARTZ. I understand the analysis you are presenting and I have heard it from very high level administration officials over

the last several months. But I do think there are a couple of responses.

First, if you take that line of argument literally, what our executive branch is saying is that they are afraid of the laws of the land and the consequences of the laws of the land. And I am troubled, quite frankly, by a judgment, when it has been made by the President or the Attorney General or the General Counsel of INS that we can't use Guantanamo because our laws apply there and we don't want to be bound by our own laws.

Our Government leaders seem to argue, almost as a philosophical matter, we can't process Haitians on Guantanamo because our laws apply there and we don't want to be bound by our own laws. So, I am troubled by that.

Mr. MAZZOLI. You have got every right to be troubled.

Mr. SWARTZ. Secondly, what I am proposing, is that Guantanamo be used on an interim basis—in other words, you can use Guantanamo today while the Turks and Caicos are being set up. And so for those numbers of Haitians who may be processed today they have some extra rights because it is on Guantanamo. That doesn't bind you when you have land in an international setting.

And I do believe—this is probably the only thing I agree with FAIR on—that this is an international matter and we should be internationalizing responsibility.

Finally, if the administration had chosen to take something akin to the operation they have now worked out with the UNHCR for boats and Turks and Caicos, and have the UNHCR play the same role on Guantanamo and internationalize the operation, even if technically our laws may be controlling on what the U.S. Government does, that in the spirit of regionalizing the responsibility we could be using Guantanamo, even if technically that means somebody shouldn't be adjudicated until they have a right to get some help.

Mr. MAZZOLI. Good. Mr. Stein.

The whole question of internationalizing and at the same time having this ironical situation where we are afraid of our own laws, because we know that they grant too many appeals and too many rights and too many, multiple hearings and too much everything, and we know that in the case of a potential influx, a fairly large number, that it just—it is busting the system apart, so we say, "Well let's just avoid that by avoiding the system in the first place."

Mr. STEIN. Well, I couldn't agree more, of course. And the temporariness factor is really also an important element of our capacity to provide bona fide asylum.

Criminal lawyers when they are representing a criminal defendant always want a speedy trial. They want everything to happen very quickly. It preserves their client's rights, their fairness.

An immigration lawyer, on the other hand, has exactly the opposite motivation, particularly if the client's claim is weak. That if you have an extended process, then you can get de facto residence even if you never actually achieve a legal claims, or it may take years and then you can apply for suspension of deportation.

Marshall McLuhan once said about the media, "The medium is the message," and in immigration often the "process is the status."

Our asylum system doesn't work. It is broken. It can't work effectively with the procedural encumbrances that frayed it. So any large group of people coming into the country needing temporary succor cannot be effectively provided that temporary relief because there is no effective way of assuring departure when the time comes. That has undermined and emasculated our capacity to be generous when there are truly emergent conditions like we may see now in Haiti.

Internationalizing the obligation is key, and this implies not only providing large-scale facilities for projected dislocations in our hemisphere. We have several key hemisphere points where we can expect large-scale migration momentum and volatility over the next 5 years, but obviously in many other parts of the world as well. We have to plan for this possibility.

That when there is large-scale anarchy, civil violence, street thuggery, when you have a per capita income of \$300 a person and your labor force is growing by 50 percent every 5 years you have the seeds for a generalized anarchy that we are now seeing emerging in many parts of the world, including Haiti. Unless we internationalize the process for temporary large-scale financial commitments, for temporary housing, in countries around these high-risk regions, we are not going to be able to manage these kinds of flows.

Mr. MAZZOLI. Yes. I think that is interesting because we cannot internationalize this so long as there are laws in effect that make all of these people for whom we have every reason to want to give temporary relief our permanent responsibilities.

And that is what the law requires today. We cannot give temporary assistance. We can't give momentary pause in their problems, because once we do on anything that looks like or smells like or is attributed to be U.S. land, we then trigger this great response of laws and regulations and everything else. So in a way, if we could get to that underlying problem we might ease it.

Mr. McCalla, if you want to address that part of it.

Mr. MCCALLA. Yes. I wanted to address that part, and thank you for giving me the opportunity to do that.

With respect to the question of internationalizing the Haitian refugee issue, that it is not simply a U.S. problem but it is a problem in the region, which is a Caribbean problem. I believe that it is absolutely possible to do that, and let me say the following.

So far the administration in dealing with the current refugee crisis has reached out to the Governments of Jamaica and the Government of the Turks and Caicos, and it has been able to achieve some agreement with Jamaica and Turks and Caicos with respect to processing.

To my knowledge, those are the only two sovereign entities that have been approached by the administration, and so that leaves open the possibility that, in fact, there could be more cooperation from within the region if the administration reached out to other nations.

Mr. MAZZOLI. So there is potential you think? There could be more evidence of cooperation if that were the context?

Mr. MCCALLA. Absolutely. That was the first point.

The second point is what Mr. Swartz has alluded to, and, has recommended to the administration with regard to Haitian refu-

gees. That is, a policy of providing a safe haven, which eliminates the need for processing and all kinds of procedural safeguards.

The policy of providing safe haven on a temporary basis is the best course of action given that we all agree—the administration, the opposition and everybody else—agree that you have to be able to achieve a solution in Haiti that goes farther than the current approach a solution that basically brings back hope into Haiti and establishes democratic institutions strong enough to withstand political instability of the sort that we have witnessed in the past decade and moreover that gives the Haitians the capacity to build on the soil that they live on. And to us that is a fairly desirable objective on the part of both the Haitians and the American Government.

Mr. MAZZOLI. I am not really an expert at all in hemispheric politics.

But I think one of the problems that we have in getting regional cooperation is exactly the problem of what the United States has done earlier in its day when it invaded islands, from when it put its troops in place, and these countries want to shy away from that.

They want to shy away from any opportunity of having U.S. people on their soil or U.S. Armed Forces or paramilitary people on their shores. So I think that that is why with the first panel, the panel of Members, I just have a respectful difference with some of them on how quickly we ought to go to the military option.

Because it just seems to me that once we get our fingerprints in any country—we are even now still trying to extricate ourselves from Southeast Asia, and we have been out of there for 25 years and we are still trying to handle a refugee problem and the guilt problems and the national interest problems, all because our fingerprints are liberally strewn through Southeast Asia.

We have already got fingerprints in Haiti via the invasion and occupation from 1915 to 1934. And it just seems to me if we go in again, even if it is a short-term surgical strike—and I don't think it can be, but if it were, we are talking about fingerprints all over Hispaniola, both sides of the border, and it seems to me that we will be forever saying, well, it is our responsibility in the hemisphere. We will say it is yours, it is not ours, and we will not—anyway, it is complicated.

Anyway, let me just ask, Father Ryscavage, you indicated that 10 days ago your testimony would have been different or you are more optimistic. Mr. Forester calls this whole thing a sham. I would like to see how you two can reconcile those differences, or if it is possible.

Do you believe that this process set up by the State Department of the United States, the Justice Department of the United States, the President of the United States, Mr. Bill Gray, a former Member of Congress, an estimable person and public leader, would consciously or even unwittingly have a part in setting up a sham.

Mr. FORESTER. Mr. Chairman, the U.N. Convention and Protocol prohibits the refoulement. On Guantanamo there was not full legal rights. You didn't invoke everything in the world. It was a "credible fear" process. There wasn't an appeal. There weren't lawyers involved. So you don't invoke all of the laws of the United States.

Now, in terms of the sham, the fact is that when you require the full burden, when you prohibit individual preparation by attorneys

or skilled people trained in bringing out the facts, when you have a quota system, there are two sorts: One is a strong desire, openly stated by the White House, of keeping in-country the primary goal and rejecting the majority and sending them back within a day, and when you give each Border Patrol agent a quota of six or seven adjudications per day—

Mr. MAZZOLI. You are not doing credit to your people. They are not Border Patrol people. They are going to be specially trained.

Mr. FORESTER. They got 5—

Mr. MAZZOLI. I understand. But to call them Border Patrol is a pejorative on your part.

Mr. FORESTER. No.

Mr. MAZZOLI. It would seem so.

Mr. FORESTER. Minimally trained is all I mean.

Mr. MAZZOLI. Well, you know, I think that you ought to do them credit. These are men and women who are employees of the U.S. Government trying their best to do a job, and try being deployed or secunded down there, and I think to call them Border Patrol people is not to do them credit.

I think they ought to be called properly trained officers. We think they will be able to learn the process. But I don't think it is fair to call them Border Patrol.

Mr. FORESTER. Minimally trained immigration—

Mr. MAZZOLI. Well, say it that way, but don't call them Border Patrol people.

Mr. FORESTER. The Immigration Service has, of course, an Asylum Branch with trained officers.

My point, the only point I meant is that we have been through this. When they brought in minimally trained people on Guantamo, at first, before we sued them, the approval rate was only 5 percent. There was individually on Guantanamo no right of appeal. There was not the right to representation, there wasn't an asylum interview. It was a credible fear standard.

And I just want to very briefly, if I might—

Mr. MAZZOLI. If I might back up a little bit.

Mr. FORESTER. Sure.

Mr. MAZZOLI. Do you think it is a sham?

Mr. FORESTER. Yes, sir. And the reason it is not—

Mr. MAZZOLI. I will come back to you.

Father Ryscavage.

Reverend RYSCAVAGE. You know, I run a Legal Services Corporation. I have lots of attorneys that, you know, report to me.

Mr. MAZZOLI. That is why we invited you to testify.

Reverend RYSCAVAGE. I don't believe in the sort of idea that, you know, attorney as savior. You know, without attorneys there can be no fairness.

I think in the mass world of international refugees, you know, when you look at Africa and other places, you know, 95 percent of the refugees in the world have no access to attorneys at all and yet in some cases there indeed is good refugee processing.

So I think we have to get a little beyond our cultural limitations in some of this, I think.

Given the fact that it is an international processing, and we can, you know, argue about this decision, but it seems to me in the be-

ginning of the process a few weeks ago they were talking about a much more restrictive role for UNHCR. They were talking about 24-hour turnaround, in and out processing. They had cut the NGO community basically out of it entirely, and there was this whole question of appeals and reconsideration.

These were the four basic areas Mrs. Ogata was concerned about in Geneva. I think they have been addressed. Not sufficiently perhaps, but I think there has been the thing, and at least enough for me to say let's try it, you know.

Mr. MAZZOLI. I am happy to hear you say that. If there is any severe critic of the U.S. policy it is Mrs. Ogata, and for the UNHCR to be involved in any fashion, as they are going to be intimately aboard the ship, in Jamaica in Kingston Harbor, and maybe in the Turks and Caicos, does indicate to me that they have overcome their initial fears or frustration or concerns enough to say let's give this thing a chance.

And I think that Mr. Aleinikoff was even indicating that the process is still ongoing. It is still evolving, and there may be changes further.

One of the problems I have with that, frankly, is that we may then have a new process down there which is very much like the process if they were in the United States, which I think is too complicated and has too many appeal rights and too many complications there. So, we have to be a little bit careful to keep it in some bounds.

Mr. Forester. Then I will yield to my friend.

Mr. FORESTER. I appreciate it very much.

If trained people on an individual basis are eliciting details, for example, did people, perhaps a few million, have Aristide's photo on the outside of their house? Did they live on a street such that the military perhaps knew them? Did they wear Aristide's T-shirt? Were they members of neighborhood committees or church groups?

The documentation shows these people have been killed just for such little stuff. The minimally trained officer will never get this information if this is done quickly without available assistance in eliciting the claim. The quality assurance will not be able to review anything because there will be nothing to review.

Mr. MAZZOLI. But, Mr. Forester, don't you think the UNHCR—do you think they are going to be complicit in something like this? Don't you think they are going to insist on the quality review?

And let me tell you, all they got to do is raise it with the press. They get to the television cameras and this whole thing falls apart. I mean it is not exactly as if this thing ends on a ship in Kingston Bay. It is not going to work that way.

But anyway, let me—my friend has been very patient. He has been my seatmate for such a long time. I would like to yield to him for such time as he may need.

Mr. CONYERS. Thank you, Mr. Chairman. I would like to commend the witnesses on this panel and raise a different perspective here.

Could it be, based on the newest reports that have just come in, that Francois' brother is asking, is stating that there may be consideration for the police chief to step down, and maybe others, that they may be appealing to General Cedras?



Could it not flow from those reports that if the United States were to adopt, through its representatives, a sterner policy, that we might be able to move forward and make some substantial gains as it were?

It seems to me that unless we do something more, unless we become more firm in our demands, unless we make it clear that the leaders of the junta and the police will have to extricate themselves from the governing process, that it will be very, very hard for anything to happen. And I am hoping that these reports might be bearing that theory out.

Could I invite any of the witnesses' reactions? Mr. Forester.

Mr. FORESTER. Briefly—thank you very much. The only comment I can make, and perhaps this is not directly on point, Representative McCollum was referring earlier to, "Well, nobody is arrested."

Not only the 219 arrested this year alone and the "fishing expedition" in the State Department telegram, but I was hoping that the chairman might enter into the record a document entitled, "The Recent Upsurge in Political Violence and Persecution of Returnees in Haiti: Implications for Asylum Adjudication," prepared by Church World Services attorney Merrill Smith, which refers at length to incidents within the last month, not only the so-called President Jonassaint's invocation of this Duvalieristic decree to arrest boat people, but to arrest over the last month in Port-au-Prince, in Petit Goave, of three incidents of people being arrested or abused just for being on a boat.

So this issue of persecution of persons trying to flee and returned is very real, and consistent, of course, with the President's comments that "they are killing and mutilating innocent civilians, even people not directly involved in the political process."

If you have that situation where persons not even political are subject to being killed and mutilated, under the doctrine of imputed political opinion those people are refugees. There is no simple way under these facts to separate the refugee from the nonrefugee. It is an extremely problematic thing.

In relation to the UNHCR, on the Bahamas over the last 2 months they have summarily repatriated hundreds of Haitians to Port-au-Prince. They brought in the UNHCR and it basically blessed the process, meaning no disrespect whatsoever to them. It remains to be seen whether the general language contained in the agreement will be enacted.

All I am saying is that from my experience I see no way in such rushed adjudications that they will even elicit the information that anyone can look at for review.

Mr. MAZZOLI. Well, I appreciate that very much. Mr. McCalla.

Mr. MCCALLA. Well, I just wanted to respond to the question posed by Representative Conyers.

I mean it is not clear to us what Mr. Francois' brother implies with respect to a breakthrough in terms of the political crisis in Haiti. But I would say that following that, yes, the breakthrough would benefit from a very firm and strong position taken by this administration in particular and together with other members of the international community.

And I would say that one of the things that this administration could request now is that if these fellows are now willing to enter

into a dialog that they should consider putting down their weapons now, not tomorrow, not later, but putting down their weapons now so that persecution of Haitians do not occur.

And perhaps then allow for the deployment of international military and civilian observers to the number that the administration has been talking about, about 3,000, immediately so that there is an environment that is conducive to a restarting of the democratic process in Haiti.

Mr. CONYERS. I think it is an opening that we ought to consider carefully. These things occur—it hasn't happened before. It gives us an opportunity to continue to press forward.

And I think a statement from the President or the State Department letting President Aristide communicate over our radio waves there appropriate language and discussions that would lead people to realize that change is possible when the United States is backing the change could be a very important opening. Where it would go, we would have to wait and see. But I think it shouldn't be observed in these hearings.

Mr. MAZZOLI. Thank you very much, Mr. Chairman. I appreciate you saying that.

Gentlemen, thank you very much. It is been excellent. I appreciate it.

The hearing is adjourned.

[Whereupon, at 2:25 p.m., the subcommittee adjourned.]

## APPENDICES

APPENDIX 1.—LETTER TO HON. CARRIE MEEK FROM RENE VAN ROOYEN, REPRESENTATIVE, UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES, DATED FEBRUARY 4, 1994, WITH ATTACHMENT, NEWS CLIPPING FROM NEWSDAY, APRIL 14, 1993, ENTITLED, "SCARS ATTEST TO HAITIAN BRUTALITY"

UNITED NATIONS  
HIGH COMMISSIONER  
FOR REFUGEES



NATIONS UNIES  
HAUT COMMISSARIAT  
POUR LES REFUGIES

Branch Office for the United States of America

Bureau pour les Etats-Unis d'Amérique

1718 CONNECTICUT AVENUE N.W.  
SUITE 200  
WASHINGTON, D.C. 20009

Center HICOMREF WASHINGTON, D.C.  
Télex: 64409 HICOMREF  
Téléphone: (202) 387-9544  
Fax: (202) 387-9888

4 February 1994

Dear Representative Meek:

SUBJECT: HAITIAN REFUGEE FAIRNESS ACT OF 1993, H.R. 3663.

As UNHCR Representative to the United States of America, I would like to express my sincere appreciation for the very valuable initiative you have taken to reverse the current U.S. practise of interdicting Haitian refugees on the high seas and summarily returning them to their country of origin. Your legislative proposal is a great contribution to upholding the international standards of refugee protection which have been painstakingly developed over the past forty years.

UNHCR has repeatedly and at very senior levels of Government expressed its serious concern over the current U.S. practise with regard to Haitian asylum seekers as being inconsistent with the fundamental principles of refugee protection and in particular with the letter and spirit of Art. 33.1 of the 1951 Convention relating to the Status of Refugees (the "1951 Convention"), which is incorporated into the 1967 Protocol relating to the Status of Refugees (the "1967 Protocol"), to which the United States is a signatory. Article 33 explicitly states:

No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of the 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. (Emphasis added).

The introduction of the Haitian Refugee Fairness Act of 1993, H.R. 3663, is thus welcomed by UNHCR as an effort to restore U.S. obligations under international law and would renew the long and generous commitment of the U.S. Government to the protection of refugees. The bill would also properly acknowledge the U.S. Government's obligation not to return Haitian refugees to

the country where they fear persecution, whether it is acting within or outside its sovereign territory.

As you may know, UNHCR is charged by the General Assembly of the United Nations with the responsibility of ensuring international protection for refugees and of seeking durable solutions for their plight. As such, we have participated in the litigation on this issue and I am enclosing for your information a copy of the "friend-of-the-court" brief that UNHCR presented to the Supreme Court in Sale v. Haitian Centers Council, Inc., et al.

The current High Commissioner, Mrs. Sadako Ogata, has on various occasions expressed her distress over the continuation of the policy of interdicting Haitians on the high seas and summarily returning them to their country of origin. Her latest intervention on behalf of the Haitian refugees and asylum seekers was contained in a letter dated 21 December 1993 addressed to the Secretary of State, Mr. Warren Christopher. Unfortunately the policy continues.

UNHCR's interventions on behalf of refugees are fully consistent with the Statute of the Office which specifies that the High Commissioner shall provide for the protection of refugees by, inter alia, "... promoting the conclusion and ratification of international conventions for the protection of refugees [and] supervising their application." (Emphasis added).

The 1967 Protocol forms the basis for U.S. asylum law. One of the primary purposes of Congress in passing the 1980 Refugee Act was to bring U.S. asylum practice in conformity with international law. The cornerstone of the international refugee protection regime is the principle of "non-refoulement". As mentioned above, Art. 33.1 explicitly states that 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. It is UNHCR's considered view that Art. 33.1 of the Protocol applies to the behavior of States irrespective of where the State chooses to act. There is therefore no extra-territorial limitation on the principle of non-refoulement. The application of non-refoulement at the frontier was reaffirmed by the Executive Committee of the High Commissioner's Programme in Conclusion No. 6 (XXVIII), U.N. Doc. A/ac.96/549, a copy of which we enclose for your information.

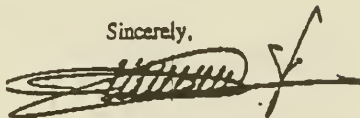
That refugees and asylum seekers should be protected on the high seas is further evidenced by the action of the international community to promote rescue at sea and to combat piracy and violence against refugees and asylum seekers, which effort was strongly supported by the U.S. Government in the 1980's for Vietnamese "Boat People" seeking asylum in Southeast Asia.

The importance of Art. 33.1 is further underlined by the fact that under Article 42 of the 1951 Convention and Article VII of the 1967 Protocol, there is no room for a State wishing to accede to these international refugee protection instruments to make any reservation to this most fundamental provision of the treaty.

Current U.S. policy with regard to Haitian asylum seekers, which is governed by Executive Order 12,807, is inconsistent with the obligations of States under the existing international refugee instruments. The continued practise of interdicting Haitian asylum seekers and involuntarily returning them to their country of origin without an assessment of their asylum claims is eroding the commitment of the international community to the protection of refugees and has seriously undermined the ability of the U.S. authorities to speak up on behalf of refugees worldwide. Your proposed bill would go a long way toward bringing U.S. practise back into conformity with international standards and would return to the U.S. its traditional leading role in international refugee protection.

Please accept, dear Representative Meek, the expression of my highest consideration and please feel free to contact me if I can provide any additional information.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Rene van Rooyen', with a large, sweeping flourish extending to the right.

Rene van Rooyen  
Representative

The Honorable Carrie P. Meek  
Representative  
U.S. House of Representatives  
404 Cannon House Office Building  
Washington, DC 20515

## WORLD

# Scars Attest to Haitian Brutality

By Ron Howell  
STAFF WRITER

New York — Holding back tears with a steely resolve, Alerie Belance described the beating — intended to be fatal — she says she took because of her family's love for exiled President Jean-Bertrand Aristide.

On Oct. 16, as gunmen ran wild through Port-au-Prince trying to thwart the United Nations-brokered plan to return Aristide to the country, two men kidnaped her from her home in the Carrefour section of the capital, Belance said. They were looking for her husband but they settled for her. The men took her to the old body-dumping ground called Titanyen and, with a machete, they hacked her face and her neck and cut off her right arm, finally leaving her for dead.

Now she is disfigured, is missing her right forearm and is deaf in her right ear. Interviewed yesterday at an apartment in the metropolitan area, where she is living under a grant of asylum, she said she now wants to bear witness to the violent repression taking place in her homeland.

"God left me alive as proof that this is really happening in Haiti," she said. "Whoever is for Aristide there has no right to live. Many people are not as lucky as I am and they die. They [anti-Aristide gunmen] disfigure you so your family won't recognize you and then they kill you."

Of about 50,000 Haitians who have gone to in-country processing centers seeking asylum in the United States, only 2,400 have received it. The United States has maintained that the vast majority of asylum-seekers are looking for jobs.

But Belance, who according to human rights workers was granted asylum and came to the New York area in January, insists the persecution is widespread and that tens of thousands of her countrymen would like to escape.

Human rights advocates here are ask-



Newsday / Thomas Stoneham

Alerie Belance shows some of the wounds from the attack

*Newsday, April 14, 1994*

ing: Do they have to wind up like Alerie Belance before they are deemed victims of political persecution?

"I think she's a classic example of the level of repression that's taking place in Haiti," said Michael Ratner, a Manhattan attorney. He and the Haitian Women for Haitian Refugees are helping Belance, 32, to adjust to her new life here.

Belance said the men who kidnaped her identified themselves as being from the Front for the Advancement and Progress of Haiti — FRAPH in its French acronym — although leaders of the organization have denied responsibility for such acts of terrorism.

Belance's husband and three children came to the New York area with her. Her husband did not want to be named in this article. He suffers the guilt of having run away from the family home last October, thinking the intruders were looking only for him and would leave his family alone.

The family was in those days middle class by Haitian standards. She had two employees and cooked and sold food from a stand in downtown Port-au-Prince. And her husband was an iron worker with five hired helpers.

After the Sept. 30, 1991, army coup that overthrew Aristide, the family, which had worked on behalf of Aristide during the 1990 elections, fled to the southern part of the country and stayed for several months until their money ran out. They returned to Carrefour and tried to live quietly, starting up the old iron business again and sending their children to Catholic schools.

But last October brought a resurgence of chaos to Haiti. FRAPH and other groups vowed to fight the United Nations accord that was to restore Aristide to the country on Oct. 30. They succeeded.

On the night of Oct. 16, as gunmen fired weapons through the neighborhood, two men came to the family house and banged on the door. Belance woke her husband. He dressed and fled through a window he had built for just such an emergency.

"They said, 'Where is your husband?'" Belance recalled. "I said he didn't come home tonight. And they said, 'Ah, he thinks his father is coming back? Is that why he's not home?'" The men, one of whom had a gun, the other a machete, were suggesting that Belance's husband was celebrating the expected return of Aristide, called "father" by many Haitians.

That is when her long night of pain began. They dragged her off and drove her to Titanyen, beating and slashing her and leaving her for dead. She passed out, but awoke the next day and crawled to the roadside, where a passerby alerted soldiers who came and took her to a hospital. Her attackers eventually got word that she was there and came to the hospital to inquire about her, she said. At that point she was taken to a safe house south of the capital and was treated there until she was granted asylum in the United States.

Belance is grateful for being able to come to the United States but said she is embarrassed at her poverty and her physical appearance. The family sold all its possessions to pay the medical bills. She wants to return to Haiti, but cannot do so until Aristide returns, she said.

"They have to send him back," she said, "because he's the only one who can save us."

APPENDIX 2.—STATEMENT OF HON. RONALD V. DELLUMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, thank you for holding this hearing and for giving me the opportunity to testify on the crisis in Haiti, and U.S. policy toward Haiti.

I must begin by stressing that it would be difficult for anyone to overestimate just how profoundly troubled I have been by the unspeakable brutality that has been inflicted upon the Haitian people since the overthrow of President Jean Bertrand Aristide in September 1991.

We all know that Haiti has had an extraordinarily difficult and tumultuous history ever since the slaves of St. Domingue - as Haiti was then called, rose up and wrested from France what was then the most valuable colony in the possession of any European power.

It is not difficult to imagine the reaction within the imperial courts of Europe to the news that 450,000 African slaves had defeated the armies of Napoleon and declared themselves a free and independent



nation. It is not difficult, Mr. Chairman, to imagine the resistance that this new and different nation encountered as it struggled to take its place in the then-slave-holder-dominated world of 200 years ago.

Haiti has indeed had a tortured and difficult history.

But Mr. Chairman, just as the end of the 80's and the dawn of the 90's brought the crumbling of the Berlin Wall, the release of Nelson Mandela and the triumph of Solidarity, so too did it bring a thunderous shout from the Haitian people that they were tired of dictatorship, tired of neglect, tired of abuse, tired of the Duvaliers, tired of the Namphys, tired of the Ton-Ton Macoutes.

Tired, Mr. Chairman. And willing to die in order to know, at last, democracy. As die they did, in 1987, when they were gunned down and left in heaps of the dead and dying at the polling stations as they tried to cast their votes. But in 1990 they marched to the polling booths once more. And, from a field of 11 candidates, gave 67% of the vote to a very late entry into the race - a Catholic priest who had long worked among and for them - Jean Bertrand Aristide.

Mr. Aristide was not the favored candidate of the U.S. administration of the time Mr. Chairman. And this caused our nation to embrace policies toward him, the Haitian military, and the Haitian people that were far from appropriate. We branded him difficult and recalcitrant. A CIA report "documenting" his proclivity for violence, his mental instability, and his hospitalization for mental illness in Canada was widely reported by the media. Unfortunately, later findings that (i)

the doctor cited in the report does not exist, (ii) Mr. Aristide was not even in Canada during the period in question, and (iii) the hospital in which he was supposed to have stayed insists that he had never been a patient there, never received quite as much publicity. However, the damage had already been done.

It was also most unfortunate that our great nation decided to continue training members of the Haitian military even after it had violently overthrown President Aristide. That decision was unworthy of us in our role as the world's leading democracy and we owe it to the Haitian people to correct the consequences of this action. And so, Mr. Chairman, the U. S. Congress must continue to move forward - independent of any executive branch or multilateral initiatives - to be on record as having formulated and advanced an enlightened, progressive, pro-democracy policy toward Haiti. And to do this, the House must move to pass HR 3663 and HR 4-114, making absolutely clear:

- (i) our willingness to impose strong sanctions against the Haitian military and its supporters;

- (ii) our concern that Haitian political refugees be treated in a color-blind, non-discriminatory fashion - neither better nor worse than others who have also fled and continue to flee repressive regimes,
- (iii) our determination to withdraw foreign assistance to any country that violates these sanctions;
- (iv) our commitment to promoting human rights in Haiti via our support for a full contingent of UN/OAS human rights observers to that country;
- (v) our commitment to the multilaterally agreed-upon package of social and economic support for Haiti in response to, and for the execution of, the Aristide Administration's economic programs.

Mr. Chairman, between the falling apart of the Governors Island Accord last October and March of this year, Haiti and the Haitians were on back burner in Washington. Between last October and March of this year, General Cedras, Lieutenant Colonel Francois, and Brigadier General Biamby believed and knew that the brutalization and murder of innocent Haitians would go unremarked within the corridors of power

in Washington. Between last October and March of this year, the wealthy families of Haiti were confident that President Aristide would wither away in exile, forgotten by those of us in Washington with the ability to make a difference. And these perceptions were all well-founded, Mr. Chairman, UNTIL Members of the United States House of Representatives and the United States Senate decided that the United States could not, and would not, close its eyes to macabre brutality being unleashed by the Haitian military in an attempt to eradicate all support for the duly elected President of that country.

5,000 killed; over 300,000 in hiding throughout Haiti; 48,000 taking to the open seas. This is a human tragedy that cannot be ignored.

We must remember, Mr. Chairman, that is because of Representatives' and Senators' determination to fight on behalf of the forgotten in Haiti via HR 3663, HR 4114, and S 2027, plus pressure from human rights activists, that Haiti has captured the attention of the White House and the United Nations. It is therefore vital that we in the Congress complete the important task begun with the introduction of HR 3663 and HR 4114 (which now has in excess of one hundred co-

sponsors), and not assume that because there has been activity at the executive and multilateral level, our task is done.

Mr. Chairman, though HR 3663 and HR 4114 differ slightly with regard to the Protective Status Provisions, both bills are rooted in and grow out of the same deeply-felt concern over the administration's policy of interdicting and summarily repatriating Haitian refugees.

I am aware that the President in his Rose Garden address of May 8, 1994 announced that the extreme brutality being inflicted upon the Haitian people by the military made the continuation of our repatriation policy unacceptable. However, it is also true, Mr. Chairman, that since the May 8 Rose Garden address, U.S. vessels have interdicted and returned over 1,800 Haitian refugees - no questions asked, no hearings granted, no attempt made to determine who among them had a well-founded fear of being beaten, tortured or even murdered by the Haitian military upon their return. This number, Mr. Chairman, exceeds the combined total of all of the Haitians forcibly returned by this administration up until then. There has until now, therefore, been a serious and tragic gap between our administration's proclaimed policy towards Haitian refugees and actual practice.

The Haitian military has launched a serious campaign to identify those who may be planning to flee the country, and any Haitian so discovered is apprehended and arrested, beaten and abused. What do you think happens to those who manage to escape the military's watchful eye, but are then interdicted by us at sea and returned, Mr. Chairman?

Stopping Haitians on the high seas, burning their boats, and returning them to Port-au-Prince, no questions asked, is inhumane. And it violates both international and U.S. laws which prohibit the forcible return of those fleeing persecution to the land of such persecution.

I welcome reports that hearings will soon commence off Jamaica aboard the US naval hospital ship Comfort and the leased Ukranian vessel, the Gruziya, and that land-based processing will occur at Turks & Caicos. But it is important for the record to show that the treatment of Haitian refugees between the time of the President's Rose Garden address and the present has not been good. And Haitian refugees stopped at sea are receiving no better opportunity to establish that they do indeed have a well-founded fear of persecution than they did

three months ago, eight months ago, or sixteen months ago.

And the administration's reliance on and touting of in-country processing, when our processing centers inside Haiti are constantly watched by the Haitian military, when these centers do not have the capacity to process the volume of applicants, when there has been so many concerns raised about the program, is sadly misplaced. On this note, Mr. Chairman, I would like to submit for the record a rather detailed document sent to my office by Mr. Thomas J. Mills, an attorney and Asylum Officer with the Immigration and Naturalization Service, who has publicly lamented the many irregularities he observed in his capacity as an INS official in Haiti. Also of value would be his recommendations to the Attorney General and the United States Congress, which I am also enclosing, in addition to some articles pertaining to Mr. Mills "whistle-blowing" on this matter. I would also like to submit for the record a particularly valuable assessment of our in-country processing in Haiti that was prepared by Americas Watch, titled "No Port in a Storm."

In closing, Mr. Chairman, I wish to commend the administration

for deciding to sever commercial air links with Haiti as is called for in HR 4114, effective June 25, 1994. The decision to freeze assets and limit financial transactions with Haiti, months and months after warning that we would do so, will at last be put in place. It is absolutely vital, however, that every effort be made to ensure that the wealthy families of Haiti, with their vast financial and legal resources, not be allowed to maneuver around these financial sanctions while poorer Haitians feel the full brunt of these restrictions. Similarly it is crucial that members of the Haitian military and the wealthy coup supporters with their multi-entry visas, long ago acquired, not be allowed wait out the difficult days ahead in the comfort of Miami, New York, and Los Angeles while those Haitians who struggled so hard for democracy are denied any such outlet. I would therefore recommend that during the markup of HR 4114, the committee amend the bill so that not only would visa applications from "designated aliens" be denied, but indeed, visas long held by "designated aliens" as defined under Section 8(b) of HR 4114 should also be revoked.

Mr. Chairman, much has changed since HR 4114 and 3663 were introduced. But what has not changed is the Congress' obligation and



prerogative a co-equal branch of government to move forward to ensure that our vision for U.S. Haiti relations is secured legislatively. The administration is now, thankfully, moving forward based on moral conviction. We must ensure that they continue to move forward, encouraged by the force of law.

Thank you, Mr. Chairman.

14 June 1994

Thomas J. Mills  
360 West Ocean Blvd., Apt. 1005  
Washington, D.C. 90802

Representative Ronald V. Dellums  
Chairman House Armed Services Committee  
House of Representatives  
Washington, D.C. 20515

Via Fax No. (202) 225-6890

Dear Congressman Dellums:

As Judicial Law Clerk in the Attorney General Honor Program from 1991 through 1992, I drafted decisions for two immigration judges. Since January 25, 1993, I have served as an Asylum Officer with the Los Angeles Asylum Office of the Immigration and Naturalization Service (INS).

On August 18, 1993 Mr. John Cummings, Acting Director of the INS Office of International Affairs, appointed me to serve for two months as quality assurance officer in the in-country refugee processing program in Port-au-Prince, Haiti. I would review 40 case files per day. The case files contained the previous day's interview notes and decisions. I would assess whether the facts provided were consistent with the decisions, whether credibility judgments were adequately supported, and whether legal issues raised by the cases were correctly resolved.

From August 19 through August 25, the INS Officer-in-Charge and INS subordinates made refugee determinations that were inconsistent with international and domestic legal standards and in gross disregard for INS regulations and procedures.

On August 24, 1993 when I addressed these inconsistencies, the Officer-in-Charge surprisingly and abruptly expelled me from Haiti. He stated that the job of quality assurance required an officer with "Guantanamo experience". He further alleged that I violated security regulations when I travelled outside of Port-au-Prince on my first weekend in Haiti.

Neither the INS nor the Officer-in-Charge stipulated such criteria prior to my expulsion. Such criteria are of an ex post facto nature.

After I returned to the United States, the Officer-in-Charge lodged a further allegation. He alleged that I violated international sanctions on Haiti. INS spokesman Mr. Duke Austin repeated this allegation to the Associated Press without allowing me the opportunity to be heard.

You should note that the Officer-in-Charge (who has since been dismissed) and subordinates (who remain in Haiti) harassed and rendered ineffective almost every person who served in the capacity of quality assurance officer or legal counsel in Port-au-Prince. Other quality assurance and legal counsel personnel who served prior to me had been threatened with expulsion as well. When one such officer learned that I had been expelled, she immediately replied that I was the "sacrificial lamb".

You should further note that the immediate superior of the Officer-in-Charge was Mr. Greg Smith, Acting INS District Director in Mexico City. The Acting District Director carried out an internal investigation. In my view, the Acting District Director was not the appropriate party to conduct such an investigation. From the inception of the refugee program in Haiti, the Acting District Director, like the Officer-in-Charge, has opposed the appointment of quality assurance and legal counsel personnel. He has recommended the elimination of such personnel. In fact, a State Department officer in Port-au-Prince informed me that the Officer-in-Charge and the Acting District Director intended to use my expulsion as a pretext to eliminate future appointments of quality assurance and legal counsel personnel in Haiti.

On January 25, 1994 after I filed a grievance with the Office of Special Counsel, the Director of the Los Angeles Asylum Office fired me- just weeks after my supervisor authorized my pay raise; just weeks after the same Director cited my job performance as "excellent"; and just weeks after the same Director signed a document recommending that I be retained beyond probation, a document she later failed to disclose during a FOIA request.

In their efforts to conceal the motives behind my expulsion and my subsequent termination, my superiors have acted with recklessness and deceit. Inasmuch as procedures set forth by Mr. Cummings and

the INS Acting Commissioner were clearly violated and I was subsequently expelled and fired for disclosing the violations, these persons acted with equal complicity. More important, reliance on an in-country processing program fraught with secrecy and pretense has placed at risk the lives of many genuine Haitian refugees.

In view of the following accounts, I believe that the INS Officer-in-Charge and INS subordinates made refugee determinations that were inconsistent with domestic and international legal standards, inconsistent with INS regulations and procedures, inconsistent with the instructions that I was given, and in gross disregard for memoranda written by the Acting Commissioner of the INS and the Acting Director of the Office of International Affairs:

#### I. A) The Law

The statutory definition of the term "refugee" which is contained in Section 101(a)(42) of the Immigration and Nationality Act (INA) applies to two provisions within the INA, Section 207 governing the admission of persons from foreign countries and Section 208 which governs the process by which refugees currently in the United States may be granted asylum. INS v. Cardoza-Fonseca, 480 U.S. 421,433 (1987).

Congress intended that the statutory definition of "refugee" be interpreted in conformance with the 1967 U.N. Protocol Relating to the Status of Refugees to which the United States acceded in 1968. INS v. Cardoza-Fonseca, 480 U.S. at 437.

Furthermore, the Supreme Court held that in construing the Protocol's definition of "refugee", the analysis set forth in the Office of the United Nations High Commissioner for Refugees Handbook on Procedures and Criteria for Determining Refugee Status, although not binding, provides significant guidance. INS v. Cardoza-Fonseca, 480 U.S. at 440, n. 22.

The Office of International Affairs instructed me that United States case law, e.g., Supreme Court and Board of Immigration Appeals decisions, although not binding, would provide further guidance in interpreting the definition of "refugee" in Haiti.

**B) INS Procedures**

1) The parameters of my role in Port-au-Prince are set forth in a memorandum entitled "Procedures to Enhance INS Refugee Processing Activities in Haiti".

The memorandum is written by Chris Sale, then Acting Commissioner of the Immigration & Naturalization Service, and addressed to Mr. John Cummings, Acting Director of the Office of International Affairs, and to Mr. Grover Rees, INS General Counsel.

The memorandum is effective March 1, 1993.

The memorandum states that "the quality assurance officer or unit will report to the AOIC, who will have final authority over adjudications, including, in her discretion, the review of individual adjudications; provided that, in the event of a disagreement between the quality assurance officer and the AOIC over an individual adjudication, the case will be submitted to Headquarters for review by the INS Refugee Division and the Office of General Counsel".

The memorandum stipulates that "[i]n light of current country conditions, it is essential that INS officers under the in-country U.S. refugee program in Haiti conduct thorough case-by-case determinations of refugee claims [...]".

The memorandum further states that "in order to ensure that the officers conducting refugee interviews in Haiti are aware of the latest country conditions information and have an opportunity to share information gained during their interviews, the Officer-in-Charge and AOIC will set aside four hours each week for training. As part of this training effort, the Officer-in-Charge and AOIC will seek to present speakers who represent a broad range of experience within Haiti. Further, the Officer-in-Charge and AOIC will ensure that interviewers are familiar with all country conditions information produced by the Resource Information Center [RIC]".

2) Another memorandum entitled "Considerations When Adjudicating Haitian Refugee/Asylee Applications" sets forth the issues to be considered in making refugee determinations.

The memorandum, dated March 9, 1993, is written by Mr. John Cummings, Acting Director of the INS Office of International Affairs, and is addressed to the INS Refugee and Asylum Divisions.

### C) Preparation

In preparation for my job, I copied the thousand page RIC Master Exhibit on Haiti and collated the material into three separate binders. I then compiled a volume of the most recent human rights reports and newspaper articles, including an interim report by the International Civilian Mission dated June 1993, a U.N. General Assembly human rights report dated August 13, 1993, an OAS Report on the situation of human rights in Haiti dated March 1993, the AILA Report on Human rights in Haiti dated May 1993, the Harvard Legal Clinic Master Exhibit on Haiti dated June 1993, and dozens of August press releases and articles that set forth the state of human rights in Haiti. I solicited the foregoing material directly from America's Watch, the National Coalition for Haitian Refugees, Amnesty International, the United Nations High Commissioner for Refugees, the American Immigration Lawyers Association, the Lawyers Committee for Human Rights, the Harvard Refugee Clinic, and the U.N./O.A.S. International Civilian Mission.

When I arrived in Haiti, there were several resources already available to the interviewers, including part III of a RIC Master Exhibit on Haiti, a legal reference on asylum law by Deborah Anker, the Immigration and Nationality Act, and Title 8 of the Code of Federal Regulations. The documentation that I carried would update these resources.

## II. VIOLATIONS BY REFUGEE OFFICE IN PORT-AU-PRINCE

1) The Officer-in-Charge has not ensured that the interviewers are familiar with all country conditions information produced by the Resource Information Center as stipulated in Chris Sale's memorandum.

On August 19th on my first day of work in Port-au-Prince, I picked up Parts I and II of the RIC Master Exhibit and presented them to the INS Officer-in-Charge. He stated "What the hell are those?" I explained that the two binders included hard copies of the Haitian Master Exhibit that had been prepared by the RIC center. He replied that the material was useless, that "the RIC is a waste of money and should be closed down". He further stated that "if any of those human rights reports were true, we would be stepping over corpses every morning". I asked if the interviewers were regularly exposed

to recent human rights reports such as the August 11 O.A.S. press release that there have been 36 political killings since July 1st in Port-au-Prince alone. He replied that the report was a fabrication. He further stated that "the O.A.S. is on its way down", that the O.A.S. manufactured the numbers of killings in order to justify its presence in Haiti, and that the O.A.S. personnel are simply "afraid that they are going to lose their jobs". I did not respond.

The Officer-in-Charge reiterated that the O.A.S., Amnesty International, and other human rights reports are not credible. He cited an example that stood out in his mind but he could not recall the source of the report. The example involved an applicant who had been beaten 250 times with a machete. The Officer-in-Charge stated that he found the report a lie "because you and I know that the fastest way to hurt a man is by kicking him in the balls". He explained that being kicked in the testicles was the type of legitimate example of torture that you find in El Salvador but "you never hear an applicant claim that he was kicked in the balls in Haiti".

The Officer-in-Charge handed me a Motion to Reconsider to read over. Although I would not be making determinations on Motions to Reconsider, he wished to elicit my reaction to the facts. The applicant had articulated a long history of political activity. The applicant had been arrested, detained, and tortured on four separate occasions, each time on account of his political activity. The applicant feared that he would be killed. The Officer-in-Charge then stated that he had not read the case yet but that he already knew it was a "bullshit story" cooked up by Ann Fuller's people at the National Coalition for Haitian Refugees. The Officer-in-Charge proceeded to read to me the case aloud. He found the facts consistent with country conditions, he found the applicant's subjective fear credible. He found, however, that the applicant's claim was not objectively reasonable. The Officer-in-Charge raised his hand and counted with his fingers the applicant's arrests and detentions. He stated the applicant had been detained "one, two, three, four times...why was he not killed the second time, the third time, or the fourth time? The applicant's statement that he fears being killed is just not logical and it is not credible". The Officer-in-Charge then reiterated that he just wanted to expose me to the "camp stories" that the applicants "cook up".

It should be further noted that Mr. John Cummings, Acting Director of the Office of International Affairs, cites NGO and academic reports as reliable and credible sources of information on human rights in Haiti. See Memorandum from John W. Cummings, Acting

Director, INS Office of International Affairs, to the INS's Asylum and Refugee Divisions, re "Considerations when Considering Adjudicating Haitian/Asylee Applications, March 9, 1993, at 4.

2) The goals of the INS in-country refugee processing program appear to be political rather than humanitarian.

On August 20th a ranking State Department official stated that he was "not going to bullshit [me] and that if anyone tells you different they are bullshitting you. The fact is that this program is political". He further stated that the Officer-in-Charge and his people have established an unreasonably high burden on the applicants and that the number of grants is much lower than it should be, although it should not be as high as some of the human rights groups project. I replied that I was surprised to hear him say that the program was political. He responded that he was only telling me the truth because he wanted to be straight with me and because he knows that I must have a high security clearance and I am not a journalist from The New York Times. The State Department official added that he appreciated my confidentiality and that if "you disclose this, so be it, I'll just deny that I ever said it".

The State Department official described an incident that occurred the day before. An applicant who had been denied refugee status had attempted suicide downstairs by swallowing rat poison. The official described how he had to run around to suppress the incident so that it "would not f\_\_k the program".

On August 23rd, the Officer-in-Charge; explaining why my job was not clearly defined, stated that there are a lot of grey areas and that nothing is black and white because this is a political program. I responded that I felt like a political stooge and asked whether I was sent to Haiti to serve as mere window dressing. He conceded that I was serving for "appearance" purposes.

3) The interviewers misapplied the law or overlooked one of the grounds of persecution in several cases.

When I brought cases to the attention of the supervisory interviewing officer, she dismissed my reasoning as irrelevant and uninformed and, alternatively, emphasized how quickly we needed to move on the files. She appeared to be under great pressure from the Officer-in-Charge to diffuse any impact that I would make. I was not allowed to do my job.



A) On the first case IOM found the case to be critical (priority A). The interviewer found the applicant credible. The applicant's oldest son was shot and disappeared in December 1992 on account of his activities in a highly targeted literacy group. The applicant's daughter, who has since received refugee status, was arrested and beaten in December 1992 and released in January 1993 also on account of her activities with the literacy group. The applicant was then arrested, taken to the police station and beaten on account of his children's involvement in the literacy group. The interviewer held that because the applicant was not a member of any political group he therefore was not able to link his fear to one of the five grounds. The interviewer further held that the applicant was the victim of a lawless society.

When I reviewed this case, I disagreed that the applicant had to be a member of a political group to meet the definition of refugee. For instance, he may have a well-founded fear of persecution on account of political opinion. See Section 101(a)(42)(B). I added that the persecutor's motives are critical and that the applicant's association or relationship to others who have been victims of persecutorial violence may establish the motive. Furthermore, the harm that the applicant experienced did not appear to constitute random violence. See, e.g., Matter of Maldonado-Cruz, 19 I&N Dec. 509 (BIA 1988), rev'd on other grounds, Maldonado-Cruz v. INS, 883 F.2d. 788 (9th Cir. 1989). (Even in a civil war situation, individuals who show that their harm relates to one of the five grounds of persecution may establish eligibility for refugee status). I cited some pages in the legal resource material that had been made available to the interviewers prior to my arrival. When the supervisory interviewing officer discussed this case with me, she immediately dismissed my reasoning as irrelevant because "the interviewers do not have access to the materials that you cite". I responded that the resources that I cited were available on the table directly in front of her desk.

B) On the next case the interviewer found the applicant not credible because the applicant claimed to have been tortured by members of the Ton Ton Macoutes in October 1991. The officer held that the applicant was not truthful because the Ton Ton Macoutes had been officially disbanded in 1986. I spoke with the State Department's country resource expert, a Haitian-American who works for IOM but assists the INS. He assured me that using the term Ton Ton Macoutes to describe an attache or armed thug is still very common today just as "skinheads" are commonly called "Nazis" and does not detract from the applicant's credibility. See also UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status,

at para. 42 ("The applicant's statements cannot be considered in the abstract, and must be viewed in the context of the relevant background situation. A knowledge of conditions in the applicant's country of origin--while not a primary objective--is an important element in assessing the applicant's credibility.").

When the supervisory interviewing officer approached me about this case, I stated that I could not concur with the interviewer's decision in good conscience. She then stated that after doing and reviewing hundreds of interviews that she "knows where the interviewer is coming from", although the decisions may not be written in the most perfect English. She then said "Honey, have you ever done quality assurance before?" She further stated that we have to move along quickly on these cases and that order comes from the President himself. I agreed that it was good to move quickly but that we should not sacrifice quality especially since there's plenty of time to discuss the few problem cases in the afternoon when we finish reviewing. When I reiterated that I could not concur with the interviewer's reasoning, the supervisory interviewing officer became visibly angry. She threw the file on to her desk and stated "well, now I'm going to have to take the heat for this". I then replied that she does not have to take the heat for anything and that I thought the process involved an open dialogue between us and the Officer-in-Charge and AOIC. I stated that it appeared that she was "fighting to deny the case". She appeared to be offended and said "that was personal". She later entered the office of the Officer-in-Charge and closed the door.

C) I disagreed with the conclusions in two other cases. In both cases the applicants were held to be truthful and credible. In one case the applicant had a history of activity with the highly targeted Tet Kole (Heads Together) national peasant movement, was accused of belonging to Tet Kole and subsequently was arrested and detained for one year. The interviewer held that the applicant's fears stem from civil unrest and do not appear to be linked to one of the five grounds of persecution.

D) In the next case the applicant was accused of being an Aristide supporter. He was arrested and jailed for one year and beaten with a stick twice a week. In May 1993 authorities molested the applicant's common law wife, his house was searched, and his baby was shot and killed. The interviewer held that the applicant's fears stem from civil unrest and lawlessness and do not appear to be linked to one of the five grounds.

I did not concur with either one of these decisions. Neither the supervisory interviewing officer, the Officer-in-Charge, nor the AOIC discussed with me the written comments that I made on the latter two decisions and I do not know whether they were overturned or reaffirmed.

It should be further noted that Mr. John Cummings, Acting Director of the Office of International Affairs, made the point in his memorandum on considering Haitian refugee applications that most violence in Haiti today is the result of "government repression" rather than general lawlessness. See Memorandum from John W. Cummings, Acting Director, INS Office of International Affairs, to the INS's Asylum and Refugee Divisions, re "Considerations when Considering Adjudicating Haitian/Asylee Applications, March 9, 1993, at 3. The memorandum further defines the term "arbitrary arrest" as constituting tyrannical behaviour, not indiscriminate or random government behaviour. Id. at 2 n.1.

E) The Officer-in-Charge stated that the doctrine of imputed political opinion does not exist for their purposes in Haiti. He explained to me that because we are processing within the country where the persecution occurs or has occurred we would easily know whether or not the applicant had a political opinion and therefore imputed political opinion is only significant in adjudicating applications for asylum in the United States.

I do not believe that in-country processing preempts application of the doctrine. Fear of persecution for holding political opinions different from those of the Government "presupposes that such opinions have come to the notice of the authorities or are attributed by them to the applicant". See Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status, (Geneva, 1979), at para. 80. Furthermore, Mr. John Cummings' memorandum on adjudications of Haitian refugee applications states that ordinary members of groups may be at risk, not just leaders. He states that "[a]ctivities, either real or imputed, are a far more important consideration in assessing risk, than is prominence". See Memorandum from John W. Cummings, Acting Director, INS Office of International Affairs, to the INS's Asylum and Refugee Divisions, re "Considerations when Adjudicating Haitian Refugee/Asylee Applications, March 9, 1993, at 7.

4) The Officer-in-Charge routinely disregards the provision in Chris Sale's memorandum that states "in the event of a disagreement between the quality assurance officer and the Assistant Officer in Charge over an individual adjudication, the case will be submitted to Headquarters for review by the INS Refugee Division and the Office of General Counsel".

I had been sent to Port-au-Prince to serve as quality assurance officer. I felt that I had been marginalized, however, from making

any substantive contribution. On August 23rd, I requested that the Officer-in-Charge define more clearly my job and his expectations of me. He replied that I "could learn a lot down here". I responded that I wanted to make a contribution even if it means interviewing and that I was not being paid to be an exchange student. He said that interviewing would not be possible. I then asked what mechanism had been established for resolving disputed decisions. He replied that as the Officer-in-Charge he would make the final decision on any case. He further stated that there has never been a dispute about a decision and that "you may be the first". I then indicated that Chris Sale's memorandum provides that disagreements between the quality assurance officer and the Officer-in-Charge and AOIC should be submitted to Headquarters for review by the INS Refugee Division and General Counsel's office. He responded that no files would be sent to Headquarters and that if any files leave the office they will go to the District Director's office in Mexico City. He further asked "where did you get that letter?" I replied that the memorandum came from the Office of International Affairs. The Officer-in-Charge then stated that the memorandum is outdated and was written to or by Grover Rees who no longer is with the General Counsel's office. I asked if the memorandum is then no longer in effect. He replied that there are a lot of grey areas here and that nothing is black and white because this is a political program. I responded that I felt like a political stooge and asked whether I was sent to Haiti to serve as mere window dressing. He conceded that I was serving for "appearance" purposes.

5) The Officer-in-Charge opposes the appointment of quality assurance officers. As such, he routinely disregards procedures in Chris Sale's memorandum. He subjected me and prior quality assurance and legal counsel personnel to harassment. As a result, we were not allowed to perform our jobs.

On August 20th the ranking State Department official from the Office of Refugee and Migration Affairs conceded to me that there had been many problems between the Officer-in-Charge and quality assurance and General Counsel personnel in the past. He stated that he did not want to involve himself in the relationship between the Officer-in-Charge and the quality assurance personnel, but that in the past the friction had risen to the point of affecting the smooth operation of the office. He added that he found the Officer-in-Charge to be a grown man who behaves like a child. He further stated that the Officer-in-Charge was probably livid that I was even in the State Department official's office with the door closed. The State Department official further stated that I was "going to have problems here". He added that I should be prepared

for two months of solitude and that I would be a "pariah" in the eyes of the Officer-in-Charge and the other INS personnel. He added that prior quality assurance personnel have gravitated to his side of the office as the State Department personnel and quality assurance people found themselves socially and philosophically more compatible.

6) It appears that the interviewers are gaining much of their country condition information from abstract and unorthodox sources (e.g., from interpreters and from the interviews themselves). The reason for this is that the Officer-in-Charge has not ensured that the INS officers conduct thorough case-by-case determinations of refugee claims as stipulated in Chris Sale's memorandum; has refused to set aside four hours per week of country conditions training as stipulated in Chris Sale's memorandum; has refused to present speakers as stipulated in Chris Sale's memorandum; and has refused to ensure that the interviewers are familiar with country conditions information produced by the Resource Information Center as stipulated in Chris Sale's memorandum.

On August 24th, I spent some time talking informally with four of the interviewers before they started their day. One of the interviewers informed me that Jean-Bertrand Aristide's election in December 1990 was plagued by rampant fraud. I replied that all of the international monitors say that it was a fair and democratic election.

The interviewer then stated that you "cannot listen to that bullshit; you have to talk to the Haitians themselves". He advised that I should "talk to some of the interpreters, and they will tell you". He concluded that the human rights reports are "bullshit" and that if you do 200 interviews you will learn the truth. "We're the best lottery in town".

Another interviewer advised me that some of the interpreters are tired of hearing the same stories over and over. He told me that he sometimes has to stop the interpreter from controlling the interview. He stated that one interpreter ordered the applicant to "just answer the question: 'yes' or 'no'".

All of the interviewers left the room, except for one. He then told me in a low tone of voice so that the others would not hear him that four of the six interviewers had decided that the applicants routinely lie. He stated that the interviewer who commented on Aristide's election thinks he knows more than he does. He further stated that one of the other interviewers states openly "here comes

the big lie" before he begins every interview. He concluded that the other interviewers are not making decisions on a case-by-case basis. He further encouraged me to sit in on an interview.

### III. EXPULSION

On August 25th, I met a new interviewer who had just arrived from Texas where he is an INS inspector. I asked him if he was experiencing any culture shock. He replied that he had never been out of the United States in his life. He further stated that he had never interviewed a refugee.

I then stopped into the Officer-in-Charge's office. I asked him if it would be possible to sit in on an interview because I would likely finish reviewing the files by noon. He replied that there would be no need for that because "you're going home".

I asked the Officer-in-Charge to set out his motives for sending me home. He replied that I do not have "enough experience in the Service". He further stated that I had not had any prior experience in case review in Guantanamo and that the memorandum from the Acting Commissioner of the INS requires that the quality assurance person have Guantanamo experience. He further alleged that I had violated security regulations by travelling outside of Port-au-Prince during the weekend.

Neither the INS nor the Officer-in-Charge stipulated such criteria prior to my expulsion. Such criteria are of an ex post facto nature. The only security briefing that I received occurred after my trip outside of Port-au-Prince. That briefing recommended only that officials inform their colleagues of travel plans and avoid the local buses. In both instances, I adhered to these recommendations.

In regard to "Guantanamo experience", Ms. Sale's memorandum merely sets forth that quality assurance officers will be selected "to the extent possible" among those with Guantanamo experience. Furthermore, after two weeks of pre-clearance investigations, the Office of International Affairs determined that I had sufficient experience to serve as quality assurance officer.

### IV. RETURN

Since my return to the United States, the Officer-in-Charge has further alleged to my superiors in the Office of International Affairs and the INS Information Office that I violated international sanctions on Haiti.

The accusation that I violated international sanctions on Haiti is defamatory. I have not been charged with such violation nor am I under investigation for such violation. On August 18 when I landed in Miami, I met with an INS official, a Haitian-American who serves as a supervisory INS examiner in Miami and part-time INS inspection officer at the Miami International Airport. Mutual friends had arranged that the INS official and I meet before my trip to Haiti as he had served as a Creole interpreter in Guantanamo and had extensive knowledge of Haitian culture and history.

When I met the INS official, he informed me that he was planning to travel to Port-au-Prince to visit his father the next morning via Haiti Trans-Air and that we would get together in Haiti. The next morning when I arrived at the American Airlines terminal, the INS official was waiting for me in the area restricted to airline and immigration personnel only. He advised me that his plans had changed and that he was forced to delay his trip to Haiti for two weeks. The INS official asked whether I would be willing to take a television into Haiti as a gift for his father. He informed me that he had already talked with Major Marc Valme, Commander of Military Security at the Port-au-Prince airport, and that Major Valme would be waiting to pick up the television when I arrived.

I agreed. The INS official paid the cost of the extra baggage that I would incur. When I arrived in Port-au-Prince, Major Valme was waiting for me and he accepted the box.

When I met the Officer-in-Charge that day, I immediately informed him that I had accepted to bring in a television on behalf of the INS official. The Officer-in-Charge advised me that the action appeared to be improper. I conceded that I had made a mistake and that if I knew that there were an appearance of impropriety I would not have accepted the television. I further stated that I had trusted that my actions were not improper in particular because the INS official is an INS supervisory examiner in Miami and is a part-time INS inspector at the Miami airport.

The Officer-in-Charge then dismissed further discussion of the incident.

On August 31, 1993 the Associated Press publicized official INS statements in regard to my expulsion from the refugee processing program in Haiti. INS spokesman Duke Austin told the Associated press that I "was disruptive to the program". He further stated that I had traveled without permission to the countryside and had brought items that violated international sanctions on Haiti.

It should be noted that in an internal memorandum to the District Director in Mexico City dated April 20, 1993, the Officer-in-Charge described the presence of legal advisors and quality assurance personnel in Haiti, in general, as disruptive. See INS Memorandum to the District Director in Mexico City, April 20, 1993 ("The presence of a 'legal advisor' here reporting to the General Counsel independent of operations reporting undermines my authority and disrupts the traditional chain of command"). In his cover letter to that memorandum addressed to Acting Commissioner Chris Sale, the District Director reiterated that he and the Officer-in-Charge regarded the positions as "disruptive". See District Director's Memorandum to Chris Sale and John Cummings, April 20, 1993 ("[I]t is recommended that the positions of designated 'legal advisor' and 'quality control officer' be eliminated forthwith as unnecessary, redundant, disruptive of program operations and wasteful of scarce Service resources.").

On August 31, 1993 the ranking State Department at the Office of Refugee & Migration Affairs called me from Port-au-Prince. In regard to disclosures that I made in my August 30th memorandum, which apparently had been faxed to him, he was livid. He stated, "Son, when two officers of the U.S. Government tell each other something in confidence, that confidence should never be broken. I've done dozens of interviews with New York Times journalists and television reporters and son, even they know not to press me when it comes to disclosing Government business. The last time any such confidence was broken was in 1984 with Oliver North. Son, you've really painted yourself into a corner. Good luck because you're going to need it".

On September 2nd, while strongly recommending that I keep my mouth closed, the Information Office through the Director of the Los Angeles Asylum Office initially offered me the opportunity to make a statement. Later that day when I replied that I would like to make a statement, the Information Office retracted its offer to permit me to speak.

I have since made two formal requests to the Director of Asylum Gregg Beyer and to the INS Information Office to retract the INS spokesman's allegations until the INS conducts a full personnel investigation, including correct procedures and the opportunity to be heard. In the alternative, I have requested permission to release my own statement. The INS has refused both of my requests.

The Director of the Los Angeles Asylum Office has warned me directly and confided to colleagues of mine at work that I "should not blow [my] career". She further advised me that if I do not "quietly await" the INS internal investigation I will lose my



credibility. Mr. Beyer advised me that my memorandum of August 30th which sets forth the events that led to my expulsion was excellent and is doing a tremendous amount of good. He further stated that I was the first person in Port-au-Prince to cry that "the emperor wears no clothes". The Director of the Asylum program and the Director of the Los Angeles Asylum Office advised me that they will support me and protect my job provided that I quietly await the results of an internal INS review of refugee adjudication procedures in Haiti and provided that I allow "the system" to work itself out.

Please note that the internal investigation has been carried out by the Officer-in-Charge's immediate superior, Greg Smith, INS Acting District Director in Mexico City. I do not believe that the Acting District Director is the appropriate party to conduct such an investigation. Like the Officer-in-Charge, he has expressed hostility toward the appointment of quality assurance and legal counsel personnel. See District Director's Memorandum to Chris Sale and John Cummings, April 20, 1993, supra.

On September 15, 1993 in a meeting between the union president and the Los Angeles Director, the Director advised the union president that she and Gregg Beyer, the national director of the Asylum Office, were on my side. She further stated that "he seems not to have learned his lesson, however, about talking to other people. He is quickly losing credibility with me and Gregg." She further advised that action was being taken as a result of my memorandum, that "he should just sit quiet and wait for a full report from Washington on the incident". She believed that the report would outline exactly what happened even though no one as of today has interviewed me. The Los Angeles Director further stated that she and Gregg Beyer were going to bat for me with the "political big guns" in Washington, D.C. She further stated that "it is possible that Washington could relieve the Officer-in-Charge from his post in Haiti, but that T.J. would have to be fired".

On September 21, 1993 an assistant to the ranking State Department officer at the in-country processing office in Port-au-Prince called me in support. He lamented that it was a flagrant waste of taxpayers' money to have marginalized me from playing an effective role in Haiti and further to have expelled me on such transparently false grounds. In fact, the same State Department official further advised me that the Officer-in-Charge and the Acting District Director intend to use my dismissal as a pretext to eliminate future quality assurance and legal counsel personnel in Haiti. The same official claimed that the INS Officer-in-Charge indicated today that Washington was going to initiate disciplinary action against me.

On October 6, 1993 the same official speculated me that my dismissal from Port-au-Prince was ordered by personnel in Washington, D.C., not by the Officer-in-Charge. He further stated that the dismissal had everything to do with my views, my disclosures and with the fact that I was not in tune with INS culture, nothing to do with my professional demeanor or experience.

On November 5, 1993 and November 8, 1993 my first-line supervisor and the Director of the Los Angeles Asylum Office, respectively, signed a "Probationary and Trial Period Report" in which they recommended my retention beyond the probationary period. They further certified that my work was satisfactory. I later discovered that the Director removed this document from my personnel file and failed to disclose it during a FOIA request. I obtained it on my own.

On January 19, 1994 an assistant to the ranking State Department officer at the in-country processing office called me from Port-au-Prince. He informed me that the Officer-in-Charge of in-country processing in Port-au-Prince, will be involuntarily dismissed from his post in February. Moreover, the position of the Officer-in-Charge and several other posts have been advertised as available.

On January 25, 1994 the INS fired me from my job as Asylum Officer.

On February 1, 1994 I returned to work. I was reinstated on account of a procedural defect in my termination. That is, the INS failed to terminate me before my first anniversary date of employment, so I returned with the protections of a tenured employee.

On April 7, 1994 Mr. Gregg Beyer, the national Director of the Asylum Program telephoned me. He stated that he had heard a rumor through State Department personnel that some groups were plan to make a public announcement in regard to my expulsion from Haiti. I replied that I had not heard the rumor and that I had no response to his question. He stated that if such an announcement were true it "would not necessarily be useful to you".

I asked Mr. Beyer if the purpose of his call was to intimidate me because I whistleblew. Mr. Beyer exclaimed "What whistleblowing? There has been no whistleblowing. We've known what was going on in Haiti for months before you got there". I indicated that it was wrong for Mr. Beyer to suggest that I had no motive to claim possible reprisal and that the Office of Special Counsel appears to have sufficient evidence to initiate investigation.

Mr. Beyer stated, "your contribution was quite good in Haiti; changes have been made; you should be proud". He then encouraged me

to put the event behind. He further stated, that the refugee program in Haiti is "very politicized" and that "we would like to see the asylum program stay out of it. That's refugee processing; it's John Cummings' program and they're doing the job the way they know how".

#### V. RECOMMENDATIONS

1) The Attorney General should appoint an impartial panel of experts to carry out a thorough review of case decisions for the Justice Department. The methodology employed, as well as all findings, should be transparent and open to public scrutiny.

At present the INS continues to prefer officers without previous refugee or asylum experience or human rights expertise to interview Haitians and to adjudicate Haitian refugee petitions. (Note that this pattern is repeated in the recent Haitian detail established outside Jamaica). These officers traditionally come from law enforcement backgrounds and appear to be extremely biased against refugee seekers. In contrast, personnel with prior asylum or legal expertise are perceived as disruptive. See INS Officer-in-Charge Memorandum to the District Director in Mexico City, April 20, 1993 ("The on-site presence of a legal advisor places a hardship upon the interviewing officers in that they see the legal advisor as reviewing their work, looking for completeness, thoroughness, and in-depth questioning, while the Officer-in-Charge is pressing for production. Traditionally, refugee processing teams work hard all day and let off steam after work by gathering for a beer and laughing and joking about cases interviewed during the day. I might add that this is also good training. The seriousness of the asylum training ... coupled with on-site presence of a General Counsel representative has combined to hold such activity to a minimum.").

2) The U.S. should work closely with the U.N. and NGO's to ensure that adjudications are consistent with international and domestic standards.

During my Haitian detail, the Officer-in-Charge refused (in violation of INS procedures) to allow NGO's to address the interviewers with current human rights reports. The Officer-in-Charge instilled in the interviewers the belief that human rights monitors fabricate their reports in order to keep their jobs in Haiti. The Officer-in-Charge further warned the interviewers that they would never be in trouble if they deny a case, but they will if they attempt to grant one.

Note that the INS intends to provide a 48 hour turn-around time on Haitians processed on the boats outside Jamaica. Such a turn-around time will provide little opportunity for UNHCR or NGO's to gain access to individual applicants or to provide meaningful counsel.

3) The U.S. Congress should demand an investigation of the in-country processing program and of the role the State Department plays in its management.

The international drug enforcement background of the State Department's coordinator of the program is of particular interest.

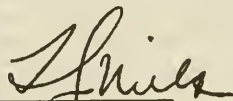
The same official informed me that the program was "political" and that the INS imposed an unreasonably high burden on the applicants. He further boasted that if I disclosed his statements to the press he would simply deny that he made them. Upon my return from Haiti, this same official called me, reprimanded me, and compared my subsequent internal disclosures of conversations with him to experiences he had had with Oliver North. He further warned that I had painted myself into a corner and that I would need a lot of luck getting out.

4) The U.S. Congress should insist that the in-country processing office in Port-au-Prince not remain the primary refuge for Haitians fleeing persecution.

Even presuming that INS procedures were and international standards were followed, the location of the in-country processing program in Port-au-Prince itself poses a great risk to prospective applicants.

Moreover, there is no protection component. Cases have been documented of Haitians who have been persecuted at different stages in the process, while awaiting a decision, after conditional approval and after being denied asylum.

When I asked him, the State Department's country resource expert conceded to me that attaches commonly observe applicants as they come and go from the BNP building in downtown Port-au-Prince where refugee applications are processed. Note further that the BNP building is located only blocks from General Cedras' office.



Thomas J. Mills,  
Asylum Officer -  
Los Angeles/  
Quality Assurance  
Officer - Haiti

# Outspoken INS officer winds up fighting

By CHRISTOPHER MARQUEL  
Herald Staff Writer

WASHINGTON — Before he was expelled from the asylum program in Haiti last August, Immigration and Naturalization Service officer Thomas "T.J." Mills, 33, had an exemplary record.

A graduate of Georgetown and the University of Connecticut law school, Mills had won high praise from several immigration judges in California, including one who called him "an outstanding attorney . . . the ultimate legal researcher."

Yet, after six days in Port-au-Prince,

Mills found himself on a return flight home, chased by charges from U.S. immigration officials in Haiti that he was unprofessional, insubordinate, naive, a troublemaker, football and possibly a television angler.

Today, eight months later, Mills, an asylum officer in Los Angeles, is fighting for the job—and seeking federal protection as a whistleblower. The Office of Special Counsel is investigating his case. "I hope the moment he landed in Haiti in 1983, two-month tour, the soft-spoken Mills' energy set the work as quality assurance officer of the in-country pro-

cessing program, an operation under which Haitians apply for political asylum without leaving their country.

Trouble came when he disagreed with some decisions to deny asylum claims and was told by a supervisor, Sam Martin, that Martin had the final word, a memo to his superiors said. Mills said he argued that procedure required disputed cases to be sent to Washington for further review.

"I felt like a political stooge and asked whether I was sent to Haiti to serve as mere window dressing," Mills wrote. "He conceded that I was serving for 'appearance' purposes."

The next day, Aug. 26, Martin told Mills to pack a bag.

Two weeks later, INS spokesman Duke Austin explained Mills' ouster, saying he was "disruptive to the program" and "had brought items that violated international sanctions on Haiti.

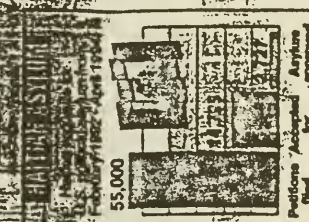
Mills said he had indeed earned a I set to Haiti for an INS colleague's faith. In Washington, some officials privately cheered him on. Gregg Boyer, director of the asylum branch at the headquarters, praised Mills' energetic handling of the situation in Haiti, telling Mills he was "the first person in Po-

# Monitors assail treatment of Haitian asylum-seekers

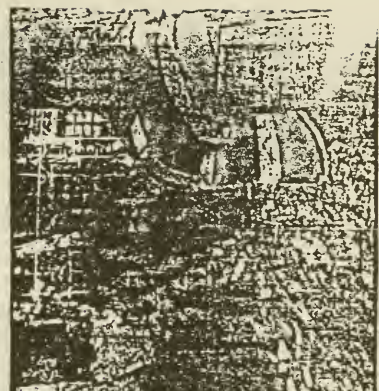
HAITI — A group of monitors has accused the U.S. Immigration and Naturalization Service of mistreating Haitian asylum seekers. The group, which includes human rights activists and former INS officials, says that the INS has been "grossly negligent" in its handling of the cases. They say that the INS has failed to provide adequate medical care and that the conditions in the camps are "inhuman and degrading."

For many Haitians, the chance to apply for U.S. asylum while still in their country — a program of "in-country processing" (ICP) — has become nothing but a source of frustration and grief, a charade designed to keep them at home.

Established by President Bush, the ICP program was expanded



They work under a political bias against asylum. "It's not that they hate the Haitians. It's just that they think everybody wants a meal ticket," complained an INS legal officer. As INS monitor, Thomas "T.J." Mills, was sent home less than a week into his two-month stint in Haiti last August after pointing out numerous irregularities and deficiencies.



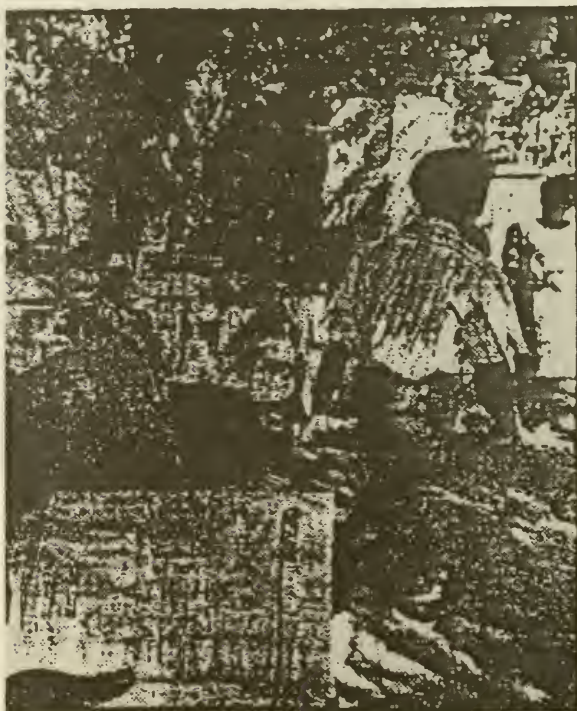
ODDS AGAINST HIM: A Haitian teenager goes through his American Embassy in Port-au-Prince, hoping to join his very theatrical show of suicide. ment that he fears he in

# for his job

au-Prince to declare that the emperor wears no clothes."

But back in Los Angeles, Mills was warned about a drop in his case-review output during a fall evaluation. He received a letter of termination in January. On a technicality, the union got him reinstated. Mills says his job is still insecure.

Not so, Beyer says. As long as Mills keeps his productivity high, he will have a job in the asylum branch. "Admittedly, he does good work," Beyer said. "But he needs to make it not so thorough."

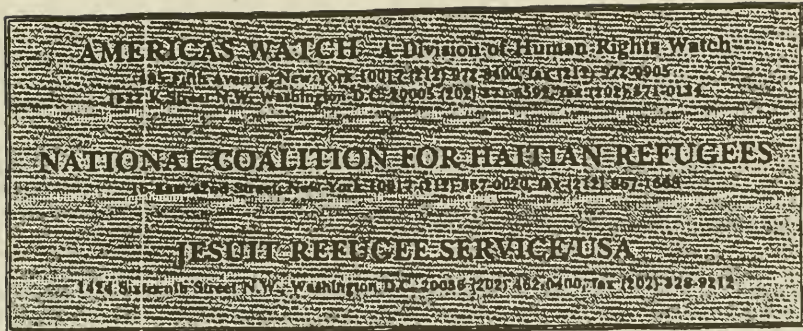


CARL JUSTE / Herald Staff









September 1993

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## No Port in a Storm

### The Misguided Use of In-Country Refugee Processing in Haiti

#### Contents

Summary of Findings .....	2
I. Introduction .....	4
II. History of U.S. Policy Toward Haitian Refugees .....	6
III. In-Country Processing in Haiti .....	8
A. Background .....	8
B. Operational Structure .....	9
C. Recent Expansion .....	10
D. Current Functioning .....	10
IV. A Critical Assessment of the ICP Program .....	15
A. The Central Role and Biased View of the State Department .....	15
B. Political Isolation Weakens the Program .....	18
C. No Safe Haven Component is Available .....	18
D. Operational Deficiencies .....	20
E. Inconsistency in Adjudication .....	22
F. Representative Cases .....	27
G. Some Asylum Seekers Will Not Risk Applying .....	31
V. Interdiction, Forced Return and In-Country Processing .....	32
VI. Conclusions .....	34
VII. Recommendations .....	36
Acknowledgments .....	37

## SUMMARY OF FINDINGS

When the September 30, 1991 military coup d'état exiled Haiti's democratically elected president and unleashed some of the most brutal repression in Haitian history, the U.S. government went to new extremes in curtailing the rights of Haitian asylum seekers. The damage done by this misguided and discriminatory refugee policy will persist long after a political settlement is achieved in Haiti.

For many years, the United States government has been interdicting Haitians on the high seas and returning them to Haiti with only minimal efforts at screening for refugee status. This policy, coupled with discriminatory treatment of Haitian asylum seekers in the U.S., has been the focus of longstanding criticism and a stream of legal challenges.

The Bush Administration's response to the September 1991 political crisis was feeble and to the refugee crisis, reprehensible. The United States joined other nations in the western hemisphere in condemning the coup, refusing to recognize the new military-backed government and imposing sanctions. However, after an initial hesitation, and in spite of widespread human rights violations and generalized violence, the interdiction policy continued. The exception was a short interlude when Haitians picked up at sea were taken to Guantánamo Bay to be screened for asylum seekers after a Florida federal district judge imposed a temporary restraining order halting forced repatriations. In February 1992, the Bush Administration established an in-country processing (ICP) program through the U.S. Embassy in Port-au-Prince. That same month, the Supreme Court lifted the ban on the involuntary return (*refoulement*) of Haitian refugees.

The parameters of debate shifted dramatically, however, when on May 24, 1992, then-President Bush ordered all Haitians to be interdicted on the high seas and summarily returned to Haiti, with no prior screening for refugees fearing persecution. ICP, which had historically been conceived as an additional avenue of protection for refugees in selected countries, became the only option for victims of Haiti's repressive military regime.

U.S. foreign policy and refugee policy have been historically inseparable and interdependent. The case of Haiti, and Haitians, is no exception. Newly elected President Clinton, who had made campaign promises to rectify the illegal and irresponsible refugee policy, opted instead to continue it. His administration justified this reversal by raising the spectre of a huge, uncontrollable invasion of economic refugees and by arguing that the policy saved lives.

The Clinton Administration has undeniably contributed to progress made thus far in the reinstatement of constitutional government. Nevertheless, the pre-inauguration announcement that the policy of forcibly returning refugees would continue, with the support of President Aristide, was inconsistent with the Administration's stated commitment to seeking justice in Haiti. Increased efforts on the political front became the excuse for forfeiting the rights of the refugees.

In January, the incoming and outgoing administrations agreed to blockade the island with U.S. Coast Guard cutters, Navy ships and helicopters in order to prevent refugee flight. Clinton's administration went so far as to defend the policy of forced return, successfully, before the Supreme Court, leaving the heretofore globally recognized principle of *non-refoulement* in a shambles. It further proposed to expand and improve ICP, thereby attaining what has since been touted as "complete coverage" for Haitian asylum seekers. Thus, in an ironic twist, *non-refoulement* is considered irrelevant to a major refugee crisis, and ICP, for the first time in its history, is considered an appropriate sole remedy.

In March 1993, The Inter-American Commission on Human Rights of the Organization of American States issued an interim resolution in response to a petition pending before it challenging the U.S. government's Haitian interdiction program. The resolution found that the interdiction policy is in violation of international law and should be suspended immediately.

In spite of observable improvements made this year in the program, ICP in Haiti, while certainly able to help some people, cannot be considered an adequate sole remedy for asylum seekers. It is both a product and a victim of the flawed and politicized view of the Haitian refugee crisis held by the U.S. government, and as such, is isolated from and distrusted by international and local refugee experts and human rights organizations, not to mention the very people it is meant to assist.

The State Department runs the program and is responsible for every aspect of it. The Immigration and Naturalization Service (INS) handles the actual case adjudication, which is heavily influenced by the faulty premise behind the program and overly reliant on the State Department including for information on country conditions and Haitian culture. Human rights analysis from the State Department is contradictory and at times appears tailored to fit the refugee policy. The fact that the U.S. government considers ICP an adequate response in the Haitian context is testimony to its biased perspective on human rights.

The most obvious shortcomings in ICP, as applied in Haiti, are the following:

1. There is no protection component. A number of cases have been documented of Haitians who have been persecuted at different stages of the process, including while awaiting a decision, after conditional approval and after being denied asylum. Risks are exacerbated by inordinately long delays in processing all but the most exceptional cases.
2. There are built-in characteristics, stemming from the U.S. government's incorrect assessment of the refugee crisis, which lead to limited access to the reasonably expedited treatment an asylum seeker logically needs and deserves. All applicants who are not "high-profile" or deemed to be in imminent danger will not even have an initial interview until six or more months after approaching the program. This includes people who would be able to meet the burden of proof for asylum. Priority (vetting) determinations based solely on the contents of a written questionnaire do not constitute a fair hearing under the circumstances.
3. There is evidence of inconsistency in adjudication, unfair application of the standard for asylum and questionable credibility determinations. Cases reviewed showed that past persecution is nearly always a prerequisite for approval. In several cases reviewed, a denial of asylum was only overturned when the applicant was brutalized in the interim. Even among cases where persecution has already occurred, asylum has been denied.
4. Those potential asylum seekers who do not feel that they can safely avail themselves of the program are left with no option. Haitian human rights groups and NGOs feel that this is the case for a significant number of victims of persecution.
5. Haitians interdicted on the high seas and returned are subject to detention under a 1980 decree prohibiting the organization of illegal departures from the country. The existence of this law blurs the distinction between illegal departure and refugee flight. The presence of ICP does not alter the fact that forcibly returning Haitians interdicted on the high seas, puts them at serious risk of both prosecution and persecution.

The Clinton Administration's efforts toward achieving a political solution in Haiti can be favorably contrasted to his predecessor's inaction. Nevertheless, this progress is diminished by the continuation and promotion of a refugee policy that is inhumane and illegal and ultimately calls into question the U.S. government's commitment to human rights and a democratic regime in Haiti. It would be a mistake to assume that progress in the restoration of constitutional government signals an end to repression, and hence to the needs of asylum seekers. It is imperative that this policy be replaced with an approach to Haitian refugees which incorporates basic refugee protections.

ICP has been unfairly used as an excuse for forcibly repatriating Haitians. A broader solution to the Haitian refugee crisis which respects the basic principles of non-refoulement and temporary refuge is called for. ICP could appropriately serve as part of such a response.

Finally, the treatment meted out to Haitians has furthered a global trend toward curtailing the rights of asylum seekers and closing borders in the face of victims of persecution. The Haitian experience flags some of the dangers inherent to attempts to address refugee migration through abbreviated procedures and summary return.

## I. INTRODUCTION

The September 30, 1991 military coup that exiled President Jean-Bertrand Aristide after only eight months in office, submerged Haiti under a tidal wave of repression and despair. The military fury unleashed against the broad popular sectors that brought Aristide to power has left hundreds, perhaps thousands, dead and made many thousands more the targets of various forms of brutal persecution.<sup>1</sup> A direct result of this widespread destruction of Haitian society has been forced migration on a massive scale. Human rights groups estimate that the number of people internally displaced or in hiding since the coup is in the hundreds of thousands.<sup>2</sup> Tens of thousands more took to the high seas, thereby exercising their internationally recognized right to leave their country and seek asylum.<sup>3</sup>

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<sup>1</sup> The Inter-American Commission on Human Rights reported in an August 27, 1993 press release, that 1,500 people had been killed since the coup and 300,000 driven into hiding. Haitian human rights groups estimates are even higher. See generally Americas Watch and National Coalition for Haitian Refugees, *Silencing a People* (New York: AW and NCHR, 1993.) See also, Department of State *Country Reports on Human Rights Practices for 1992* (Government Printing Office, Washington, D.C., 1993), Haiti discussion at pp. 421-425, and reports and press releases of the UN/OAS International Civilian Mission, March - August, 1993.

<sup>2</sup> The term "in hiding" (*marronage*), commonly used in post-coup Haiti, refers to a range of survival measures taken by individuals who have been persecuted or fear persecution. Being in hiding often involves constant movement, prolonged displacement and inability to work or to be united with family members. Its many manifestations include not sleeping at home at night, leaving town entirely, frequent moving from place to place or remaining confined indoors at a location deemed safe by friends or other helpers. It is often a progressive or fluid state and the causal fear and insecurity are compounded by economic hardship and personal isolation.

<sup>3</sup> Article 14.2 of the Universal Declaration of Human Rights states, "Everyone has the right to leave any country, including his own, and to return to his country." Article 14, 1 states, "Everyone has the right to seek and to enjoy in other countries asylum from persecution." Article 12.2 of the International Covenant on Civil and Political Rights states, "Everyone shall be free to leave any country including his own." Article 22 of the American Convention on Human Rights guarantees the right to leave any country and further guarantees the right to "seek and be granted asylum in a foreign territory..." (ppgh. 6) and the right of non-refoulement (ppgh. 8). Article 33 of the 1951 Convention Relating to the Status of Refugees states, "No Contracting State shall expel or return ("refouler") a refugee

In the wake of the coup, the Bush Administration was faced with two closely interrelated problems: what to do about the political explosion in Haiti, and what to do about its human fallout. President Bush's response defied all logic. He reacted in a lukewarm manner to the critical fact of President Aristide's ouster while exerting considerable effort to keep the refugees off U.S. shores.

A longstanding U.S. policy of discrimination against Haitian refugees is the platform upon which the management of this extraordinary human crisis is based. So it comes as no surprise that precisely when military repression reached a new high, tolerated and even promoted by the *de facto* government, the quality of U.S. treatment of Haitian refugees reached a new low. Indeed, both the Bush and Clinton administrations have gone to great lengths to turn the meaning and intent of international and U.S. refugee law upside down in order to restrict to the fullest extent possible the entrance of Haitian refugees.

During his campaign, President Clinton promised to do what his predecessor had not: contribute to the return of democratic government in Haiti and discontinue what he denounced to be an illegal and dangerous policy of forced repatriation. Even prior to his inauguration, President Clinton began to take more forceful steps toward achieving the reinstatement of the constitutional government of Haiti. In July of this year an accord was signed by President Aristide and General Raoul Cédras creating the framework for a political settlement.<sup>4</sup>

Meanwhile, on the refugee question, President Clinton not only continued the policy of forced return, he strengthened it by surrounding the island with some twenty U.S. Coast Guard cutters and Navy vessels ordered to interdict and return any Haitian leaving the island for the United States. Shortly after his election, his administration appeared before the Supreme Court to argue, in *Sales v. Haitian Centers Council*, that the principle of non-refoulement did not apply to Haitian refugees on the high seas, thereby sacrificing the most fundamental principle of refugee protection in order to salvage that same policy.<sup>5</sup> The decision in *Sales v. HCC* was a serious blow to the internationally recognized rule of non-refoulement and formally strips the U.S. of the moral authority it once exercised in the defense of asylum seekers the world over.

Responding to the Supreme Court decision, the United Nations High Commissioner for Refugees (UNHCR) stated that, "This decision is contrary to the views of UNHCR's Executive Committee that refugees should not be refused entry to a country where they are seeking asylum, and that asylum seekers rescued at sea should always be admitted, at least on a temporary basis.....[The] UNHCR considers the Court's decision a setback to modern international refugee law which has been developing for more than

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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."

<sup>4</sup> The Governors Island Accord was signed on July 9, 1993 and provides a general framework for reinstatement of constitutional government. It requires President Aristide to name a Prime Minister who will be confirmed by a reconstituted Parliament. Steps are then to be taken for lifting of international sanctions, the retirement of army commander General Raoul Cédras, creation of an independent civilian police force and the October 30 return of the President. Robert Malval, the Prime Minister-designate named since by President Aristide, has been approved by the reconstituted Haitian Parliament. The U.N. Security Council suspended the sanctions against Haiti on August 28.

<sup>5</sup> The 1951 Convention Relating to the Status of Refugees, Article 33, prohibits States from returning refugees to countries where they may face persecution. In a June 21, 1993 decision in *Sales v. Haitian Centers Council*, the Supreme Court found that the letter of neither domestic nor international law prohibited the United States from returning Haitian refugees picked up on the high seas, even though, as Judge Stevens wrote in the majority opinion, "such actions may even violate the spirit" of international treaty law.

forty years...It renders the work of the Office of the High Commissioner in its global refugee protection role more difficult and sets a very unfortunate example.<sup>6</sup>

In March 1993, the Inter-American Commission on Human Rights of the Organization of American States (OAS) issued an interim resolution in response to a petition pending before it challenging the U.S. government's Haitian interdiction program. The resolution found the program to be in violation of international law and called for its immediate suspension.

The Haitian constitutional crisis might well be on the difficult path toward resolution in coming months. Nevertheless, it would be erroneous to assume that the signing of papers in New York, or the eventual reinstatement of legitimate government, will automatically result in an end to fear and violence. The serious flaws in the refugee policy will, therefore, continue to have consequences -- both as gross injustice to Haitians and as a disastrous legal precedent, breathing life into a global trend to narrow and limit the heretofore universally recognized principles protecting those who flee persecution.

The U.S. treatment of Haitian refugees touches on broader legal and moral questions amid the current debate about asylum reform. This policy provides an example of how the distinction between illegal immigration and refugee flight can be lost as countries close their borders to asylum seekers.

## II. HISTORY OF U.S. POLICY TOWARD HAITIAN REFUGEES

The U.S. government has been a champion of large groups of asylum seekers around the world, particularly those fleeing what were socialist-bloc countries. For refugees from the former Soviet Union, Vietnam and Cuba, to name a few, the U.S. has upheld the principles of refugee protection, relaxed the standard for qualifying for refugee status and pressed other countries to accept large numbers of refugees by playing a leading role in seeking alternatives and providing resettlement opportunities.<sup>7</sup>

The purpose of the Refugee Act of 1980 was to bring U.S. law into compliance with international principles and make the granting of asylum and refugee status more uniform. "Until 1980, refugees were defined more by where they came from than by the circumstances and persecution which might have precipitated their flight."<sup>8</sup> Conversely, the traditional approach of the U.S. government toward those fleeing regimes that it considers allies has been far more severe and often outright discriminatory, particularly when refugee groups see the U.S. as the logical choice for asylum. The treatment of Salvadorans, Guatemalans and Haitians fleeing brutal military-dominated regimes in the eighties are cases in point. Eventually temporary protected status was granted to Salvadorans, and Guatemalans now have

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<sup>6</sup> "Office of the High Commissioner concerned by Supreme Court Haitian Decision," June 22, 1993 press release.

<sup>7</sup> "On November 21, 1989, the President signed into law...legislation [called the Lautenberg Amendment] establishing categories of refugee applicants. As a consequence, some 58% of all refugee admissions during FY 1990 are being adjudicated according to a standard different from the worldwide standard." Inzunza, "The Refugee Act of 1980 Ten Years After - Still the Way to Go," *International Journal of Refugee Law*, Vol. 2 No. 3, 1990, p. 420. According to Inzunza, in FY 1990, 96% of refugees resettled in the U.S. would be applicants from communist-bloc countries.

<sup>8</sup> *Ibid.*, p. 416. The Refugee Act of 1980, among other things, regulates overseas processing of refugees (Section 207), asylum adjudication (Section 208) and incorporates the principle of non-refoulement (Section 243).

somewhat better access to the asylum process.<sup>9</sup> The situation for Haitians, however, has only continued to deteriorate.

The U.S. government has long deplored the practice of totalitarian regimes of restricting the exit of their citizens. Nevertheless, it has lauded the Haitian government for measures it has taken since 1980 to restrict the exit of Haitian refugees. What's more, it has recently become the principal enforcer in denying Haitians the right to leave their country and particularly the right to seek asylum.

For years the U.S. has used a bilateral agreement with the Haitian government as the basis for the interdiction, screening and repatriation of Haitian asylum seekers. In 1981 the U.S.-Haitian interdiction program was launched based on an exchange of diplomatic letters between the two governments and an executive order from then-President Reagan.<sup>10</sup> Under that agreement, Haitian "flag vessels" found in international waters and bound for the U.S. would be interdicted and returned to Haiti. However, the agreement stipulated the U.S. obligation to screen Haitians for claims of persecution, thereby formally recognizing the application of the internationally recognized principle of non-refoulement.

During the next decade, the procedures used to screen boat people and determine refugee status were questioned and attacked by refugee advocates and human rights monitors. From 1981 until the September 1991 coup, 22,716 Haitians were repatriated, according to State Department figures. A total of twenty-eight were allowed to enter the U.S. to pursue asylum claims.<sup>11</sup> The harsh treatment afforded Haitians in the U.S., who have routinely suffered prolonged detention and asylum-approval rates of less than two percent, has also been a long-standing concern. However, at issue were the procedures, not the principle.

In the immediate aftermath of the coup, U.S. cutters initially continued to pick up Haitians on the high seas and screen them onboard for asylum seekers. When this practice was legally challenged as insufficient, screening at the U.S. Naval base at Guantánamo Bay, Cuba commenced. Then the discussion and the lawsuits focused on whether "screened-out" refugees could be forcibly repatriated and whether HIV-positive "screened-in" Haitians could be detained indefinitely at Guantánamo and denied due-process rights enjoyed by other screened-in asylum seekers.<sup>12</sup>

<sup>9</sup> Salvadorans were granted Temporary Protected Status (TPS) through the Immigration Act of 1990, which added section 244A to the Immigration and Nationality Act providing the Attorney General with discretion to grant TPS. Both Salvadoran and Guatemalan refugees also were afforded the opportunity to have their asylum claims reconsidered pursuant to the 1991 District Court decision in *American Baptist Churches v. Thornburgh*, 760 F.Supp. 796 (N.D.Cal. 1991).

<sup>10</sup> Executive Order 12324, September 29, 1981. See Bill Frelick, "Haitian Boat Interdiction and Return: First Asylum and First Principles of Refugee Protection," U.S. Committee for Refugees, February 20, 1993, p. 6.

<sup>11</sup> L. Guttenberg and L. Dugaard, "United States Treatment of Haitian Refugees: The Domestic Response and International Law," American Civil Liberties Union, *International Civil Liberties Report*, Vol. 1, No. 2, June 1993, p. 10.

<sup>12</sup> Refugees were "screened-in" based on a "credible fear" standard in order to pursue their asylum claims in the U.S. under the higher standard of a "well founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion." "Screened-out" refugees were then returned to Haiti. For a 1992 chronology of U.S. program, policy and legislative decisions affecting refugees and asylum seekers in 1992, see "Refugee Reports," U.S. Committee For Refugees, Vol. XIV, No. 1, January 29, 1993, p. 6.

Ironically, it was not until the September, 1991 coup introduced some of the most brutal repression in Haitian history, that the U.S. decided to do away altogether with any pretense of screening fleeing refugees. On May 24, 1992, the parameters of debate shifted dramatically when then-President Bush issued the "Kennebunkport Order" under which all Haitian boats would be interdicted by the U.S. cutters and their passengers returned directly to Port-au-Prince with no prior screening for asylum seekers.<sup>13</sup> With the May 24 order, the Bush Administration abrogated the 1981 bilateral agreement with Haiti. The current policy is based on a unilateral action that lacks the formal consent of the Haitian government.

In this way, the Bush Administration solved the U.S. refugee "problem" through a policy of containment that has curtailed the flight, and the rights, of potential refugees. President Clinton inherited this policy, and, swallowing his pre-election aversions, fine-tuned it by blockading the island.

Interdiction of Haitian refugees	
1981 - Sept. 1991:	22,805
Sept. 1991 - July 1993:	30,032
(May 24, 1992 - July 1993:	5,826)
Total since 1981:	58,795

### III. IN-COUNTRY PROCESSING IN HAITI

#### A. Background

The United States set up an in-country processing program (ICP) in Port-au-Prince in February 1992 to afford Haitians the option of seeking asylum without first taking to the high seas. At this time refugee screening was still taking place at Guantánamo. Since the May 1992 U.S. presidential order, ICP has been the only recourse for Haitian asylum seekers and has become a palliative for critics of U.S. policy. When he announced the temporary continuation of the Bush interdiction policy, President Clinton added that ICP would be expanded and improved, thereby better justifying forced repatriation.

This novel application of ICP is a first worldwide. In-country processing is part of a broader set of procedures contained in the 1980 Refugee Act and was not intended as a sole means of protection.<sup>14</sup> Similar programs in Vietnam, Cuba and the former Soviet Union were designed to facilitate the processing of chosen groups of refugees the U.S. was already predisposed to accept based on a concept

<sup>13</sup> Executive Order 12,807, Fed. Reg. 25,133, May 24, 1992.

<sup>14</sup> As noted in the *amicus curie* brief filed in *Sales v. Haitian Centers Council*, Joshua R. Floum (Attorney of Record) *et al.* on behalf of Senator Edward Kennedy and former Representative Elizabeth Holtzman and other Members of Congress (hereinafter Members of Congress Amicus), "(T)he language, structure and legislative history of the Act, as well as years of executive application of the Act, demonstrate that Congress intended that the Act's three separate but concurrent forms of refugee protection comprise a comprehensive scheme." (p. 5)



of "presumptive eligibility."<sup>15</sup> In Haiti, on the other hand, the program is designed to cut off a mass influx of people the U.S. is predisposed to reject. What's more, it is the first case where ICP has been imposed on asylum seekers as a substitute for the ability to escape and seek safe haven before articulating individual claims.<sup>16</sup> In the case of Vietnam, the U.S. played a forceful role in encouraging countries of first asylum to accept boat people temporarily until they could be resettled.<sup>17</sup>

Furthermore, in other countries where ICP became part of a U.S. strategy for resettling refugees, the period of acute political upheaval was over, human rights problems were chronic and predictable and government policies were solidified. In this context, agreements were reached with the respective governments to facilitate the orderly processing of selected groups of people. In Haiti, political turmoil is at its height and more complicated yet, the U.S. does not even recognize the de facto government, much less enter into agreements with it. These factors effectively remove the safeguards which define the logic and efficiency of ICP in other countries. The driving force behind this plan seems to be the historically unshakable U.S. decision not to become a country of first asylum for Haitian refugees.

## B. Operational Structure

By definition, overseas refugee processing depends heavily upon executive discretion, and foreign policy considerations are part of the decision on what groups are considered of special humanitarian interest to the U.S.<sup>18</sup> In Haiti the State Department is the principal policy-making bureau behind ICP and directly manages it. It has been responsible for setting up the program, providing services to INS officers and contracting with the International Organization for Migration (IOM) and more recently with two non governmental organizations.<sup>19</sup> A Refugee Coordinator manages the program under the auspices of the U.S. Consulate.

Operationally, the State Department's role encompasses all activities except for specific case adjudication. It is responsible for initial "vetting" or grading applications into priority categories for consideration by INS. It has contracted the IOM in Port-au-Prince to receive applicants, prepare asylum

<sup>15</sup> For example, Inzunza writes, "Although the statutory definition of refugee changed in 1980, until August 1988, all Soviet and some Indochinese refugee resettlement applications... were being found eligible for refugee status under what amounted to a presumption of eligibility...." (Inzunza, "The Refugee Act of 1980...." p. 418.)

<sup>16</sup> See, for example, Members of Congress Amicus p. 10: "The government's conduct in forcing Haitians back to Haiti and funneling them through section 207 overseas refugee processing violates the purpose of the Act to make these protections comprehensive and to reaffirm the principle of non-refoulement."

<sup>17</sup> "[A] similar in-country procedure for processing refugees was created at the height of the Vietnamese boat exodus. However, those who decided to flee by boat were never turned back because such a program existed. And the United States was vigilant in seeing that other governments would not summarily push back the boat people, demanding that they be given temporary asylum in the region. Bill Frelick, "Clinton's Haitian Policy: Same Old Story," *St. Louis Post-Dispatch*, January 19, 1993. (Reprinted by U.S. Committee for Refugees.)

<sup>18</sup> Section 207 of the Immigration and Nationality Act "enumerates several factors that may be considered during the consultative process, including the impact on the "foreign policy interests of the United States." The statute, however, does not identify numerical limits, special humanitarian concern or a foreign policy impact for consideration in section 208 (a) asylum or section 245 (h) withholding decisions..." as cited in Members of Congress Amicus, p. 16

<sup>19</sup> The International Organization for Migration is an intergovernmental organization that implements various programs worldwide for migrants and refugees.

claims for adjudication and handle all out-processing. More recently, two non-governmental organizations (called Joint Voluntary Agencies, or JVAs), World Relief (WR) and the United States Catholic Conference (USCC), have been contracted to run the newly opened regional centers in Les Cayes and Cap-Haitien respectively.<sup>20</sup> The U.S. Embassy also serves as the main resource on country conditions, social and political organization and human rights data for the program, providing briefing materials and expert opinions.

The IOM staff of forty includes five caseworkers: three Haitian-Americans and two U.S. citizens of non-Haitian background. Caseworkers must be fluent in English, Creole and French and have a university degree. The other staff are form-fillers to assist with completion of standard INS forms, interpreters and administrative staff.

The INS has assigned an Officer in Charge (OIC) and an Assistant Officer in Charge (AOIC), both with one-year contracts. The eight interviewing officers responsible for adjudication are drawn from a pool of primarily examiners and inspectors who have received a three-week asylum training course and are on sixty-day rotations. A quality assurance team comprising an asylum corps officer and a legal advisor from the INS General Counsel's office are assigned on a thirty-day rotation and are responsible for case review of all decisions. The rest of the staff is administrative.

### C. Recent Expansion

A technical team including representatives from the State Department, the INS and the Congress traveled to Haiti last January to make recommendations for improving and expanding the program. These included measures to increase capacity and efficiency and the opening of two regional centers.

After a separate review of the program, the INS installed the quality assurance team described above. Another INS change was to draw on a pool of officers who had been through a three-week asylum law training course. According to the State Department and the INS, all of the recommendations were approved and have been implemented.<sup>21</sup>

### D. Current Functioning

The following is a brief outline of the process itself.

1. The applicant picks up a preliminary questionnaire from IOM, which is filled out and returned. (Questionnaires can also be obtained by requesting one by telephone or mail or by sending a friend.) If an applicant is illiterate or otherwise needs assistance, an IOM employee can help fill out the form. Unfortunately, this happens in a public and quite crowded reception area in full hearing of others present. Some people hire strangers to fill out the forms for them, while others seek help from family members. The first page of the questionnaire is biographical information. The second page requests information on organizational and political affiliations, government posts held and any arrests or problems with the authorities.

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<sup>20</sup> In other examples of overseas refugee processing, JVAs work closely with the State Department and the INS to facilitate the orderly resettlement of refugees.

<sup>21</sup> Unfortunately, the technical team's report and the follow-up report on the implementation of the recommendations have been classified.

2. The application is vetted (prioritized) into an A, B or C category for adjudication by the Refugee Coordinator's staff.<sup>22</sup> Vetting is carried out based solely on the contents of the questionnaire. A vetting supervisor, who has been with the program since the beginning, reviews all vetting decisions.

"A" cases are described as high-profile, often involving an official of the Aristide government, a member of a targeted profession such as journalists, or a grassroots organization leader. The case is considered extremely urgent, and most involve past persecution.<sup>23</sup> These make up about five percent of the total vetted applications. "C" cases, about ten to fifteen percent of the total, are those in which (according to the questionnaire) the applicant has made no claim to asylum. The vast majority, over eighty percent of all cases, are "Bs". In many cases, the applicant has articulated some fear of persecution but the case may need to be developed or is not considered top priority.<sup>24</sup>

All "A" cases are reviewed by the Refugee Coordinator, who will follow particularly sensitive ones. He will also occasionally glance through "B" and "C" cases. "A" cases are scheduled for an IOM and an INS interview the same day or the following day. Currently, "B" cases are receiving interview dates for between January and March, 1994. "C" cases are not scheduled for interviews.

3. At the time of the IOM appointment, the necessary forms are filled out and the applicant is interviewed. The purpose of the interview is to review the questionnaire with the applicant and elicit further information relevant to the application. The caseworker writes up the interview and prepares the file for INS.

4. The same day or the following day, the INS reviews the file, interviews the applicant through an interpreter, and makes a provisional decision. This decision is based upon whether the applicant has met the burden of proof and whether the applicant is considered credible.<sup>25</sup> The INS interviewer's notes are incorporated into the file along with the recommended decision. Cases are reviewed by the Assistant Officer in Charge and by the quality assurance team, which assesses whether the facts provided are consistent with the decision, whether a credibility judgement is adequately supported and whether legal issues raised by the case have been correctly resolved. A U.S. Embassy political officer and an ethnic affairs expert on the IOM staff are on site and serve as the principal resources on local conditions. The INS

<sup>22</sup> The vetting staff is generally composed of part-time contract employees, often relatives of U.S. Embassy personnel.

<sup>23</sup> Interview with Refugee Coordinator Luis Moreno, Port-au-Prince, June 14, 1993.

<sup>24</sup> The approval rate is thirty-three percent for A cases and five percent for B cases. This means that B cases account for a higher number of actual cases approvals.

<sup>25</sup> The standard for asylum under the Refugee Act of 1980 is a "well founded fear of persecution...on account of race, religion, nationality, membership in a particular social group or political opinion." This includes, but is not limited to, past persecution. The adoption of this definition brought the U.S. into compliance with the international definition of refugee.

Regarding credibility, the INS "Basic Law Manual: Asylum" (from the Asylum Branch of the Office of the General Counsel, March 1991) states: "[A]n alien's own testimony may be sufficient, without corroborative evidence, to prove an asylum claim if that testimony is believable, consistent and sufficiently detailed to provide a plausible and coherent account of the basis of the claim." According to the UNHCR, "The applicant's statement must be coherent and plausible and not run counter to generally known facts." *Handbook on Procedures and Criteria for Determining Refugee Status*, January 1988, p. 48.

Resource Information Center (RIC) provides country condition information from a variety of governmental and non-governmental sources, including church, refugee and human rights groups.<sup>26</sup>

5. **Out-processing:** All approvals are considered conditional until out-processing has been completed. This includes a medical examination, obtainment of a passport (passports are required by the Haitian authorities in order to leave the country) and securing sponsorship by an individual or organization in the United States. For the passports, fingerprints must be obtained at the police station. Obtaining passports for all individuals included on an application may require getting a birth or marriage certificate for the first time.<sup>27</sup>

6. **Motions to reconsider:** If a case is denied, the IOM (or the JVA) receives a form letter indicating the category of the reason for denial. These letters are not case-specific. The applicant is then notified. The denial includes notice of the right to file a motion to reconsider. To file the motion the applicant writes a letter to the District Director of INS in Mexico explaining the reasons why the case should be reexamined. These letters can be translated by the IOM (or the JVA in the regional centers). More recently, a notice that the letter must be in English has been included on the denial letter. In general, the letter must present new information; few cases are overturned based on the premise that the original decision was faulty.<sup>28</sup> Approximately twenty motions to reconsider are received daily. The decisions are made in Haiti and signed by the INS Officer in Charge on behalf of the District Director. There is a delay of several months in most cases.

7. **Regional centers:** A regional ICP center opened in Les Cayes on April 26, 1993. It is run by World Relief under contract to the State Department.<sup>29</sup> Like IOM in Port-au-Prince, World Relief's mandate is to prepare cases for INS adjudication. Their expatriate staff is composed of a director and a deputy director. Four form-fillers, an accountant, a receptionist and four security guards have been hired locally. The centers are set up to prepare forty cases per week for INS adjudication. As currently designed, a team of two INS officers will spend two weeks per month in each regional center. An unfortunate feature of the Les Cayes center is its location just one block from the army garrison, where potential applicants are often held and beaten.

There are certain variations to the procedure in the regional offices. For example, an applicant in Les Cayes has the questionnaire vetted and forms filled out on the same day. Vetting is done by the

<sup>26</sup> A U.S. Embassy political officer in charge of refugee and migration affairs (and deputy refugee coordinator) has travelled extensively in Haiti following up on repatriates. To date, over 4,000 have been interviewed. See also, *News From Americas Watch* and National Coalition for Haitian Refugees, "Half the Story: The Skewed U.S. Monitoring of Repatriated Haitian Refugees," June 30, 1992. The human rights liaison, born in Haiti, is an IOM employee who works closely with the Refugee Coordinator and the INS. He is responsible for contacts with local organizations and handles off-site interviews. He is often consulted on sensitive cases as the resident expert on Haitian matters. He also informs ICP personnel through translation and summary of local press.

<sup>27</sup> Marriage certificates cost about fifty gourde or US\$4.17. The birth certificates vary between fifteen and sixty gourde or \$1.25 to 5.00. The required photographs cost seventy-five gourde or \$6.25 a set. The minimum and standard wage for a factory worker wage is fifteen G/day or \$1.25. (Based on an exchange rate of twelve gourde = U.S. \$1.00.) IOM, if asked, will defray some of the cost. World Relief said they would help pay if asked, but do not tell applicants about this service.

<sup>28</sup> This has occurred, however, particularly when an NGO has gotten involved.

<sup>29</sup> The center in Cap-Haitien opened in May and is run by the United States Catholic Conference.

JVA director. As of late June, "B" cases were being scheduled for interviews for sometime in July. "Cs" were not being scheduled. The director of World Relief told AW and NCHR that mechanisms were in place to transport an urgent case to Port-au-Prince, although no such case had yet occurred.

Two INS officers are scheduled to visit each regional center every two weeks. During those visits they hold interviews for up to 140 applicants. These files are taken back to Port-au-Prince for quality assurance and final adjudication. A decision is communicated to Les Cayes, at which time out-processing is begun for those approved. Medical examinations are completed locally. Fingerprinting, passport obtainment and sponsorship are handled through IOM in Port-au-Prince. Most often the approved applicant waits in Les Cayes for all of this to be completed. Few can afford to stay in Port-au-Prince for that length of time. World Relief says that they pay expenses if asked but do not volunteer such assistance.

In other countries where ICP is used, non-governmental organizations with experience in refugee processing and resettlement have worked closely with the State Department and the INS to prepare and process refugee claims. World Relief and USCC have only recently become involved in ICP in Haiti, taking charge of the two regional centers opened in April and May of this year. According to a USCC official, JVAs are experts on refugee issues and can use that knowledge to help people through the process.<sup>30</sup> However, a State Department official said that the JVA role is to provide "a service to the State Department, not to act as advocates."<sup>31</sup>

Both World Relief and USCC say that as long as ICP is a reality in Haiti, their participation can have a positive effect in the efficient and fair processing of Haitian refugees. However, they share the broader NGO perspective that not even a new and improved ICP is a substitute for the right to seek safe haven. Fr. Rick Rycavage, Executive Director of the Catholic Bishops' Office of Migration and Refugee Services, recently stated that "[T]he processing center is no substitute for justice either within Haiti, or in the treatment of refugees who try to flee Haiti."<sup>32</sup>

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<sup>30</sup> Interview with Shej Lowman, Washington D.C., June 9, 1993.

<sup>31</sup> Interview with Ken Foster, Refugee Program, State Department, Washington D.C., June 9, 1993.

<sup>32</sup> U.S. Catholic Conference, "Church Agency Disappointed at Supreme Court Ruling Upholding Administration's Decision to Return Haitian Refugees," press release, June 22, 1993.

Available Data on ICP Caseload  
June 1, 1992 - July 30, 1993

Dates	Cases vetted (#)	Cases adjudicated (#)	Cases approved (#)	Approval rate (%) <sup>*</sup> (%) <sup>**</sup>	Cases entered US (#)
Jun 1 -Jul 1, 1992	1337	109	12	11 0.9	2
Jul 1 -Aug 3, 1992	898	394	26	6.6 2.9	7
Aug 3 -Sep 1, 1992	727	575	39	6.7 5.3	1
Sep 1 -Oct 2, 1992	666	557	27	4.8 4.0	11
Oct 2 -Oct 30, 1992	423	331	7	2.1 1.7	0
Oct 30-Nov 27, 1992	436	216	12	5.5 2.8	20
Nov 27 -Jan 1, 1993	318	223	26	11.6 8.2	12
Jan 1 -Jan 31, 1993	320	166	16	9.6 5.0	16
Jan 31-Mar 28, 1993 (2 months)	4210	650	99	15.2 2.4	n/a
Mar 28-Apr 30, 1993	4315	1173	26	2.2 0.6	111
Apr 30-May 27, 1993	1318	596	39	6.5 3.0	50
May 27-Jul 2, 1993	2168	855	91	10.6 4.2	61
Jul 2 -Jul 30, 1993	2259	850	35	4.1 1.5	69
Total # cases	19,395	6,695	455	6.8 2.3	368
Total # persons	34,171	7,947	1,243	15.7 3.7	937

\* Figure represents percentage of adjudicated cases.

\*\*Figure represents percentage of vetted cases.

Source: Compiled from cumulative figures from the State Department. The methodology employed, as well as all findings, should be transparent and open.

#### IV. A CRITICAL ASSESSMENT OF THE ICP PROGRAM

Since its inception, ICP in Haiti has come under severe criticism from human rights groups and refugee advocates. In prior reports on Haiti, AW and NCHR have pointed out many inadequacies of the policy in general and of the ICP program specifically.<sup>33</sup> Nevertheless, it is of particular concern that the recent expansion and streamlining of the program under the Clinton Administration has led U.S. officials to tout it as providing "complete coverage" and to see it as a measure which mitigates and justifies the policy of forced return.<sup>34</sup>

The authors recognize the serious efforts made in recent months by individuals involved in the program to make it more efficient and "user-friendly." It does appear that the program has improved in several areas since the technical team visit in January. These include:

1. Expedited processing of Priority A cases: Exceptionally urgent cases can now be turned around in approximately two weeks including the out-processing.
2. Quality assurance: By using quality assurance officers, including some with prior experience in Guantánamo, adjudication decisions are being reviewed systematically by a General Counsel's office attorney and a trained asylum officer.
3. Use of interviewing officers who have attended a three-week asylum training program.
4. Training of IOM staff: Attempts have been made to address the complicated problem of staff/applicant interaction and assure quality and standardization of interview write-ups.
5. The recent opening of two regional centers and the use of JVAs to run those centers.

Nevertheless, these improvements have done little to ameliorate a number of basic shortcomings. These are primarily a result of conceptual inconsistencies, which stem from substituting ICP for traditional self-help remedies such as the ability to flee.

##### A. The Central Role and Biased View of the State Department

The ICP program is based on the State Department's premise that the number of genuine asylum seekers is actually quite small. A State Department official involved in setting up the program voiced what seems to be the common belief that "most Haitians are economic migrants; it diminishes our program worldwide if we accept economic migrants."<sup>35</sup> Furthermore, as stated above, the reason that ICP became the antidote for the Haitian refugee problem in the first place was a desire to keep the numbers admitted to the U.S. to a minimum.

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<sup>33</sup> See generally, *Motion for Leave to File Brief Amicus Curiae and Brief of Human Right Watch, Amicus Curiae*, in Support of Respondents, *McNary v. Haitian Centers Council* (later changed to *Sales v. Haitian Centers Council*), October term, 1992 and AW and NCHR, "Half the Story," New York, June 30, 1992.

<sup>34</sup> Interview with Ken Foster. Assistant Attorney General Webster Hubbell is quoted saying, "Interdicted boat migrants who fear political persecution will be afforded meaningful opportunity for refugee processing in Haiti." (Editorial, "Gone Under a Second Time," *Miami Herald*, June 22, 1993.)

<sup>35</sup> Interview with Ken Foster.

Ceiling determinations are limits on refugee admittance, made by the Executive branch. They are often made independently of specific country conditions and do not lend themselves to responding to crises. The ceiling for Latin America for fiscal year 1993 was 3,500, of which 500 were allocated to Haiti. This decision was made in August 1992, in the midst of widespread human rights abuses and three months after the Kennebunkport Order made ICP the only option available for Haitians.<sup>36</sup>

Furthermore, refugees outside the United States in general have far fewer due-process rights than asylum seekers who have made it to U.S. shores, and admission is much more discretionary. Although U.S. refugee law, in contrast to international refugee law, does include the concept of a refugee still in his or her own country, there is an increased sense that any approvals are tantamount to altruism. In refugee processing the officer makes a final decision, there is no judicial or administrative review and the applicant bears a greater burden of proof.

U.S. Embassy personnel or IOM contract employees are the principal resources for IOM and INS interviewers.<sup>37</sup> The State Department official interviewed warned that one should not take people's statements at face value. Past reports such as those put out by the American Immigration Lawyers Association, the Lawyers Committee for Human Rights, Amnesty International etc. contain lots of hearsay. We investigate the cases.<sup>38</sup> The fact that this view is being conveyed within the program, certainly undermines the value of having non-governmental human rights material made available to ICP staff. For example, an asylum officer recently assigned to the quality assurance team told AW and NCHR in Haiti that at least some INS personnel consider reports from human rights NGOs and the United Nations/Organization of American States International Civilian Mission (UN/OAS Mission) totally unreliable.<sup>39</sup>

Furthermore, the State Department view of the human rights situation in Haiti seems to vary depending on who is asking. The most recent State Department report on country conditions in Haiti stated:

Haitians suffered frequent human rights abuses throughout 1992 including extrajudicial killings by security forces, disappearances, beatings and other mistreatment of detainees and prisoners, arbitrary arrest and detention, and executive interference with the judicial process....<sup>40</sup>

However, a May 7, 1993 State Department advisory opinion in the case of a Haitian popular-movement activist applying for asylum in the U.S. gave quite a different analysis of the situation:

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<sup>36</sup> There is no ceiling for asylum seekers in the U.S. The ceiling for overseas refugee admissions from Haiti for fiscal year 1993 was 500. Although that number has been surpassed and 1,000 unallocated slots were assigned to Haiti, the fact remains that a ceiling is in place affecting the number of Haitians who will eventually be admitted.

<sup>37</sup> A review of asylum claims in the U.S. by Harvard University's National Asylum Study Project shows a heavy reliance by INS asylum officers on State Department resources, according to the Study Coordinator.

<sup>38</sup> Interview with Ken Foster.

<sup>39</sup> The officer, T.J. Mills, was later suspended from the program.

<sup>40</sup> Department of State, *Country Reports* (for 1992), p. 421.



During 1992, the level of political violence has been considerably reduced....Despite Haiti's violent reputation, it is possible for many people to find safe residence in another part of the country....We do not believe the fact that an ordinary citizen is known to support or to have supported President Aristide by itself puts that person at particular risk of mistreatment or abuse.

Under the heading "False and Exaggerated Claims by Previous Returnees," the opinion goes on to say:

...[I]nvestigations made by U.S. Embassy officers there indicate that many of the reports made by asylum applicants of arrests, killings and intimidation are exaggerated, unconfirmable or false....<sup>41</sup>

This view suggests a bias against Haitian asylum seekers by implying that if some have lied, then many probably lie.

In contrast, the June 9, 1993 report by the UN/OAS Mission stated as follows:

The most serious and numerous human rights violations...involved arbitrary detentions, systematic beatings and torture perpetrated by members of the armed forces or persons operating at their instigation or with their tolerance. The Mission has also been informed of cases of arbitrary executions and deaths following torture inflicted while in detention.

As indicated below, these violations of the right to life and integrity and security of person are intended primarily to restrict or prohibit the exercise of the freedoms of opinion and expression, assembly and peaceful association. Unfortunately [the report] provides only a partial picture of the extent to which human rights violations in Haiti are widespread and systematic.<sup>42</sup>

More recently, in an August 11, 1993 press release, the UN/OAS Mission

expresses its grave preoccupation at the numerous violations of human rights in Haiti. In particular, the Mission condemns the arbitrary executions and suspicious deaths which have reached alarming levels in the area of Port-au-Prince, where 36 cases have been identified since July 1st.

The targets of these grave human rights violations are members of popular organizations and neighborhood associations, but also simple citizens who had the misfortune to find themselves in the path of the killers.

....Attacks on freedom of association and expression continue, as well as violations against personal security and physical integrity.<sup>43</sup>

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<sup>41</sup> According to the Harvard National Asylum Study Project, this kind of opinion is typical of Haitian cases.

<sup>42</sup> As of May 1993, the UN/OAS Mission had 141 international staff members of which eighty-six were deployed in regional teams around the country and twenty were in training.

<sup>43</sup> As translated by the Washington Office on Latin America.

The U.S. Embassy's political officer in charge of human rights was reluctant to talk on the record to AW and NCHR about human rights issues. However, she painted a picture of random, undirected violence and general lawlessness merely tolerated from above, as opposed to the targeted, patterned and strategic repression, which includes a sense of chaos and lawlessness, that is reported by both local and international human rights groups.<sup>44</sup>

#### B. Political Isolation Weakens the Program

The ICP program is isolated from organizations that could strengthen it by serving as resources. The U.S. policy of forcibly returning Haitian refugees is widely considered to be discriminatory and ultimately in violation of principles of international law. As a centerpiece of this policy, the program has had little contact with the UN/OAS Mission, the UNHCR or local human rights groups which are the real experts on local conditions. A UN/OAS Mission official said, "The Embassy had, until recently, not sought out contact with the Mission. Contact has been minimal."<sup>45</sup> While some private human rights groups assist individuals applying to the program on an *ad hoc* basis, they do not encourage it. Furthermore, they distrust the program's motives and are quick to point out its inadequacies.

#### C. No Safe Haven Component is Available

The most obvious weakness of the ICP program is that there is no safe haven component for asylum seekers. This means that they do not enjoy even the temporary protections and security to which asylum seekers are entitled under international law.<sup>46</sup> The State Department official interviewed told the authors, "We don't provide safe haven....So far it hasn't been an issue because people can call, send letters, access a church group."<sup>47</sup> Nevertheless, ICP applicants have been persecuted while awaiting final resolution of their cases. The Refugee Coordinator stated, "No cases die in harassment, beatings or killings to the refugee program."<sup>48</sup> However, that distinction is quickly blurred, since applicants with genuine claims apply to the program precisely because they are at risk.

The authors were able to document several cases of persecution during early June 1993, involving ICP applicants.<sup>49</sup>

One case reported confidentially occurred some time during the first two weeks of June. It involved a young man who had filled out a preliminary questionnaire to apply for asylum, but never made

<sup>44</sup> Interview with Ellen Cusgrave, U.S. Embassy, Port-au-Prince, June 16, 1993.

<sup>45</sup> Interview, Port-au-Prince, July 1993.

<sup>46</sup> For example, the UNHCR states that in cases of mass influx, temporary refuge should always be provided. See "Conclusions of the International Protection of Refugees" adopted by the Executive Committee of the UNHCR Programme, Office of the UNHCR (Geneva 1980), p. 49.

<sup>47</sup> Interview with Ken Foster.

<sup>48</sup> Interview with Louis Moreno, Port-au-Prince, June 14, 1993.

<sup>49</sup> Real names are not used in the following testimonies except where stipulated, in order to protect the sensitive situations of our informants. In some cases, specific dates and places have been eliminated for the same reason. All interviews were carried out in Port-au-Prince during the week of June 13-20, 1993.

it back to his interview. When he left the ICP locale he was arrested and taken to a Port-au-Prince police station. He was kicked and beaten. Someone who knew him helped him get released after at least one day and night in prison.<sup>50</sup>

In Les Cayes, the problem is magnified by the small-town, everyone-knows-everyone atmosphere:

"Claude" is an Aristide supporter and activist. He was president of an election bureau during the 1990 presidential elections, and he collaborates with grass-roots organizations. He volunteers with the local Institute for Social Welfare and Research doing AIDS education. He has a long history of problems with the local authorities, particularly with one government delegate, which he says began due to his work during the 1990 elections. He was first arrested in August 1992 and briefly detained. On November 27, 1992, he was harassed, threatened and chased by the same delegate and two armed men in civilian clothes. A few days later, on December 1, he was detained again and jailed for six days for being Lavalas.<sup>51</sup> On December 31, the delegate threatened him with arrest in the street. When passersby protested, he was left alone. On January 6, 1993, the delegate arrested him, and he was taken to the police station. He was threatened with death, accused of being Lavalas, anti-army and a thief. On January 7 his captors decided to make a formal complaint on charges of theft, criminality and morally assaulting the authorities. He was imprisoned at the Les Cayes military headquarters. The public prosecutor ordered him released after six days under "provisional liberty" status. He stopped living in town and lived hiding from then on. On April 27 the delegate saw him again and said "It's you; you're under arrest." He jumped in a taxi and went to the office of the UN/OAS Mission. The World Relief office for ICP had opened that same day in Les Cayes. He went there to apply and was given a questionnaire. He was interviewed on May 4 and received notice of conditional approval on May 21. On June 1 he was arrested by the military at the request of the same government delegate, who said he was going to have him shot. He was released on June 4 after U.S. Embassy intervention. As of June 20, he was still in Les Cayes waiting for out-processing to be completed. He asked the AW and NCHR to intervene to expedite his case. He said he was afraid and living in hiding.<sup>52</sup>

"Jean" is a thirty-eight-year-old carpenter and furniture maker from Les Cayes. He has been a member of a number of local popular organizations, among them the Assemblée Populaire Nationale and the Union for Change. Prior to the coup he had been arrested and tortured in 1988 under General Henri Namphy's regime. He has been tracked and harassed by the army since the coup because he was a known activist and because he filed a complaint against the official responsible for his torture in 1988. His most recent problems have been with a local government delegate. On several occasions in December 1992 and January 1993 he was threatened and harassed by the delegate. Beginning in January, police and soldiers began arriving at his house. At that time, he moved to another neighborhood, only visiting his home in the daytime. He knows that military auxiliaries known as *attachés* frequently come to his house at

<sup>50</sup> Interview with a Haitian source close to the ICP program on the condition of confidentiality, Port-au-Prince, June 17, 1993. Hereinafter referred to as a confidential Haitian source.

<sup>51</sup> *Lavalas* is the Creole word meaning "landslide"; as used colloquially, it refers to the broad-based popular movement that elected President Aristide.

<sup>52</sup> Interview, Les Cayes, June 19, 1993. Americas Watch and NCHR expressed concern about this case to the Refugee Coordinator and World Relief. The delay was due to the fact that the required passport had not yet been issued.

night. After receiving encouragement from a friend, he decided to apply for political asylum. He was hesitant to go since the office was located just up the street from the military headquarters, but his friend explained how to check out the area and then go in. He applied on May 20, was interviewed by World Relief on June 3 and was scheduled for an INS interview on July 1. Two weeks before that interview, at about 7:30 p.m. on June 18, two soldiers in civilian dress came to his house just as he was arriving. He went inside, and they told him to come out and talk to them. He responded that he was in his own house. They yelled that he was Lavalas and he responded, "Yes I am, and I have a right to be." They told him that they were going to find a way to finish him off. Among other things, they said that when his "Papa Aristide" came back they were going to leave a lot of people "on the ground." They left saying they were coming back with the police. He immediately called the UN/OAS Mission, and two representatives went to his house. The men did not come back, but his wife reported that the same two men had been to the house on two occasions earlier that day and seemed to be waiting for him to show up. The next day, he told AW and NCHR that his wife was packing up the house, now too afraid to continue living there herself.<sup>53</sup>

If a conditionally approved individual is found to be HIV-positive, the question of protection becomes even more serious. These applicants must file a waiver which is granted at the discretion of the Attorney General, in order to be allowed admission into the United States.<sup>54</sup> The added aggravation with ICP is that the person must wait, like a sitting duck, in Haiti, even though he or she has been officially recognized as having a well-founded fear of persecution (or indeed of having suffered persecution). According to IOM, several waivers had been filed in 1993 but were still pending as of June. However, in September, the INS office in Washington reported being unaware of any waivers pending.

AW and NCHR are greatly concerned about one particular case. The applicant was kidnapped at gunpoint and detained for several days at an unknown site, tortured and found dumped on the street days later. His application for political asylum was conditionally approved rapidly, given the gravity of his situation. He was then found to be HIV-positive. In April, he applied for a waiver through the ICP program. Five months later, in September, it was discovered that his application had never left Port-au-Prince due to an administrative delay over a form. AW and NCHR brought the case to the attention of the ICP staff. Meanwhile, the conditionally-approved applicant and his family remain in Haiti at serious personal risk.

#### D. Operational Deficiencies

By nature and by design, the number and type of people receiving the reasonably expedited processing that asylum seekers require are drastically reduced, and the fair and consistent adjudication of claims is sabotaged. There are examples of this at every stage of the process.

The system is overloaded. This is perhaps unavoidable, given the desperate need of so many Haitians and the fact that all avenues of non-immigrant entry to the U.S. are closed to most people. Those who wish and need to leave for a variety of reasons try the program. This "magnet effect" can impede genuine

<sup>53</sup> Interview, Les Cayes, June 19, 1993

<sup>54</sup> According to experts at the Centers for Disease Control, all refugee applicants are screened for HIV and other diseases such as tuberculosis. HIV-positive approved asylum applicants must obtain a waiver, and these can delay an inordinately long time. An applicant must show, among other things, that his or her medical expenses will be covered at no cost to the government.

APPENDIX 3.—STATEMENT OF HON. ELIOT L. ENGEL, A  
REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman. Thank you for holding this hearing on the Haitian Refugee Fairness Act which would prohibit the current, illegitimate repatriation of Haitian refugees seeking political asylum in the United States of America. I am pleased to announce my ardent support for this legislation.

After a violent military coup over two years ago, devotees of former Haitian President Jean-Bertrand Aristide and his pro-democratic ideologies have been found raped, tortured, and viscously murdered by the military regime of General Raoul Cedras. Consequently, thousands of Haitian citizens have attempted to escape with the hopes of being granted political asylum in the United States.

Currently, the United States is not granting political asylum to the majority of Haitian refugees. Rather, they are being labeled "economic" migrants and sent back to the brutality of their native land. This legislation will help correct the flawed United States' foreign policy toward Haiti by directing the government to review each refugee's grievances before resorting to summary repatriation. If a refugee proves to have a real fear

of persecution, he or she will be granted asylum in the United States. In addition, under this legislation, Haitians residing in the United States prior to November 17, 1993 will be eligible to apply for Temporary Protected Status, which will allow Haitian refugees to stay for an extended period of time.

Although the United States and the international community have tightened sanctions on Haiti, General Cedras' brutal regime still clings to power. Consequently, the humanitarian condition in Haiti continues to deteriorate. It is, therefore, more necessary than ever to take steps to assist the Haitian people.

Representative Carrie Meek's proposal is an important step toward correcting America's unjust policy of forced repatriation and I urge the subcommittee to support her bill.

## APPENDIX 4.—STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

As an original cosponsor of this important piece of legislation, I wish to express my strong support for H.R. 3663, the Haitian Refugee Fairness Act. In addition, I would like to thank my colleague, Congresswoman Carrie Meek, for her leadership and efforts in this matter.

Some may argue that given the recent changes in the U.S. policy on Haiti, legislation such as H.R. 3663 is no longer necessary. This is not the case. Apparently, even with shipboard hearings now scheduled for Haitian refugees, virtually all are still repatriated, and often handed over to the police, under the premise that they are economic and not political refugees. Yet, it is not true that the majority of those fleeing Haiti are merely fleeing poverty. Since the coup, in 1991, over 3,000 Aristide supporters have been assassinated. Summary arrests, disappearances, rape, and beatings occur regularly.

It concerns me greatly to think that the United States continues to repatriate the majority of Haitian refugees. I cannot help but feel that to do so has served to undercut one of the basic premises on which this nation was founded. The United States has long been a place of refuge to those seeking protection from oppressive regimes. The coup leaders in Haiti are engaged in a brutal policy of repression which endangers the lives of many Haitians. It is unconscionable to think that the United States government continues to return Haitians to Haiti knowing full well that in many cases those who return face certain violence and possibly death. Furthermore, I am forced to ask why the U.S. forcibly repatriates only Haitians, and not refugees from other countries? I can see nothing short of a racist bias against Haitians in our current policy. This is unacceptable in a civilized nation.

Given these facts, I urge the members of the Subcommittee on International Law, Immigration and Refugees to support the Haitian Refugee Fairness Act. H.R. 3663 would extend much needed protection from a repressive state to Haitian refugees.

WASHINGTON OFFICE  
1725 LONGWORTH H.O.B.  
WASHINGTON, D.C. 20515  
(202) 225-4377

CITY OFFICE  
656 E. 79TH STREET  
CHICAGO, IL 60619  
(312) 224-6500

SUBURBAN OFFICE  
8730 S. WESTERN AVENUE  
SUITE 237  
EVALETT, PARKWAY  
EVALETT, ILLINOIS

**APPENDIX 5.—DRAFT LETTER OF UNDERSTANDING WITH UNHCR  
FROM STEPHANIE MARKS, ESQ., COORDINATOR, ASYLUM PROGRAM,  
AND SCOTT STOFEL, ESQ., STAFF ATTORNEY, WASHINGTON OFFICE  
OF THE LAWYERS COMMITTEE FOR HUMAN RIGHTS**

**Lawyers Committee  
for Human Rights**

100 Maryland Avenue, N.E., Suite 502  
Washington, D.C. 20002  
Telephone: (202) 547-5692  
FAX: (202) 543-5996

Joseph Eldridge, Director, Washington, D.C. Office  
Elsa C. Messumme, Staff Attorney

June 15, 1994

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Brunson McKinley  
Acting Director  
Bureau of Population,  
Refugees, and Migration  
U.S. Department of State  
2201 C Street N.W.  
Washington D.C., 20520

**Re: Draft Letter of Understanding  
with UNHCR**

Dear Mr. McKinley:

The Lawyers Committee for Human Rights is dedicated to promoting and protecting fundamental human rights, including the right of refugees to obtain safe haven from persecution according to internationally recognized law and procedures. We fully agree with President Clinton that "the repression and bloodshed in Haiti has reached alarming new proportions." We are therefore concerned that the offshore Haitian refugee screening program announced by the President on May 8 be implemented in a way which assures that Haitians fleeing persecution will be given a meaningful opportunity to present their claims for asylum. The draft letter of understanding to the United Nations High Commissioner for Refugees ("UNHCR") which you released on June 11 contains elements that we support but fails to adequately address several crucial procedural issues. We do not believe that any form of shipboard processing can provide refugees with the sense of security and guaranty of privacy essential to the adequate determination of claims of asylum. We therefore support the statement that the "goal of the United States and UNHCR remains establishment of an appropriate land-based processing center" and we strongly urge the U.S. government to carry out this goal as rapidly as possible. We also support the decision to give the UNHCR a role in reviewing individual case determinations and in making recommendations concerning overall program implementation.

**Main Office:**

Michael H. Posner, Executive Director  
William G. O'Neil, Deputy Director  
Arthur C. Melton, Director, Refugee Project  
330 Seventh Avenue, 10th Floor  
New York, New York 10001  
Telephone: (212) 629-6170  
FAX: (212) 967-0916



Because the draft letter of understanding only outlines the screening program in the broadest of terms, we cannot assess whether practical implementation of the program will provide refugees with an adequate hearing. However, we believe that any meaningful screening process must ensure that refugees be given effective pre-interview counselling and that the asylum interviews be conducted and reviewed by adequately trained personnel. Although we support the decision of the U.S. government to allow the UNHCR to review case files and to discuss INS determinations with Quality Assurance Officers, post-determination review should not be viewed as a substitute for an adequate initial interview procedure. The quality of review will necessarily be limited by the quality of the records created at the initial INS interviews. It is therefore essential that the U.S. government implement screening procedures that will ensure that asylum claims will be adequately presented and appropriately assessed at the initial INS interviews.

It is particularly crucial that asylum seekers be given access to individualized counselling by representatives of the UNHCR or non-governmental organizations, including legal counsel, prior to the INS interviews and throughout the adjudication process. From our substantial experience in representing asylum applicants from throughout the world, we are only too aware that for reasons of fear, trauma, lack of education, or unfamiliarity with asylum law, many of the most severely persecuted refugees will often fail at first examination to present sufficient evidence to establish eligibility for asylum.<sup>1</sup> A pre-interview group orientation lecture cannot adequately substitute for individualized counselling as a means of ensuring that a refugee will be able to disclose all of the facts relevant to his asylum claim at his screening interview.

It is also vital that the INS interviews be conducted and reviewed by personnel who have been adequately trained in asylum law and procedure and have a thorough understanding of conditions in Haiti. The draft proposal does not indicate the categories of personnel who will serve as INS interviewers or as Quality Assurance Officers nor is there any indication of the volume of casework each such interviewer or officer is expected to handle. We urge the Administration to require that Quality Assurance Officers be trained Asylum Officers with at least one year of previous experience and that the ratio of Quality

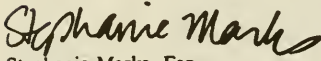
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<sup>1</sup> In this regard, see also the United Nations Handbook on Procedures and Criteria for Determining Refugee Status, Paragraphs 190 (noting the difficulties refugees may have in articulating their experiences and the need for qualified personnel to conduct interviews) and 199 (noting that more than one interview may be necessary to ascertain the true nature of an applicant's claim).

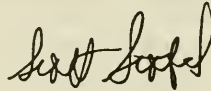
Assurance Officers to interviewers be adequate to insure meaningful review.<sup>2</sup> It is also imperative that the screening program provide for sufficient numbers of trained Creole-speaking interpreters.<sup>3</sup> In addition, we recommend that the INS prepare an adequate record of each interview to ensure a meaningful opportunity for review and reconsideration. The INS in consultation with the UNHCR should also develop appropriate standards of review and the INS should be required to respond to any concerns raised by the UNHCR within a mutually agreed upon period of time.

Although the Lawyers Committee for Human Rights continues its longstanding opposition to the interdiction of Haitian refugees in international waters,<sup>4</sup> we view a meaningful offshore refugee screening process as an improvement over the current practice of forced repatriation. We urge the relevant U.S. government agencies to take the steps necessary to ensure that the process put into place provides meaningful protection for refugees fleeing persecution in Haiti.

Sincerely,



Stephanie Marks, Esq.  
Coordinator, Asylum Program



Scott Stofel, Esq.  
Staff Attorney, Washington Office

cc: Mr. Kofi Asomani  
Special Envoy for Haiti, UNHCR

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<sup>2</sup> See United Nations Handbook on Procedures and Criteria for Determining Refugee Status, Paragraph 192(i) and (vi) (recognizing that interviews must be conducted by competent authorities and applicants must be given reasonable time for a formal appeal if a hearing process is to satisfy minimum standards of adequacy).

<sup>3</sup> See United Nations Handbook on Procedures and Criteria for Determining Refugee Status, Paragraph 192(iv) (recognizing access to a competent interpreter as one of the basic requirements of an adequate hearing process).

<sup>4</sup> See for example, Lawyers Committee for Human Rights, Refugee Refoulement: The Forced Return of Haitians Under the U.S.-Haitian Interdiction Agreement (1990).

**APPENDIX 6.—STATEMENT OF LUCAS GUTTENTAG, DIRECTOR, AMERICAN CIVIL LIBERTIES UNION IMMIGRANTS' RIGHTS' PROJECT AND LAURA MURPHY LEE, DIRECTOR, AMERICAN CIVIL LIBERTIES UNION, WASHINGTON OFFICE**

Mr. Chairman and Members of the Subcommittee:

The American Civil Liberties Union appreciates the opportunity to submit our views on the imminent resumption of processing of interdicted Haitian refugees. While we believe that conditions in Haiti warrant granting Temporary Protected Status (TPS) to Haitians in the United States and granting temporary safe haven to Haitians interdicted on the high seas, this submission addresses only the procedures that we understand will be implemented in the immediate future by the Clinton Administration. In our view, the announced process is fundamentally deficient and denies interdicted Haitians a meaningful opportunity to present their claims of persecution.

Initially, and fundamentally, we must stress that the program contemplated by the Clinton Administration for interdicted Haitians is not authorized by the Immigration and Naturalization Act (INA) pursuant to either 8 U.S.C. § 1158, which establishes the domestic asylum process, or 8 U.S.C. § 1157, which authorizes the overseas refugee system. Rather, the proposed program establishes an extra-statutory hybrid system that subjects interdicted Haitians to a process inferior in substance as well as procedure to both the domestic asylum process and the overseas refugee program. First, in contrast to the U.S. asylum process, the Haitian program does not provide any of the procedural safeguards guaranteed to asylum applicants in the United States by statute, by regulation and under the Constitution. Indeed, the interdiction and shipboard processing appears to be carefully designed to deny Haitians the procedural safeguards they would receive if their claims were being adjudicated in the United States. As individuals in the de facto custody of the U.S. government, Haitian applicants should receive more, not less, protection.

Second, in comparison to the overseas refugee processing, the Haitian program provides less protection, less procedural fairness and greater risk to individual applicants. For example, unlike the interdicted Haitians, overseas applicants are not prohibited from consulting with an attorney to prepare their application, are not compelled to present their claim without an opportunity to prepare a complete application, are not in the de facto custody of the United States and, most importantly, are not forcibly returned to the country they have fled if their claim is denied.

In addition to the foregoing fundamental failings, we note the following equally profound deficiencies in the proposed Haitian processing program:

1. Well-founded fear standard. Interdicted Haitians will be required to prove that they satisfy the ultimate test for refugee eligibility, a "well-founded fear of persecution." This demands that individuals prove on-the-spot that they are entitled to refugee status. Yet these persons will have just arrived from a harrowing journey at sea, will not have a

sufficient opportunity to prepare or prove their cases, will not be allowed to consult with an attorney of their choosing and will not be represented by counsel at their interviews.

Imposition of the well-founded fear standard stands in sharp contrast to the standard applied in other settings. Even the Reagan and Bush Administrations allowed Haitians with a "credible fear of persecution" to be transported to the United States, where they have the opportunity to fully prepare and present their claims in a deliberate fashion to qualified asylum officers with the assistance of voluntary lawyers. Moreover, under the Lautenberg Amendment, persons currently applying for refugee status from overseas as nationals of the former Soviet Union and designated countries of Southeast Asia are admitted to the United States as refugees if they can "assert[] a credible basis for concern about the possibility" of persecution. Pub. L. No. 101-167, Title V, § 599D, 103 Stat. 1261 (1989); 8 U.S.C.A. § 1157 note. We believe that principles of equal treatment and non-discrimination demand that the same level of protection apply to interdicted Haitians if any individualized assessment of their claims is to be undertaken.

2. **Forcible Repatriation.** Unless a safe haven site is established, Haitians who cannot satisfy the "well-founded fear" standard will be forcibly repatriated to Haiti. Thus, not only is the standard higher than in analogous contexts, but the consequences are more severe. Repatriation increases the risk of persecution enormously because Haitians who have fled are delivered by the United States directly back to the military regime. Thus, a person who was in hiding loses any chance of remaining free of the military's grasp. Indeed, the Haitian military is reported to have announced or instituted a new policy under which anyone who attempts to flee the country by boat will be subject to arrest and imprisonment. Such a policy makes persecution of repatriated Haitians a virtual certainty.

3. **Right to Volunteer Counsel at No Expense to the Government.** Interdicted Haitians will be processed and repatriated without any opportunity to be represented by an attorney or other representative advocating on their behalf. Representation by counsel is a cornerstone of fair processing, especially where the applicant is unfamiliar with the language, the law, the legal system or the nature of the process. Effective representation requires individual and confidential counseling by an attorney who can explain the governing legal standards, help elicit the relevant facts, apply those facts to the law and prepare the applicant for an interview. A lawyer's presence at the interview itself is essential to insure that the interviewer develops a complete factual record, to guard against legal errors or overly narrow interpretations of the law and to otherwise insure that the applicant's claim is fully presented and fairly decided.

The Administration has informed advocates that voluntary attorneys seeking to provide free legal representation to individual interdicted Haitians will not be allowed access to the Haitians or be allowed onto the boats. The only explanations offered for these prohibitions are alleged logistical impediments and the assertion, which we dispute, that counsel are prohibited at overseas refugee interviews. Neither rationale justifies the

exclusion of lawyers from their traditional and crucial role, particularly when the individual applicant faces the risk of persecution.

The first rationale, that the presence of attorneys creates logistical problems or interferes with the efficient processing of refugee applicants, is refuted by the INS' own statements in earlier challenges to its processing of interdicted Haitians. In sworn testimony in Haitian Centers Council v. McNary, 823 F. Supp. 1028 (E.D.N.Y. 1993), high-ranking INS officials testified that the presence of counsel is helpful, that it does not delay or interfere with processing and that it makes the adjudication of claims more reliable. See, e.g., Testimony of INS General Counsel Grover Joseph Rees, HCC Trial Transcript at 1328-29; Testimony of INS Director of Asylum Gregg A. Beyer, HCC Trial Tr. at 730-31; Deposition Testimony of INS Senior Asylum Officer Irma Rios, HCC Deposition at 130. However, even if the presence of attorneys were to have some effect on the speed of processing, such impact cannot justify denying a safeguard that reduces the risk of returning bona fide refugees to their persecutors. Fairness, humanitarian principles and the requirements of due process demand that logistical considerations not dictate procedural protections, particularly when minor accommodations will substantially increase the reliability and accuracy of the determination. See Mathews v. Eldridge, 424 U.S. 319 (1976). Indeed, denying free legal representation on logistical grounds suggests that the proposed plan is more concerned with deciding cases quickly than with deciding them fairly. As such, the credibility of the entire process is negated.

The second rationale is similarly flawed. Government officials testifying under oath have previously acknowledged that counsel are not prohibited in overseas refugee interviews. See Testimony of INS General Counsel Rees, HCC Trial Tr. at 1331-33. Moreover, as we have already noted, the proposed shipboard processing is not analogous to overseas refugee interviews because overseas refugee applicants are not in de facto U.S. custody and are not forcibly repatriated if their claim is denied.

**4. Absence of Specialized Asylum Officers.** The determination of who satisfies the refugee standard and who will be forcibly returned to Haiti will be undertaken by INS officers and employees who are not competent to make such life-and-death decisions. Since 1990, the INS has maintained a specialized Asylum Officer Corps that is specially trained to adjudicate asylum applications in the United States. See 8 C.F.R. § 208.1(b). These Asylum Officers are separately recruited, are not responsible for other INS functions, receive specialized asylum training and report only to the director of the INS asylum branch. The INS personnel detailed to determine Haitian claims meet none of these criteria. They are on temporary assignment, received only a cursory and truncated training and will, in many cases, resume enforcement responsibilities when they finish their tour of duty. Yet, their decisions are the one and only determination that interdicted Haitians receive before being repatriated to Haiti.

Our prior experience reveals the indefensibility of recruiting INS personnel from other assignments to conduct asylum interviewing. Precisely such a practice in Los Angeles

in 1989 led to a court challenge that resulted in a federal court invalidating 30,000 interviews. See Mendez v. Thornburgh, CV 88-4005 TJH (C.D. Cal. 1989), Order of June 23, 1989 (as modified). See also Los Angeles Times, "Deportation Blocked Until INS Gives New Interviews to 23,000," May 16, 1989. (The INS subsequently acknowledged that 30,000 applicants were covered by the injunction.) The Mendez evidence, including sworn deposition testimony of temporary asylum interviewers, showed that the interviewers were incompetent, hostile and biased. Yet, only a court injunction compelled the INS to undertake new interviews. Now the Administration has consciously precluded any judicial oversight of the Haitian program by barring lawyers and by conducting the interviews outside the territorial waters of the United States.

5. Absence of Meaningful Appeal. All of the foregoing shortcomings are compounded by the absence of a meaningful appeal or review of individual decisions. Under the Administration program, review of a determination will be limited to a rereading of the file. Even if an applicant affirmatively tells an interviewer to add specific information to the file (a highly unlikely prospect), review will be limited to a reading of the applicant's file as supplemented. Applicants themselves will not be reinterviewed or questioned unless an INS reviewer chooses to do so. Similarly, even if a representative of the United Nations High Commissioner for Refugees concludes that further interviewing or reconsideration is warranted, the INS decides unilaterally whether to do so. Such a form of review appears inferior even to that available to overseas refugee applicants. Compare Testimony of Dudley G. Sipprelle, U.S. State Department Consular General, HCC Trial Tr. at 1165. Moreover, unlike any other appeal, the review process does not include an advocate for the applicant pointing out errors that may have prejudiced the determination.

In light of the fundamental shortcomings of the Administration's proposed Haitian processing program, we respectfully urge the Subcommittee to call upon the Administration to utilize the credible fear determination, to allow volunteer lawyers to provide individual representation, to assign only qualified Asylum Officers to conduct interviews, to provide meaningful appeal and review, and to grant safe haven to all interdicted Haitians.

**APPENDIX 7.—STATEMENT OF DR. ELIZABETH G. FERRIS, DIRECTOR,  
IMMIGRATION AND REFUGEE PROGRAM, CHURCH WORLD SERVICE**

The Church World Service Immigration and Refugee Program [CWS/IRP] welcomes the opportunity to submit comment on H.R. 3663 and H.R. 4114, along with addressing the critical issue of Haitian refugees. We would like to thank this Subcommittee for their role in advancing humane refugee policies beginning with H.R. 3883, which called for a halt to the repatriation of fleeing Haitian refugees. We urge this Subcommittee to assist by any means possible with the establishment of a regional safe haven for fleeing refugees. We also ask you to watch closely the implementation of the Administration's new policy of shipboard screening in Jamaican territorial waters to ensure it's integrity. Finally, we implore the Subcommittee to take legislative steps which will provide protection to those Haitians who are already within our jurisdiction.

CWS/IRP has always maintained as a priority the protection of Haitian refugees. We have steadfastly held this position for over 17 years and continue to maintain that the repatriation of Haitian refugees is morally unconscionable. U.S. actions toward Haitian refugees are of great significance to other refugees throughout the world. The actions that the U.S. has taken thus far have impacted on the lives of thousands of Haitians and have had far-reaching effects on refugees throughout the world.

CWS/IRP is the refugee assistance arm of the National Council of the Churches of Christ in the U.S.A. This work is done with the help of thirty-five affiliate offices and

participating denominations. CWS/IRP has 13 participating denominations: African Methodist Episcopal Church, American Baptist Churches in the U.S.A., Christian Church Disciples of Christ, Christian Reformed World Relief Committee, Church of the Brethren, Episcopal Migration Ministry, Orthodox Church in America, Presbyterian Church U.S.A., Progressive National Baptist Convention, Reformed Church in America, Southern Baptist Immigration and Refugee Service, United Church of Christ and the United Methodist Committee on Relief. These groups work ecumenically to minister to and advocate for the rights of refugees, immigrants and asylum seekers. In addition to our work resettling refugees, we provide legal representation and referral to thousands of Haitians seeking political asylum.

For over a decade, CWS/IRP has worked with Haitian refugees in the U.S. Presently, we resettle Haitians through the U.S. Refugee Program and we are one of only two agencies which resettle Haitians who have been paroled into the U.S. by the INS and found eligible for resettlement by the Community Relations Services of the U.S. Department of Justice.

The national denominations who support our program have also provided substantial funds to assist Haitians with their legal needs. Thus, we are presently assisting over 4,000 Haitians who were pre-screened in Guantanamo as having a credible fear of persecution and who arrived in the United States in 1991 and 1992 to file for political asylum. In addition, we have long worked with partner agencies in Haiti to assist that nation in its struggles to meet basic human needs.

#### I. THE DETERIORATING SITUATION IN HAITI

In recent months, persecution of ordinary Aristide supporters has reached dramatically new levels. These developments are highly relevant to considerations before this Committee. On May 8th, President Clinton noted, in reference to the Administration's policy of summary repatriation:

"I ordered the review of this policy six weeks ago when we began first to get intelligence reports and then clear news reports that there was increasing violence against citizens of Haiti who did not agree with the policies of the military regime... of people not only being killed but being mutilated."

According to the New York Times,

"Hundreds of supporters of the Rev. Jean-Bertrand Aristide and other civilians have been killed in Haiti in recent months in the bloodiest wave of political terror since the army overthrew Father Aristide as President two and a half years ago. ...The violence



accelerated this year, with 50 or more bodies turning up in the streets [of Port-au-Prince] each month. Many were badly mutilated or bore clear signs of torture." French, Howard W., "A Rising Tide of Political Terror Leaves Hundreds Dead in Haiti", New York Times, April 2, 1994, p. A1.

Recent UN/OAS International Civil Mission reports indicate dramatic increases in extra-judicial execution (CP/94/5, March 16), political rape (CP/94/8, March 21), and arbitrary arrest and illegal detention (CP/94/6, March 17; CP/94/12, April 8; CP/94/13, April 22), along with wholesale massacre in Gonaives (CP/94/17) and a "virtual state of siege in the Bassin Caiman zone" (CP/94/19).

The State Department's Bureau of Human Rights and Humanitarian Affairs has noted these reports of "a recrudescence of repression continuing on into 1994 with increased frequency and brutality, including the murder, rape, and beating of political opponents, now including rank-and-file former Aristide supporters in Port-au-Prince's slum neighborhoods, by local authorities and their agents, in the capital and provinces alike." (Dankert, Roger, Director, Office of Asylum Affairs, Bureau Advisory Opinion, April 25, 1994, p.1) Though much belated, this is a major reversal of State Department views on the relationship of 'prominence' to the risk of persecution in Haiti. State Department reporting on the conditions in Haiti has widely differed from reports issued by the Human Rights Community.

Our concern has become especially heightened since the unrecognized Provisional President Emile Jonassaint ordered punishment of organizers and their accomplices who are caught arranging clandestine trips out of Haiti. The Miami Herald reported that in Petit Goave, "From 35 to 55 people--including at least six small children and babies--were taken to prison..." The Miami Herald also notes that in this new application of the 1980 decree:

"'Accomplices' are defined so broadly that they include all passengers.... On the dark beach at Trouchouchou, near Petit Goave, the soldiers made no attempt to distinguish between organizers and passengers. The trip's organizer escaped since he was on board the boat, as Jean Rosiris Jose, the judge who heard the case of the Petit Goave group, freely admitted in an interview. Jose carefully leafed through a heavy volume of the Haitian penal code, but did not point to any particular law. Finally he just said, 'We have to arrest passengers to stop this.'" Benesch, Susan, "A Cuba-Style Crackdown In Haiti-Would-Be-Boat People

Jailed, Beaten For Trying To Leave", Miami Herald, May 31, 1994, pp.1A and 6A, at 6A.

It is important to highlight that the persecution of asylum-seekers is politically motivated. The dockside reporting by the State Department on earlier practices of the Haitian authorities reveals the hostility with which the authorities regard returnees:

"The immigration police questioned returnees as usual, searched their belongings and finger printed them. ... Though the ostensible purpose of questioning was to identify boat trip organizers, the interrogation (which took place within the hearing of emboffs and international civilian mission representatives) appeared to be a 'fishing expedition' for persons considered troublemakers by the police and probably designed to intimidate the returnees. (U.S. Department of State, unclassified cable of September 22, 1993.)

Considerable animosity on the part of the authorities is based upon their generally correct imputation to the refugees of a desire to seek asylum, thereby exposing and denouncing the Haitian government to foreigners for its human rights violations. The recent wave of attacks on asylum-seekers occurs in the context of the Jonassaint regime's recent threat "to enforce grave punishment against those who 'contact the enemies of the homeland or one of their agents.'" (Radio AFP Paris, May 23, 1994, 0338 GMT (reported in FBIS-LAT-94-099, May 23, 1994, p.15).

## II. IN-COUNTRY PROCESSING

The process by which Haitians are identified as refugees and admitted into the United States through the U.S. Refugee Program is known as in-country processing. Procedures for this program have been the subject of heavy criticism. The examination of this program is necessary in order to determine whether we offer viable protection to those Haitian nationals which the State Department's Bureau of Human Rights and Humanitarian Affairs referred to as "the rank-and-file former Aristide supporters in Port-au-Prince". (see April 25, 1994 Advisory Opinion (ref. at p.3, pp.1)) (cited) in their April 25, 1994 Advisory Opinion (see p.3, pp.1).

In order to qualify for the United States Refugee Program a refugee must: (1) be a designated nationality for the region; (2) fall within the priority categories for that nationality in that region; (3) meet the US refugee definition; and (4) not be excludable under INA Section 212(a). This contrasts to our political asylum adjudications which require that all non-

frivolous applications receive an interview for a determination of well-founded fear of persecution.

Individuals overseas who are seeking refugee status from the U.S. must first establish their ties to the U.S. or U.S. interest in the case. In Haiti, applicants are placed into one of three categories. These categories are: Category A: high risk cases with expedited interviews; Category B: cases with viable claims scheduled for interviews; and Category C: cases where no refugee claim is made, and where the individual is not scheduled for an interview. If applicants meet one or more of five criteria they may receive an interview. These five criteria are:

1. senior and mid-level Aristide government officials;
2. close Aristide associates;
3. journalists and educational activists who have experienced significant and persistent harassment by the de facto authorities, or who have a credible fear because of their activities;
4. high profile members of political/development/social organizations who have experienced significant and persistent harassment by the de facto authorities, or who have a credible fear because of their activities;
5. others of compelling concern to the United States and are in immediate danger because of their actual or perceived political beliefs or activities.

The practical effect of this system has been to exclude refugees with viable claims.

This vetting process takes place only after the potential applicants have appeared with a photograph, identification document and completed a preliminary questionnaire. This occurs in Port-au-Prince at the Rex theater located across the square from a military facility. The almost constant lack of electric power in Port-au-Prince has forced the staff who prepare the initial forms to work outside in the entry of the theater. All potential applicants are therefore interviewed in plain view of the street and the passers by. There is no privacy or confidentiality being extended to the refugee applicants.

When the Rex theater opened, close to 200 people a day were presenting themselves. In May, that number had dwindled to between sixty or seventy a day. The risk these individuals must take in order to avail themselves of the program, and the time period they must wait for a determination leaves them identified, exposed and without protection. From February of 1992 through April of this year, 54,219 preliminary questionnaires had been filled out. This years figures show that 17% of all applicants

are scheduled for interviews. The INS approval rate of those interviewed has risen from 7% to close to 30%. While we are pleased to see a rising approval rate, we nonetheless feel the program's credibility is undermined when only 17% of all applicants proceed forward subsequent to the vetting process.

The Administration has publicly stated that it wants Haitian nationals to avail themselves of the in-country processing and not the new shipboard processing. We express strong reservations over such statement because of reports that the approval rates for Haitian refugees in the new system has already been set. This raises serious questions about the new program's credibility.

We also seriously question the Administration's ability to continue the in-country processing program in a meaningful manner. Taking into consideration the draw down of personnel from the consulate caused by the imposition of stiffer sanctions, the ceasing of commercial flights, the siphoning off of INS staff for the Jamaica operation makes it questionable as to whether individuals will be able to avail themselves of in-country processing. We are also gravely concerned over the length of time the determination will take and the ability to get approved refugees out of Haiti. This only intensifies the need for the immediate establishment of a regional safe haven while the situation inside Haiti is addressed.

### III. SHIPBOARD PROCESSING: THE END OF INTERDICTION BUT NOT REPATRIATION

We were encouraged by President Clinton's May 8th announcement reversing the Bush administration's policy of interdiction. However, given the Administrations' treatment of the refugees to date, we are skeptical about the new policy's positive contribution to a fair refugee process. Our skepticism was reinforced on Friday, May 10th, when we watched the Administration repatriate 400 fleeing refugees on the eve of implementing their new policy. We question why these refugees could not have been held aboard U.S. Coast Guard Cutters for transport to the new facility.

The Administration's unjust treatment of Haitian refugees has not gone unnoticed by governments elsewhere who are anxious about the world refugee situation. We hear from international church partners in all regions of the world that U.S. policies toward Haitian refugees are having a negative impact on their governments' willingness to accept refugees from other countries.

We cannot ignore the ramifications of our past policy and the significance of the credibility of the new policy. Refugee protection is rooted in an understanding that bordering countries to the refugee-producing country will accept those refugees until the international system can respond. But, if the country of

first asylum refuses to respond and in fact rejects those refugees then the rest of the international community receives the message that it can turn its back on the crisis. In addition, when the leader in refugee protection, the United States, turns inward, then the other partners in refugee protection feel justified in shutting their doors when a crisis reaches them. The United States became the country of first asylum for these refugees. We have grievously undermined essential principles of refugee protection with our persistent refusal to assist Haitians fleeing persecution. Irreparable harm will be done to both Haitian refugees and refugees around the world if the implementation of the Administration's new policy proves not to be credible and fair.

We urge this Subcommittee to watch closely the implementation of the Administration's new policy. Specifically, the Administration has stated in the letter of understanding between our Government and the UNHCR that Haitians fleeing by boat may be suffering both physical and emotional trauma when they are picked up by U.S. Coast Guard Cutters' and they will be evaluated for such before they are pushed forward in their refugee determinations. Haitian nationals will have been engaged in flight as they travel by boat out of Haiti and out of the hands of their persecutors. It is imperative that individuals feel that this flight has ended before they move forward to establish that they are bona fide refugees. There must also be strict safeguards in place to insure that individuals are not suffering from dehydration, hunger, or insufficient rest before they are interviewed. Whether or not someone is ready to be interviewed depends on the emotional and physical condition of the person. What it does not depend on is the number of people waiting for processing. Shipboard processing is insufficient for responding to this problem. The solution is the location and establishment of a regional land-based safe haven, and it must be found immediately.

The credibility of this operation also rests on a so-called appeal process for negative refugee determinations--decisions which result in the repatriation of Haitians. We note that the new policy is refugee processing overseas, not asylum adjudication. In other words, the refugee resettlement process does not offer the kind of appeal we know of under our judicial system and should not be confused with such. The "U.S. Resettlement Overview" by the UNHCR Branch Office for the United States, Resettlement Office produced in February of 1994 clearly enunciates the "appeal" process used in overseas refugee processing:

##### 5. Appeal Procedure

In overseas processing there is no formal appeal procedure for rejections, however, an applicant may request a reconsideration of his/her claim on

the basis of new information, or information that was not available in a previous interview. The granting of a reconsideration is entirely within the discretion of the INS official in charge of the case.

It appears that the process that will be used under the new policy will be very similar. Individuals will be told at the end of their interview whether they have been deemed to be a refugee or not. If the determination is negative the applicant will be asked if they have additional information. That information will be recorded on a separate piece of paper and placed in the file for review by the INS Quality Assurance Officer who then "may" decide that further discussion with the applicant is necessary. The UNHCR representative will have the opportunity to review this and make their recommendation to the INS Quality Assurance Officer who "may" then, after considering the UNHCR opinion, decide if it is appropriate to engage in further discussion with the applicant. We are pleased that careful consideration has been given to this aspect of the process, but we are nonetheless troubled. It is not an appeal which is being offered, it is a discretionary reconsideration based on new information. There is no explicit provision for reconsideration of an erroneous determination. The questionable level of experience of the interviewers compounded by time constraints lead us to believe that there is a high probability of erroneous determinations and therefore bona fide refugees will be repatriated.

#### IV. THE NEED FOR PROTECTION OF HAITIANS HERE IN THE UNITED STATES

The deterioration of the political situation in Haiti makes it imperative that the U.S. provide protection to those Haitians within our borders. We have watched with growing concern the escalation of the oppression and persecution. As we discussed in Section I: the human rights situation in Haiti is deplorable. It's unconscionable that we should return individuals to Haiti at this time. We need to insure that those Haitians who are within our protection stay within our protection. This Subcommittee has been convened to consider just such options of protection with H.R. 3663 and H.R. 4114.

These two bills would legislatively accomplish giving TPS to Haitian nationals. Congress would be legislating TPS as it did in the El Salvadoran situation because the Attorney General has failed to designate Haiti for TPS. TPS was enacted as part of the Immigration Act of 1990, and it authorizes the Attorney General to designate any nation or part of a nation under TPS if he or she finds that there are certain situations present such as an ongoing armed conflict within the nation. TPS would allow Haitians to remain in the U.S. until the Attorney General determines that conditions in Haiti are safe for their return.

We concur with the UNHCR's support for H.R. 3663. We agree that Representative Meek's proposal was "a great contribution to upholding the international standards of refugee protection which have been painstakingly developed over the past forty years." In addition, we agree that the bill is welcome because it is viewed as an effort to restore U.S. responsibilities under international law and would acknowledge the U.S. Government's obligation not to return Haitians to the country where they fear persecution, whether it is acting within or outside its sovereign territory.

While we would welcome a more secure status granted to those Haitians who are here in the United States it is imperative that some protection against return be extended to them until it is determined that they can return safely to Haiti.

#### V. CONCLUSION

We request that this Subcommittee assist by any means possible the establishment of a regional safe haven for fleeing refugees. We also ask that the Subcommittee closely watch the implementation of the Administration's new policy of shipboard screening in Jamaican territorial waters to ensure it's integrity. Finally, we implore the Subcommittee to take legislative steps which will protect those Haitian nationals who are already within our jurisdiction.

As we close this comment we would like to relay a story of flight which was told to us by Alerte, a Haitian refugee who recently visited Washington. Alerte is a 32 year old wife and mother of three children who was living in Cote Plage 26 in Carrefour, one of the strongholds of Aristide support. She and her husband had been continuously harassed by the Haitian military from the time of the coup because they were known to have voted for President Aristide. This all ended on the night of October 16, 1993 when FRAPH, Haitian paramilitary forces, arrived at the door. Two years and 15 days after the coup, Alerte and her family were still seen as a danger by those in power. This visit resulted in blow after blow of a machete to Alerte's face, neck, arms and legs. She was then left for dead in the mass grave of Titanyen. Found alive she was taken to the hospital. Incredibly, she was forced to flee the hospital when the FRAPH discovering that she had survived the attack, came looking for her. With the help of her doctor who told the military she was dead she was able to gain time to slip into hiding. After recovering in hiding she sought refugee status.

We can no longer sit in silence but must assist our neighbors who so desperately deserve our help.

**APPENDIX 8.—JOINT STATEMENT OF WASHINGTON ASSOCIATION OF CHURCHES, NORTHWEST IMMIGRANT RIGHTS PROJECT, AND WASHINGTON REFUGEE RESETTLEMENT**

The Washington Association of Churches represents more than 1500 congregations from 17 denominations as well as 14 local ecumenical agencies from throughout the State of Washington. Washington Refugee Resettlement (a Church World Service affiliate) and Northwest Immigrant Rights Project provide support and resettlement services to refugees and immigrants from throughout the world. Our organizations share a profound concern about the Administration's current and proposed policies for processing Haitian asylum seekers.

**Actions Protesting Administration's Policies**

In protest of the Administration's policies, our organizations recently called upon religious organizations, affiliated refugee organizations, and other supporters of human rights to fast for one day each week until the United States establishes fair, orderly, and humane procedures for evaluating whether Haitian refugees qualify for political asylum and takes measures to protect the safety of those who do not.

In addition, on June 6, 1994, the Board of Directors of the Washington Association of Churches unanimously approved a resolution inviting constituent congregations to: 1) provide



advocacy, protection and support to Haitians in search of safe haven; 2) seek justice for Haitian refugees through public declarations of sanctuary; and 3) call upon the U.S. government to fulfill its obligations as the natural country of first asylum for Haitians fleeing their homeland.

#### Concern About Public Speculation on Approval Rates

We are particularly concerned about an Administration official's recent estimate that only 5 percent of Haitian refugees would qualify for asylum, while the vast majority of applicants would continue to be dismissed as "economic migrants." Although the statement was no doubt intended to dissuade more Haitians from risking the dangerous voyage to the United States, public speculation about likely acceptance rates shows a cynical disregard for the adjudicative process and exerts improper pressure on adjudicators. Asylum determinations must be based on careful analyses of the facts of individual cases. More stringent standards must not be imposed on certain asylum seekers simply because their homelands lie close to our borders.

#### Use Shoreside Asylum Procedures as Baseline

The United States has established procedures for interviewing and processing asylum applicants from around the world. These procedures provide a baseline for evaluating how Haitian applicants should be processed. The aim of the procedures must be to ensure a fair hearing for each refugee. Because these seemingly routine interviews could well mean the

difference between life and death for those interviewed, there is no margin for error. Specific recommendations are reviewed below.

Time to Recuperate before Interview - No Shipboard Processing

First, before an interview is scheduled, care must be taken to ensure that the refugee is physically capable of presenting his or her case. The refugees may have gone for extended periods without food or water and been exposed to the elements in unseaworthy vessels. They must have sufficient time to recuperate and regain their bearings prior to being interviewed. Serious adjudications cannot occur at sea. Indeed, the American Bar Association recently urged the Administration not to reinstitute "discredited shipboard processing."

Assistance of Counsel or Other Advocate

Under U.S. laws, asylum seekers in the United States are entitled to have counsel or a representative present during their interviews. They may also submit affidavits and other evidence to bolster their cases. As attorneys can attest, it takes many hours to elicit the facts upon which an asylum claim is based. Applicants may take for granted incidents of persecution simply because such treatment has become so commonplace in their country as to be unworthy of mention. A skillful attorney or advocate will ensure that relevant facts are brought to the interviewer's attention and provide much-needed moral support during an interview. Attorneys and voluntary organizations such as the U.S. Catholic Conference have already volunteered their services.

Protection of Privacy

Each interview must be conducted in a manner that protects the applicant's safety, privacy, and confidential information. Tyrannical rulers such as those now controlling Haiti gain and maintain power by creating a climate of insecurity and fear. As Haitian refugees will not be accustomed to speaking freely, particularly to government officials, special care must be taken to ensure that they feel at ease speaking during these crucial interviews.

Adjudications by Professional Asylum Officers

Under U.S. regulations, the cases of shoreside asylum applicants are heard by professional asylum officers with special training in international relations and international law. Given the complex and fluctuating conditions in Haiti, it is crucial that officers interviewing Haitian refugees be trained in Haitian politics and culture as well as international law.

Access to Competent, Independent Interpreters

The refugees must have access to competent, independent interpreters. A poor interpreter can distort an interviewer's questions and an applicant's responses. Government interpreters may feel compelled to assist in screening out applicants, despite their eligibility under U.S. laws.

Review of Case Denials in Deliberative Setting

In shoreside adjudications, if an asylum officer denies an applicant's case, the applicant may renew his or her claim before an Immigration Judge. The Judge's decision may in turn be appealed to the Board of Immigration Appeals and to a federal

appeals court. Under some proposals being discussed, Haitian refugees would have only one opportunity to present their case. Given the grave consequences should a political refugee be forcibly returned in error, Haitian applicants must be able to have initial case denials reviewed in a more deliberative setting.

#### Retain "Credible Fear" Standard

Haitians whose asylum claims are processed in the type of makeshift manner proposed by the Administration should not have to meet the same stringent standard as those shoreside asylum applicants who are afforded numerous procedural protections and the assistance of counsel. Haitians must not be processed under the more stringent standard until they are afforded comparable protections in the adjudication and review of their cases.

#### Temporary Protection for All Haitians

Finally, the United States must not return anyone to a place where his or her safety will be compromised, even if he or she does not meet our definition of a "political" refugee. As Sadako Ogata, United Nations High Commissioner for Refugees, recently said: "In these situations, people who flee should be given some kind of chance to stay outside the country, at least until democracy is restored." 1986 Nobel Peace Laureate Elie Wiesel wrote:

I believe that men and women who decide to leave a country because they are hungry, because they cannot see their children die, or because they cannot see their parents die

of hunger, deserve our respect; they deserve our friendship; and they deserve our support, just as those who flee the very same country or others for political reasons.

The United States has often asked other countries to provide temporary shelter to refugees from adjacent countries. These other countries are watching now to see how the United States responds to a refugee problem on its own doorstep.

The most sensible U.S. policy would be one directed towards building a democratic, peaceful, and prosperous Haiti, thus eliminating the need for the refugees to flee. If given a chance, most people, Haitians included, would prefer to live and work in peace and safety in the familiar surroundings of their own country, close to friends and loved ones. No refugee makes the decision to leave his or her homeland lightly. We must respect the decisions made and the risks taken by Haitian refugees and give their claims for political asylum the serious consideration they deserve. Equally important, we must offer protection to those who do not qualify for asylum until it is safe for them to return.

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*Drawn in part from a guest editorial, published June 1, 1994 in the Seattle Post-Intelligencer, by Rev. John Boonstra, Executive Minister, Washington Association of Churches, Kathryn Railsback, Collin Tong, and Rev. John Worcester, members of the Board of Directors of Washington Refugee Resettlement, and Vicky Stifter, Executive Director of Northwest Immigrant Rights Project.*

## APPENDIX 9.—CRS REPORT: CUBAN ADJUSTMENT ACT OF 1966

93-253 A  
February 24, 1993**CRS Report for Congress**

Congressional Research Service • The Library of Congress

**Cuban Adjustment Act of 1966**Larry M. Eig  
Legislative Attorney  
American Law Division**SUMMARY**

Congress enacted the Cuban Adjustment Act of 1966 to provide Cubans who had fled the Castro regime an opportunity to apply for permanent resident status without having to leave the United States. The Act thus eased procedural obstacles without conveying any substantive rights. Amendments to the Act in 1976 and 1980 have clouded rather than clarified the Act's scope and its intended effect on applicable immigration quotas.

**BACKGROUND**

Fidel Castro came to power in Cuba in January 1959. Within less than three years, 153,000 Cubans had registered at the Cuban Refugee Emergency Center in Miami. After a suspension in commercial air traffic slowed Cuban emigration during 1962-1965, the number of Cuban arrivals increased under an airlift program instituted by President Johnson. The Immigration and Naturalization Service (INS) reported that as of August 1, 1966, 165,000 Cubans were in the United States without visas permitting them to reside here permanently.<sup>1</sup>

The 165,000 Cubans identified by INS primarily were in the United States in parole or extended voluntary departure status. None of them was in a status that automatically provided an opportunity to adjust to permanent resident status. Granting immigrant status administratively to such a large number of Cubans was not hindered at the time by any immigration quota--there were no limits on Western Hemisphere immigration in effect until 1968. Nevertheless, the statutory provision that permits aliens here to seek permanent residency while remaining in the United States, § 245 of the Immigration and Nationality

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<sup>1</sup> See H.R. Rep. No. 89-1978, 89th Cong., 2d Sess. 2 (1966).

Act of 1952<sup>2</sup> (INA), as amended, then disqualified natives of the Western Hemisphere from applying.<sup>3</sup> The Cuban emigres who wished to seek a firmer foothold here thus were in a bind. They could not apply in the United States for permanent residency. Neither could they return to Cuba to apply there with American officials. The only recourse they had was the burdensome one of leaving the United States to apply for American permanent residency with American officials in a third country. It was Congress's desire to provide the Cubans who were here with an opportunity to apply for permanent residency in the United States that led to the passage of the Public Law 89-732,<sup>4</sup> popularly known as the Cuban Adjustment Act of 1966 (1966 Act).<sup>5</sup> This report briefly discusses the original adjustment provisions of the 1966 Act and subsequent amendments to them.

### ADJUSTMENT PROVISIONS OF THE 1966 ACT

The 1966 Act eased the burden of Cubans here who wished to seek permanent residency by granting the Attorney General discretionary adjustment authority. Similar to the general adjustment authority granted the Attorney General under § 245 of the INA, § 1 of the 1966 Act states that:

Notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act, the status of any alien who is a native or citizen of Cuba and who has been inspected and admitted or paroled into the United States subsequent to January 1, 1959, and has been physically present in the United States for at least two years, may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. . . . The provisions of this Act shall be applicable to the spouse and child of any alien described in this subsection, regardless of their citizenship and place of birth, who are residing with such alien in the United States.

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<sup>2</sup> 8 U.S.C. § 1255.

<sup>3</sup> Prior to 1965, the restriction against adjusting to permanent resident status in the United States applied only to natives of adjacent countries and nearby islands. The restriction was broadened because of the growing problem of Central and South Americans coming here as non-immigrants (*e.g.*, tourists) and immediately seeking permanent status. H.R. Rep. No. 89-745, 89th Cong., 1st Sess. 22 (1965).

<sup>4</sup> Act of November 2, 1966, 80 Stat. 1161.

<sup>5</sup> H.R. Rep. No. 89-1978, 89th Cong., 2d Sess. 3 (1966).

On their face, the adjustment provisions of the 1966 Act have broad eligibility standards but provide rather restricted benefits. Eligibility extends to individuals who are either *citizens* or *natives*. An individual who moved abroad from his or her birthplace in Cuba at an early age may qualify. Also, there is no requirement that an applicant be a likely victim of persecution, as must be a *refugee* or *asylee* under Refugee Act, nor must an applicant otherwise show any individualized hardship. Thus, a native of Cuba who moved to Haiti at a young age in 1936 was found eligible under the 1966 Act when he applied for adjustment after entering the United States on a tourist visa.<sup>6</sup>

Respecting benefits granted, it is clear that the 1966 Act did not provide for automatic adjustment to permanent residency of all Cubans here. The 1966 Act only provided a procedure for seeking permanent residency, not an entitlement to it. Under the terms of the Act, adjustment is granted only on application and a finding that the applicant meets the qualifications for receiving a visa and is not barred from entry into the United States on criminal, health, national security, or other grounds for exclusion under the INA. Some grounds of exclusion may be waived by administrative discretion.<sup>7</sup> On the other hand, there is administrative discretion under the 1966 Act to deny permanent residency to otherwise qualified applicants.<sup>8</sup> Also, in only providing a procedure for seeking adjustment of status, the 1966 Act does not curb the authority of INS to arrest, detain, or otherwise process out-of-status Cubans in the same manner it treats out-of-status nationals of other countries.

#### IMMIGRATION AND NATIONALITY ACT AMENDMENTS OF 1976

The prohibition barring Western Hemisphere aliens from applying for adjustment of status once in the United States was repealed by the Immigration and Nationality Act Amendments of 1976 (1976 Amendments). Even though the expressed reason for enacting the 1966 Act was thus eliminated, the 1976 Amendments not only did not repeal the 1966 Act but added the following language to it:

[A]pproval of an application for adjustment of status to that of lawful permanent resident of the United States pursuant to [this Act] shall not require the Secretary of State to reduce the number of visas authorized to be issued in any

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<sup>6</sup> *Matter of Masson*, 12 Imm. & Nat. Dec. 699 (BIA 1968).

<sup>7</sup> Despite the broad requirement of admissibility, it has been held that the public charge grounds for excluding or deporting an alien do not apply to aliens adjusting under the 1966 Act. *Matter of Mesa*, 12 Imm. & Nat. Dec. 432 (1967). Also, the Labor Department determined that because most Cubans who were here at the time of enactment were already in the workforce, it would not apply labor certification requirements in the adjustment process. H. Rep. No. 89-1978, 89th Cong., 2d Sess. 3 (1966).

<sup>8</sup> *Matter of Marchena*, 12 Imm. & Nat. Dec. 355 (1967).



class in the case of any alien who is physically present in the United States on or before [January 1, 1977].

Under the general adjustment provisions of § 245, each adjustment in the United States to permanent resident status has to be offset against any applicable entry quota. By contrast, the 1966 Act did not address whether adjustments under it were to be charged against any entry quota, an absence possibly explained by the lack of any quotas at the time for Western Hemisphere admissions. Beginning in 1968, however, an overall annual quota on Western Hemisphere immigration of 120,000 became effective. The purpose of the above-quoted section of the 1976 Amendments was to make clear that adjustments of certain Cubans under the 1966 Act were not to disadvantage immigration from other Western Hemisphere countries (which had developed backlogs) by reducing the availability of visas under the 120,000 per year hemispheric limit.<sup>9</sup> At the same time, the 1976 Amendments prospectively replaced the overall hemispheric limit with per country limits. It is perhaps significant, then, that the 1976 Amendments restrict the no-offset policy to Cubans who were present in the United States before the hemispheric limits were supplanted by country limits. In any event, neither the 1976 Amendments nor its legislative history addresses the chargeability of Cubans arriving after January 1, 1977. It has been the administrative practice not to charge adjustments under the 1966 Act to any entry quota.

#### REFUGEE ACT OF 1980

Congress enacted the Refugee Act of 1980<sup>10</sup> in an attempt to replace the practice of enacting *ad hoc* responses to migration emergencies with a comprehensive, ongoing refugee admission and adjustment system. Still, the Refugee Act did not repeal the 1966 Act. Rather, the Refugee Act amended the 1966 Act to reduce the presence requirement for adjustment from two years to one year. The legislative history of the Refugee Act does not mention the 1966 Act. The reduction in the presence requirement did not emerge until conference and apparently was regarded as a conforming amendment to conform the 1966 Act to the one-year waiting requirement for refugee adjustment adopted in conference.

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<sup>9</sup> The House Judiciary Committee stated that the effect of the 1976 Amendments would be to make approximately 20,000 to 25,000 additional visas available to Western Hemisphere countries each year for a few years. The committee also stated that freeing Cubans who were then present here from quota restrictions would free them from the delay resulting from the unavailability of visas under the hemispheric quota. H.R. Rep. No. 94-1553, 94th Cong., 2d Sess. 12 (1976).

<sup>10</sup> Public Law No. 96-212, 94 Stat. 109.

APPENDIX 10.—STEVEN FORESTER, ESQ., SUPERVISING ATTORNEY,  
HAITIAN REFUGEE CENTER, MISCELLANEOUS MATERIALS

DATE	TIME

RED SECOND COMPLEX  
of the United States  
of Representatives  
GOVERNMENT OPERATIONS

JOHN C. CONYERS, JR.  
Chairman, Subcommittee on  
Legislation and National Security,  
U.S. House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20513

DR. BENJAMIN FRANKLIN  
GOMES & BUCKLEY, P.C.  
ALBERT S. BUCKLEY, P.C.  
MATTHEW G. BUCKLEY, CALIFORNIA  
DONALD W. PATRICK, NEW JERSEY  
DAVE & DEWEY, CALIFORNIA  
MURPHY & MURPHY, MASSACHUSETTS  
DAVE MURPHY, CALIFORNIA  
COLLEEN C. MURPHY, MASSACHUSETTS  
RICHARD L. MURPHY, CALIFORNIA  
CHRISTOPHER S. MURPHY, CALIFORNIA  
JOHN W. O'CONNOR, CALIFORNIA

2157 Rayburn House Office Building  
Washington, D.C. 20513

FOR IMMEDIATE RELEASE  
April 8, 1992

FOR MORE INFORMATION CONTACT:  
Bob Wainer/Rochelle Daniel  
(202) 225-5651

**NEWS RELEASE**

CONYERS ANNOUNCES HEARING ON U.S. POLICY TOWARD HAITIAN REFUGEES;  
GAO TO REPORT SENDING BACK REPRESENTATIVES APPROVED FOR  
U.S. STAY WITH CREDIBLE CLAIMS OF PERSECUTION AND OTHER  
DISTURBING FINDINGS

THURSDAY, APRIL 9, 10 AM, 2205 RAYBURN HOUSE OFFICE BUILDING

(Washington, D.C.)... Representative John Conyers, Jr. (D-MI), Chairman of the House Government Operations Committee, today announced a public hearing to be held by the Subcommittee on Legislation and National Security, on U.S. Human Rights Policy Toward Haiti, Thursday, April 9, at 10 AM. "This hearing is a result of our investigation into the U.S. human rights policy toward Haiti. Regrettably, there appear to have been serious failures in the immigration system. This jumbled and unfair system has sent back innocent Haitian refugees with valid human rights claims. For example, we now learn that fifty-four Haitians who had been approved to stay in the U.S. were none the less sent back to Haiti through administrative error. They were never even told they were approved for stay in the U.S.," said Conyers.

"Our investigation focused on four elements: U.S. policy and program, INS processing procedures, conditions in Haiti, and legal challenges to U.S. policy. Also, as part of this effort, at our request, a GAO team was dispatched to Haiti and to the U.S. Navy Base at Guantanamo Bay Cuba. GAO will be reporting some very disturbing findings:

Fifty-four Haitians who had credible claims were sent back to Haiti.

GAO believes that there are more Haitian refugees who have been incorrectly processed, denying many Haitians with legitimate claims protection in the U.S.

- The INS is using flawed processing procedures resulting from clerical errors, delays in processing information, and poor system design. As a result, there were also 47 Haitians who were without credible claims but were sent to the U.S. for further processing.
- Seven Haitians were voluntarily repatriated without knowing that they had met the INS standard to come to the U.S. for entry. This was caused by the delays in the entry of data from their interviews.
- There is no U.S. agency charged with processing of the repatriation of these Haitians. This contributes to mistakes and the system's overall failure."

Conyers said, "The Bush Administration has turned its back on innocent Haitians feeling repression in their homeland and seeking the freedom of our shores. Failures of INS administration denying Haitians their guaranteed rights by U.S. law makes a mockery of the U.S. refugee system.

"The GAO through its findings has confirmed my suspicion that Haitians with credible human rights claims have been sent back to Haiti to suffer under the tyranny that now exists in their country. That is why I asked GAO to study the Haitian refugee interrogation and screening process. Under this shabby system, these Haitians have been denied an absolute right protected by U.S. laws.

"With sheer sadness, I regret that the U.S. has refused to grant the refugees 'safe haven' status to let them stay in the mainland United States pending political developments in their homeland, particularly those that have clearly demonstrated refugee eligibility.

"I'm still standing in the dark trying to have the light shine on this important issue that engulfs the thousands of Haitian refugees who seek refuge in this country," concluded Conyers.

**Hearing:**

"Oversight of U.S. Human Rights Policy toward Haiti"

**Witnesses:**

GAO Investigators

INS and State Department Representatives

William O'Neil, Deputy Director of the Lawyers Committee for Human Rights

Ira Kurzban, Counsel for the Haitian Refugee Center in Miami

Harold Koh, Professor, Yale Law School

## HAITI

1/94

IN-COUNTRY REFUGEE PROCESSING

- o In-country processing of Haitian refugees began in mid-February 1992. On October 1, 1992, the International Organization for Migration (IOM), under contract from the Department of State, opened a Refugee Processing Center (RPC) in Port-au-Prince to handle all the pre- and post-adjudication processing of refugee cases.
- o On April 26, 1993, a provincial processing center opened in the southern city Les Cayes (World Relief), and on May 24, 1993 a second provincial center opened in the northern city of Cap Haitien (USCC).
- o In April 1993, we placed preliminary refugee questionnaires on Coast Guard cutters so that any interdicted person with a possible claim to refugee status can be identified prior to debarkation and taken quickly into refugee processing.
- o Preliminary questionnaires are reviewed to determine whether prima facie evidence suggests the applicant qualifies for processing.
- o Individuals in the following categories are eligible for refugee processing: senior and mid-level Aristide government officials; close Aristide associates; journalists and educational activists who have experienced significant and persistent harassment by the de facto authorities, or who have a credible fear because of their activities; high profile members of political/development/social organizations who have experienced significant and persistent harassment by the de facto authorities, or who have a credible fear because of their activities; and, others of compelling concern to the U.S. and in immediate danger because of their actual or perceived political beliefs or activities.
- o We are actively working with non-governmental organizations, human rights groups, church groups, international organizations and others to expand the use of referrals to the program.
- o Cases found eligible for processing consideration are scheduled for a case presentation interview by caseworkers at one of the three RPC's. Subsequently, an INS officer privately interviews each applicant and makes the final determination of refugee status.
- o Applicants approved by INS go through standard refugee processing procedures for medical screening, sponsorship assurance, and travel arrangements. We attempt to process high priority cases in seven working days.

*Haitian Refugee Center  
Sant Réfijyé Ayisyen, Inc.*

119 North East 54th Street  
Miami, Florida 33137

Phone: (305) 757-8538  
Fax: (305) 758-2444

April 18, 1994

John W. Cummings  
Acting Director  
Office of International Affairs  
DOJ-INS  
ULL Building  
3rd Floor  
Washington, DC 20536

Dear Mr. Cummings:

Thank you for talking with me Friday. Enclosed are my letters seeking refugee protection on behalf of some persons in hiding in Haiti. Denials have been received in at least three cases, grants in none. This morning I received, via relatives here, the denial letters for three relatives of Elie Zephir, whose murder was documented by Amnesty International and in Haiti En Marche (see enclosed). INS has denied Rochlin Moimeme, an activist whose hand-written letter is enclosed, and Jean Gerald Duverger, first delegate of the reforestation group UNPREN, whom soldiers beat on head, face, and body when they broke up an UNPREN meeting in Port au Prince on October 26, 1993. I documented repression of such groups and supplied UNPREN correspondence showing its existence.

The "high profile" requirement in the enclosed eligibility criteria would seem to violate your correct assessment in your excellent March 1993 memo (top of sixth page) that "lack of prominence does not remove the possibility of being at risk" and that "Activities, either real or imputed, are a far more important consideration in assessing risk, than is prominence." Indeed, the criteria and practices violate the spirit and substance of your memo. Everything we know about Haiti, including the gruesome and vicious current murders, vindicates your conclusions. As you know, Haitian authorities persecute among many others members of organizations; persons merely for having distributed, worn, or displayed on their houses or vehicles Aristide leaflets; and activists' relatives. My letters refer to some of the background documentation on these issues.<sup>1</sup>

I hope you will find a way to overcome the obvious and severe problems which exist in ICP. So many lives are effected.

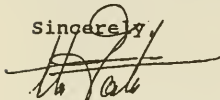
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<sup>1</sup>One of the enclosed letters refers to Margaret Nerette, a Cite Soleil grassroots activist who flew to Washington DC to meet with President Aristide. While she was here, attaches or soldiers -- see enclosed -- came to the house and asked her brother where she was. When he said he didn't know, they replied, "You can replace her" or words to this effect, and abducted him. He has never been seen again.

You probably know my colleague Merrill Smith, attorney at Church World Service in Miami, 305-541-8040. He is a superb advocate, probably the best in the country, on Haitian asylum claims, with a thorough knowledge of country conditions, and is a gentleman and highly intelligent. He has much information and insight to provide on the issues we discussed. Please feel free to contact him or me at any time. My toll free number is 1-800-749-8538.

Thanks also for your efforts regarding Mr. Desanges.

Sincerely,

A handwritten signature in dark ink, appearing to read "S. Forester", written over a horizontal line.

Steven Forester, Esq.  
Supervising Attorney

Moniteur No. 84 du 24 Novembre 1980.

**DECRET DU 17 NOVEMBRE 1980  
PUNISSANT LES VOYAGES IRRÉGULIERS**

Art. 1er.— Est réputé voyage irrégulier à destination de l'étranger, le voyage entrepris ou organisé à partir du Territoire National en dehors des formes et conditions prévues par les lois de Police, particulièrement celles de l'Immigration et l'Émigration.

Art. 2.— L'organisation de pareil voyage est un délit punissable suivant les dispositions du présent Décret.

Art. 3.— Tout organisateur de voyage irrégulier à destination de l'étranger, toute tentative de faire voyager une personne à partir du Territoire National vers l'Étranger sans l'accomplissement des formalités légales seront punis d'une peine de 6 mois à trois ans à prononcer par le Tribunal Correctionnel compétent.

En cas de récidive, le coupable sera condamné au maximum de la peine et à une amende de 10.000 à 50.000 gdes.

Art. 4.— Sont réputés complices du délit d'organisation de voyage irrégulier à destination de l'Étranger et punissable selon le cas, de peines prévues au présent Décret 1) Ceux qui, à un titre quelconque auront à bord de leurs navires, aéronefs ou à bord de leurs simples bateaux, des voyageurs non pourvus de pièces prescrites par les lois visées au sus-dit article premier.

2) Ceux qui auront servi d'intermédiaire (courtiers, agents, sous-agents ou autres) entre ces voyageurs et les organisateurs de voyage irrégulier.

3) Ceux qui auront sciemment hébergé les voyageurs irréguliers pour faciliter leur voyage, empêché la poursuite et le jugement des délinquants.

4) Tous ceux qui volontairement auront aidé à l'organisation et à la réalisation de ces voyages irréguliers.

Art. 5.— Dans les cas d'escroquerie et d'abus de confiance provoqués par promesse, persuasions, par artifice ou perception de sommes d'argent, miroitement d'avantages matériels ou espérances vaines ou chimériques, les auteurs et complices qui auront ainsi abusé de la crédulité de ceux qui veulent voyager ou utilisé des moyens similaires seront punis de peines prévues par les articles 337 et 340 du Code Pénal.

Art. 6.— Lorsque les circonstances auront conféré aux faits poursuivis le caractère d'un crime plu-

tôt que d'un délit, la cause sera instruite et jugée suivant la procédure tracée par le Code d'Instruction Criminelle, et le Code Pénal.

Art. 7.— Tout responsable de navire marchand ou de plaisance, de cabotages, goélettes, corvettes, aéronefs, transportant des passagers à partir du territoire d'Haïti vers l'étranger, devra contrôler les pièces d'émigration et de police autorisant le voyage du passager.

Des agents de contrôle des dits Services, vérifieront également les pièces et documents légalisant le voyage et la violation des formalités et dispositions de la loi sur l'émigration et celles du Code Douanier.

Art. 8.— En cas de contravention constatée par les agents qualifiés, le navire sera considéré comme pirate et arraisonné, la cargaison saisie et vendue suivant la procédure des articles 357 et 358 du Code Douanier, les responsables (contrevenants et complices) remis aux autorités judiciaires en vue des poursuites prescrites par le présent Décret.

Art. 9.— En dehors des peines sus-dites et sus-visées, les capitaines de navires, voiliers ou motorisés, les conducteurs ou propriétaires de goélettes, corvettes ou autres contrevenants, encourrent également la condamnation à une amende de 25.000 à 200.000 gourdes avec retrait de la patente ou licence.

Art. 10.— Le présent Décret abroge toutes Lois ou dispositions de Lois, tous Décrets ou dispositions de Décrets, tous Décrets Lois ou dispositions de Décrets-Lois qui lui sont contraires et sera publié et exécuté à la diligence des Secrétaires d'Etat de la Justice et de l'Intérieur et de la Défense Nationale, chacun en ce qui le concerne.

Donné au Palais National à Port-au-Prince, le 17 Novembre 1980. An 177ème de l'Indépendance.

Jean-Claude Duvalier





NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA

# Church World Service

701 S.W. 27 Ave, Miami, FL 33135

IMMIGRATION AND REFUGEE PROGRAM

Tel. (305) 541-8040 Room 707  
Roseann Micallef, Director FAX: (305) 642-2815

June 8, 1994

BY HAND

Erich Cauller  
Director, Asylum Unit  
United States Department of Justice  
Immigration and Naturalization Service  
701 S.W. 27th Avenue, 14th Floor  
Miami, Florida 33135

Dear Erich,

Attached please find a copy of "The Recent Upsurge in Political Violence and Persecution of Returnees in Haiti - Implications for Asylum Adjudication". We have been referring to this material in cases which remain pending with Asylum Officers. Its implications, however, are clearly much broader. We ask you to consider distributing it to your officers generally.

We realize that it may seem somewhat unusual to encourage *sua sponte* re-openings of cases which we are not representing and, of course, it may not be in line with the Asylum Unit's immediate interest in productivity in reaching final decisions. We hope, however, that you will agree that these developments are sufficiently relevant and probative to be taken into consideration, and encourage officers to do so or, at a minimum, let them know that they would be permitted to do so.

Thank you for your kind consideration of this matter. If you should have any questions or comments, please do not hesitate to contact the undersigned.

Yours,

Merrill Smith  
Church World Service

also:

Marisol Zequiera Burke  
Catholic Emergency Legal Aid for Haitians

NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA



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## THE RECENT UPSURGE IN POLITICAL VIOLENCE AND PERSECUTION OF RETURNEES IN HAITI - IMPLICATIONS FOR ASYLUM ADJUDICATION<sup>1</sup>

### Introduction

In recent months, persecution of ordinary Aristide supporters and forcibly returned Haitian asylum-seekers has reached dramatically new levels. These developments in country conditions are highly relevant to the adjudication of current Haitian asylum claims. Moreover, they form a basis for re-opening previously denied cases that may remain under the adjudicator's jurisdiction.

As most Haitian asylum-seekers lack legal representation, Church World Service implores adjudicators in the interest of fundamental fairness to reopen *sua sponte* such cases where these developments may tip the balance between denial and approval. Considering the grievous consequences at stake, potentially countervailing interests of 'productivity' should be waived or reconsidered.

### I. UPSURGE IN GENERAL POLITICAL REPRESSION

On May 8, the President of the United States noted, in reference to the policy of summary repatriation:

"I ordered the review of this policy six weeks ago when we began first to get intelligence reports and then clear news reports that there was *increasing violence against citizens of Haiti who did not agree with the policies of the military regime* -- and, indeed, some of them seem to be not political at all -- of people not only being killed but being mutilated."<sup>2</sup>

According to the New York Times,

<sup>1</sup> Copies of all documents cited herein are available from Church World Service upon request.

<sup>2</sup> Office of the Press Secretary, the White House, "Statement and Press Conference by the President", May 8, 1994, p. 3, emphasis added.

"Hundreds of supporters of the Rev. Jean-Bertrand Aristide and other civilians have been killed in Haiti in recent months in the bloodiest wave of political terror since the army overthrew Father Aristide as President two and a half years ago. . . . The violence accelerated this year, with 50 or more bodies turning up in the streets of [Port-au-Prince] each month. Many were badly mutilated or bore clear signs of torture."<sup>3</sup>

Recent UN/OAS International Civil Mission reports indicate dramatic increases in extra-judicial execution (CP/94/5, March 16), political rape,<sup>4</sup> and arbitrary arrest and illegal detention,<sup>5</sup> along with a wholesale massacre in Gonaïves (CP/94/17, May 2) and a "virtual state of siege in the Bassin Caïman zone" (CP/94/19, May 5).

The State Department's Bureau of Human Rights and Humanitarian Affairs has noted these reports of "a recrudescence of repression continuing on into 1994 with increased frequency and brutality, including the murder, rape, and beating of political opponents, now including rank-and-file former Aristide supporters in Port-au-Prince's slum neighborhoods, by local authorities and their agents, in the capital and provinces alike."<sup>6</sup> Though much belated, this is a major reversal of State Department views on the relationship of 'prominence' to the risk of persecution in Haiti.

## II. UPSURGE IN PERSECUTION OF RETURNED ASYLUM-SEEKERS

Church World Service and others have long been concerned by

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<sup>3</sup> French, Howard W., "A Rising Tide of Political Terror Leaves Hundreds Dead in Haiti", New York Times, April 2, 1994, p. A1.

<sup>4</sup> CP/94/8, March 21 ("often against near relatives of political or union activists").

<sup>5</sup> CP/94/6, March 17 ("Members of popular organizations have been particularly singled out."); CP/94/12, April 8 ("[30 of 37 cases between late January and late March] involve members of popular organizations and their relatives"); CP/94/13, April 22.

<sup>6</sup> Dankert, Roger, Director, Office of Asylum Affairs, Bureau of Human Rights and Humanitarian Affairs, U.S. Department of State, Advisory Opinion, April 25, 1994, p. 1, emphasis added.

the persecution of forcibly returned Haitian asylum-seekers.<sup>7</sup> Recently, however, following the appointment of Emile Jonassaint as de facto President, this practice has taken a dramatic upswing.

"On 19 May [1994], Haitian provisional President Emile Jonassaint... announced his government is going to take sanctions against the clandestine departures of boat people for Florida. Jonassaint, who was speaking during a news conference at the National Palace, explained that a decree dated 1980, punishing clandestine departure departures from the national territory, was still in force."<sup>8</sup>

"In a May 22 communique, the Jonassaint regime said it would 'take all measures to apply [the decree] punishing instigators and accomplices of the crime of organizing clandestine trips abroad.'"<sup>9</sup>

This is not mere rhetoric - Jonassaint's words have apparently been put into brutal effect. According to USA Today,

"In Port-au-Prince, 184 boat refugees who were returned to the city's dock Monday morning [May 23, 1994] were beaten by police as they were taken to jail, Red Cross officials said. ... In Petit Goave, a port where many boat people leave for the USA, -30 to 40 people were arrested and beaten, human rights observers said. In Gonaives and Petit-Goave, police

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<sup>7</sup> Inter-American Commission for Human Rights, Precautionary Measures Taken by the Inter-American Commission In Case No. 10.675 (United States) At 83rd period of Sessions, p. 2, ("The Commission has information that: ... (d) Haitians who are so-returned to Haiti by the United States authorities very frequently suffer persecution at the hands of Haitian authorities;"); Amnesty International, United States of America/Haiti: The price of rejection - Human rights consequences for rejected Haitian asylum-seekers, May 1994 (AMR 51/31/94); Americas Watch/National Coalition for Haitian Refugees, Half the Story: The Skewed U.S. Monitoring of Repatriated Haitian Refugees, June 30, 1992.

<sup>8</sup> Signal FM Radio, 1030 GMT, May 20, 1994 [as reported by the Federal Broadcast Information Service - Caribbean, May 23, 1994, p. 14].

<sup>9</sup> Benesch, Susan, "A Cuba-style crackdown in Haiti - Would-be boat people jailed, beaten for trying to leave", Miami Herald, May 31, 1994, pp. 1A and 6A, at 6A.

Monday detained people to stop them from leaving Haiti by boat."<sup>10</sup>

The Miami Herald, also reporting that "[in Petit Goave, f]rom 35 to 55 people - including at least six small children and babies - were taken to prison...", notes that in this new application of the 1980 decree,

"'Accomplices' are defined so broadly that they include all passengers... On the dark beach at Trouchouchou, near Petit Goave, the soldiers made no attempt to distinguish between organizers and passengers. The trip's organizer escaped since he was on board the boat, as Jean Rosiris Jose, the judge who heard the case of the Petit Goave group, freely admitted in an interview. Jose carefully leafed through a heavy volume of the Haitian penal code, but did not point to any particular law. Finally he just said, 'We have to arrest passengers to stop this.'"<sup>11</sup>

#### Political Motivation behind Persecution of Returnees

The persecution of forcible returnees is politically motivated. The dockside reporting by the State Department on earlier practices of the Haitian authorities reveals the hostility with which the authorities regard returnees:

"The immigration police questioned returnees as usual, searched their belongings and fingerprinted them. ... Though the ostensible purpose of questioning was to identify boat trip organizers, the interrogation (which took place within the hearing of emboffs and international civilian mission representatives) appeared to be a 'fishing expedition' for persons considered troublemakers by the police and probably designed to intimidate the returnees."<sup>12</sup>

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<sup>10</sup> Squitieri, Tom, "Violence escalates with new Haitian regime: Military's foes met with brutal killings, mutilations", USA Today, May 24, 1994, p. 7A.

<sup>11</sup> Benesch, Susan, "A Cuba-style crackdown in Haiti - Would-be boat people jailed, beaten for trying to leave", Miami Herald, May 31, 1994, pp. 1A and 6A, at 6A.

<sup>12</sup> U.S. Department of State, unclassified cable of September 22, 1993, emphasis added. See also Maass, Harold, "Some repatriated Haitian refugees subjected to arbitrary arrest, torture", Miami Herald, June 18, 1993, p. 22A ("Seraphin said a

Leaving is by itself a political statement. As Amy Wilentz, author of The Rainy Season: Haiti Since Duvalier, has noted:

"Fleeing the country is tantamount to voting with your feet for the ousted democracy. The huge wave of desperate refugees is a public humiliation for the government and neither Duvalierists nor the Haitian Army - the two groups who carried out the coup - responds well to humiliation. In fact, they respond ruthlessly."<sup>13</sup>

As Liz Balmaseda describes an incident at the airport in Haiti:

"When they reached the Haitian immigration post, [three deported asylum-seekers] were greeted with a threat, they say. 'They said they were going to show us what happened to people who leave the country illegally. They said they would kick our butts,' says Clerval."<sup>14</sup>

Considerable animus on the part of the authorities is based upon their generally correct imputation to the refugees of a desire to seek asylum, and, in the process, to expose and denounce the Haitian government to foreigners for its human rights violations.<sup>15</sup> The recent wave of attacks on asylum-seekers occurs in the context of the Jonassaint regime's recent threat "to enforce grave punishment against those who 'contact the enemies of the homeland or one of their agents.'"<sup>16</sup>

local soldier pegged him and others as subversives, saying they would not have fled by boat if they weren't rabble rousers.").

<sup>13</sup> Wilentz, Amy, "Haitians Flee Political Nightmare, Only To Be Returned", Los Angeles Times, February 16, 1992.

<sup>14</sup> Balmaseda, Liz, "For these 3 Haitians, there is hope", Miami Herald, September 12, 1992, p. 1B.

<sup>15</sup> See Affidavits of Guantánamo 'double-backers' Dukens Luma (beaten by authorities who did not believe his claim that he had told the Americans that he had only fled for economic reasons) and Fito Jean (witness to abduction of three returnees following hostile dockside remarks by military referring to boat people who presumably "denounce the country to foreigners") submitted to the Inter-American Commission for Human Rights.

<sup>16</sup> Radio AFP Paris, May 23, 1994, 0338 GMT (reported in FBIS-LAT-94-099, May 23, 1994, p. 15).

Legal Standards

"The Asylum Officer or Immigration Judge shall give due consideration to evidence that the government of the applicant's country of nationality or last habitual residence persecutes its nationals or residents if they leave the country without authorization or seek asylum in another country." 8 CFR § 208.13(b)(2)(ii).

As demonstrated above, the persecution of attempted clandestine departure is politically motivated and based upon substantially accurate imputations that such persons may be "troublemakers", have denounced the regime to foreigners or have embarrassed the regime by their very departure.

Haitian asylum-seekers who fled by means which the current regime considers illegal, however, also constitute a particular social group under INA §101(a)(42)(A). The BIA defines social group with the criterion of "a common, immutable characteristic", i.e., one that its members either cannot change (like race or nationality) or should not be required to change (like religion or political opinion).<sup>17</sup> To have left one's country and to have sought asylum are not only immutable past acts - they are also universally recognized human rights that no one should be required to waive.<sup>18</sup>

Moreover, the severity and arbitrariness of punishment for illegal departure alone (i.e., even if, arguendo, the punishment were not politically motivated), substantially enhances the

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<sup>17</sup> Acosta, 2 ILPR B1-30, 51. Among the characteristics that cannot be changed, the BIA has recognized "shared past experience such as former military leadership or land ownership." Id.

The social group ground "was intended to compensate for the narrower categories' inability to encompass the full range of persecution", Graves, "From Definition to Exploration: Social Groups and Political Asylum Eligibility", 26 San Diego L. Rev. 740, 771 (1989), and to cover "all the bases for and types of persecution which an imaginative despot might conjure up", Helton, Arthur, "Persecution on Account of Membership in a Social Group as a Basis for Refugee Status", 15 Col. Hum. Rts. L. Rev. 39, 45 (1983).

<sup>18</sup> Universal Declaration of Human Rights, Article 14(1); International Covenant on Civil and Political Rights, Article 12(2); American Declaration of the Rights and Duties of Man, Article 27.

eligibility of such persons for asylum. According to the UNHCR,

"The legislation of certain States imposes severe penalties on nationals who depart from the country in an unlawful manner or remain abroad without authorization. Where there is reason to believe that a person, due to his illegal departure or unauthorized stay abroad is liable to such severe penalties his recognition as a refugee will be justified if it can be shown that his motives for leaving or remaining outside the country are related to [the five grounds]."<sup>19</sup>

The UNHCR's exclusive reference to the subjective element of the well-founded fear standard, i.e., "motives", significantly lightens the burden of proof for asylum applicants where an objective element of severe punishment for illegal departure is present. In other words, if an applicant's subjective fear of political persecution is found to be sincere, the severity of the punishment for departure, e.g., arbitrary arrest, physical abuse, etc., can effectively compensate for putative deficiencies in the objective well-foundedness of his or her particular fear of persecution.

Of course, it also bears notice that the 1980 decree was not "legislation" but rather diktat of the Duvalier regime. Moreover, its present re-instatement - it had been suspended by the constitutional government - is being carried out by an illegitimate regime not recognized by any government.

#### Conclusion

The implications of this analysis are indeed broad. Nevertheless, the number of persons who may be rendered eligible for asylum by objective facts and applicable law can in no way form a legitimate basis for denial of eligibility. On the contrary, this represents a morally just and legally sound opportunity to save many individuals from the political bloodbath currently engulfing Haiti.

Merrill Smith  
Directing Attorney  
Church World Service - Miami

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<sup>19</sup> United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status, September 1979, p. 16, ¶ 61, emphasis added.



Adis Cano  
Lutheran Ministries of Florida

Esther Olavarria Cruz  
AIIA Pro Bono Project

Steven Forester  
Haitian Refugee Center

Cheryl Little  
Florida Rural Legal Services

cc: Gregg Beyer  
Office of International Affairs

John Evans  
Resource Information Center

## NOTE ON HUMAN RIGHTS IN HAITI - MAY, 1994 -

Source: Platform of Haitian Human Rights Organizations

MAY: Documented Cases of extra-judicial execution: 25  
 Documented Cases of Arbitrary and/or illegal arrests: 30  
 Documented Cases of Degrading and Inhuman Treatment: 24  
 Documented Cases of Searches/Intimidation: 58

## Note on the Military Repression in Le Borgne:

- Information remains difficult to obtain from the area. The level of repression in the Le Borgne area in the north of Haiti has not diminished since it began on April 8. On April 25, several hundred military personnel and FRAPH and a section chief attacked Guisteme Augustin, age 70, in his home near Margot, Borgne, struck him with a machette, shot him and then burned him. Merancia Romeus was abducted as she was going to Bassin Caiman by a large group of FRAPH, military and a section chief who were looking for Marc Lamour.

Disappearances also continued. On May 1, Mania Laguerre was severely beaten and abducted by 3 uniformed soldiers who were looking for her husband, Emmanuel Pierre. There has been no news of her since then.

On May 26, a soldier going by the name of Saddam Hussein, wearing the blue uniform of the Tontons Macoutes, abducted a young woman named Nicole in Bolosse, Port-au-Prince. A man named Bob was also arrested by the same man.

Arbitrary, illegal arrests and other human rights violations were documented in the areas of Limbe, Anse-a-Galuts, Thiotte (where a judge named Vallieres Toussaint remains imprisoned since May 18), the Central Plateau, and Cape Haitian.

Reynold Neptune and his family were forcibly subject to internal relocation to Port-au-Prince by military in Jeremie on May 25. Mr. Neptune was arrested on May 11 and severely beaten.

Incidents involving a Canadian development worker named Victor Edmonds, MICIVIH personnel, and U.S. Marines were widely reported in the media.

Persons in hiding were also reported persecuted in several parts of the countries.

Forcible repatriation of Haitian asylum-seekers continued, with 329 repatriated by the U.S. Coast Guard between May 23 and June 1st. Of this number, 23 were reportedly imprisoned. Some 1,447 refugees have been forcibly repatriated (as of publication of this report on ~~May 27~~) since May 8th, when Pres. Clinton announced an impending change in refugee policy. Arrests of Haitians attempting to flee by boat were also documented in the Petit Goave area as well as the Dominican republic border area.

**QUESTIONNAIRE PRELIMINAIRE  
KESTYONÉ PRELIMINÉ**

Quel est votre Nom  
Ki Non-ou?    
Prénoms Nom de Famille

Autres Noms?  Sexe: « Masculin » « Féminin »  
Ou gen ti-non? « Gason » « Fanm »

Date de Naissance?  Lieu de Naissance?   
Dat ou fèt? Ki koté ou fèt?

Etes-vous marié? « OUI » / « NON » Vivez-vous en Concubinage? « OUI » / « NON »  
Eské ou marié? Eské ou plasé?

Si vous êtes marié, Nom de votre conjoint:    
Si ou marié, non madanm-ou, oubven mari-ou  
Prénom Nom de Famille

Date et Lieu de Naissance de votre Conjoint:    
Dat li fèt avèk ki koté li fèt:

Combien d'enfants avez-vous?  Combien d'enfants vous accompagne?   
Konbyen pitit ou gen Konbyen ki pralé avèk ou?

Nom des enfants Non pitit yo	Date et Lieu de Naissance Dat ak ki koté yo fèt	Sexe Fanm / Gason	Vous accompagnez-ils? Eské yo pralé avèk ou?
<input type="text"/>	<input type="text"/>	<input type="text"/>	« OUI » / « NON »
<input type="text"/>	<input type="text"/>	<input type="text"/>	« OUI » / « NON »
<input type="text"/>	<input type="text"/>	<input type="text"/>	« OUI » / « NON »
<input type="text"/>	<input type="text"/>	<input type="text"/>	« OUI » / « NON »
<input type="text"/>	<input type="text"/>	<input type="text"/>	« OUI » / « NON »
<input type="text"/>	<input type="text"/>	<input type="text"/>	« OUI » / « NON »
<input type="text"/>	<input type="text"/>	<input type="text"/>	« OUI » / « NON »

**INFORMATIONS QUI PEUVENT NOUS AIDER A VOUS CONTACTER  
ENFOMASYON POU KONTAKTÈ OU**

Domicile: Rue koté ou rete : \_\_\_\_\_  
Kijan: Ville Non vil la : \_\_\_\_\_  
Section, Commune / Seksyon, Komin : \_\_\_\_\_  
Habitation / Abitasyon : \_\_\_\_\_  
Téléphone / Tèlèfòn : \_\_\_\_\_

Qui d'autre peut vous contacter:  
Pa ki lòt moun nou ka kontakte ou?

Domicile de ce Contact / Kijan: \_\_\_\_\_  
Rue koté ou rete : \_\_\_\_\_  
Ville Non Vil la : \_\_\_\_\_  
Section, Commune, Seksyon, Komin : \_\_\_\_\_  
Habitation, Abitasyon : \_\_\_\_\_  
Téléphone / Tèlèfòn : \_\_\_\_\_

Avez-vous (ou votre Conjoint) été membre d'une Organisation engagée dans des Activités politiques ou d'autres activités qui pourraient être considérées comme telles par les Autorités du Pays ? " OUI "

Eskè ou tè : oubyen madanm-ou / mari-ou ) fè pati de yon oganizasyon kap okipe afe politik ou lòt aktivite kè gouvènman wè kan kou politik ? " NON "

Le Nom de cette Organisation ( s ) ? 1. \_\_\_\_\_  
Non Oganizasyon sa 2. \_\_\_\_\_  
3. \_\_\_\_\_

Quel Poste ou Titre avez-vous dans cette Organisation ( s ) ? 1. \_\_\_\_\_  
Ki sa ou tè yè nan oganizasyon an 2. \_\_\_\_\_  
3. \_\_\_\_\_

Combien de membres y-a-t-il dans cette Organisation ? 1. \_\_\_\_\_  
Konbyen membe ki genyen nan Oganizasyon an ? 2. \_\_\_\_\_  
3. \_\_\_\_\_

Combien de dirigeants y-a-t-il dans cette Organisation ? 1. \_\_\_\_\_  
Konbyen chèf ki genyen nan oganizasyon an ? 2. \_\_\_\_\_  
3. \_\_\_\_\_

Quelles sont les activités de cette Organisation ?  
Ki aktivite oganizasyon an ? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Avez-vous ( ou votre Conjoint ) occupé un poste politique ? " OUI "  
Eskè ou : oubyen madanm-ou, mari-ou : tè gen yon job politik ? " NON "

Quel Bureau avez-vous dirigé ? \_\_\_\_\_  
Ki Buro ou dirigé ? \_\_\_\_\_  
Quand / ki lè ? \_\_\_\_\_  
Dans quel parti politique ? \_\_\_\_\_  
Nan ki pati politik ? \_\_\_\_\_

Avez-vous ( ou votre Conjoint ) été employé par le gouvernement Haïtien ? " OUI "  
Eskè ou : oubyen madanm-ou, mari-ou : tè travay nan gouvènman Aytyen ? " NON "

Quand / Ki lè ? \_\_\_\_\_  
Où / Ki koté ? \_\_\_\_\_  
Quel était votre Poste / Ki tè Job ou ? \_\_\_\_\_

Quelles étaient vos responsabilités / Ki sa ou tap fè ? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Quelle est votre métier actuel ? \_\_\_\_\_

Ki sa ou ap te kouvè-a ? \_\_\_\_\_

Vos expériences de travail pendant les cinq dernières années.

Travay ke ou tap fè pèndan 5 anè ki sot pase-yo.

Employeur  
Patron

Poste occupé  
Travay-ou

Dates d'emploi  
Dat travay-yo

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_  
4 \_\_\_\_\_

Quelle est la profession actuelle de votre conjoint ? \_\_\_\_\_

Ki sa mari/madanm-ou ap fè kouvè-a ? \_\_\_\_\_

Les expériences de travail de votre conjoint pendant les cinq dernières années.

Travay ke mari/madanm-ou tap fè pèndan 5 anè ki sot pase-yo.

Employeur  
Patron

Poste occupé  
Travay

Dates d'emploi  
Dat travay

1 \_\_\_\_\_  
2 \_\_\_\_\_  
3 \_\_\_\_\_  
4 \_\_\_\_\_

Est-ce que vous ou votre conjoint: n'avez jamais été  
arrêté par les autorités haïtiennes ?

" OUI "

" NON "

Eske la polis pa iam arètè mari/madanm-ou ?

Si oui, donnez les informations concernant  
votre arrestation ou emprisonnement.

Si wi, bay enfòmasyon sou arèstasyon-ou. \_\_\_\_\_

Quand est-ce que vous avez été arrêté ? \_\_\_\_\_

Ki lè yo te arètè ou ? \_\_\_\_\_

Combien de temps vous a-t-on gardé ? \_\_\_\_\_

Konbyen tan ou tè fè nan prizon ? \_\_\_\_\_

Raison de l'arrestation ? \_\_\_\_\_

Rezou arèstasyon-an ? \_\_\_\_\_

Lieu de détention ? \_\_\_\_\_

Ki kote ou tè nan prizon ? \_\_\_\_\_

Décrivez brièvement le traitement reçu en prison :

Di ki jan yo tè tretè-ou nan prizon-an : \_\_\_\_\_

Est-ce qu'on n'a jamais perquisitionné votre maison  
ou celle de votre conjoint ou est-ce que vous  
n'avez été fouillé dans la rue ?

• OUI •  
• NON •

Eske yo pa janm fouye kay-ou (ou kay madanm-ou) oubyen  
Eske yo pa janm fouye-ou nan lari ?

Quand est-ce que ça a eu lieu ?

Ki lé sa té rivé ? \_\_\_\_\_

Est-ce que les autorités ont pénétré dans votre maison ?

• OUI •  
• NON •

Eske otorite-yo te entre nan kay-ou ?

Décrivez brièvement l'incident :

Rakonté sa ki té pasé : \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

S'il vous plaît, donnez les détails de tous les autres incidents ou les circonstances non-mentionnés sur cette  
forme dans lesquels vous sentez persécutés ou qui vous font penser que vous le serez.

Sil-vou-plè, bay detay sou tout sa ki té rivé ou sitiyasyon ke ou poko rakonté sou fey-sa ki fè ou senti yap pèsèkite-  
ou oubyen ki ka fè ou kwè ke yo ka pèsèkite-ou. \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Est-ce que vous ou votre conjoint avez déjà  
effectué des voyages en dehors d'Haïti ?

• OUI •  
• NON •

Eske-ou (oubyen madanm/mari-ou) n'ale nan peyi  
étranje déjà ?

Si oui, dites quand et où vous avez voyagé ?

Si wi, di ki lé è ki koté ou té alé ? \_\_\_\_\_

Quelle est la dernière fois que vous êtes revenu en Haïti ?

Ki denve fwa ou te retounen en Ayiti ? \_\_\_\_\_

# The Miami Herald

JOHN S. KNIGHT (1894-1981)

JAMES L. KNIGHT (1909-1991)

DAVID LAWRENCE JR., *Publisher and Chairman*ROBERTO SUAREZ  
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*Senior Managing Editor*

## Let Haitians have counsel

**T**wo days from now, the economic noose encircling Haiti will grow both tighter and broader. The United Nations Security Council's worldwide embargo on commerce with Haiti starts on Saturday. It could prostrate an economy and a people already on their knees.

Look for the global embargo to cause the effect unintended by either the Security Council or the United States, which pushed for it. For the embargo follows President Clinton's May 8 announcement that the United States soon will resume shipboard asylum hearings for interdicted Haitian refugees.

The two events dovetail in a way perhaps also unintended. Mr. Clinton's promise of hearings for Haitians, hence a chance to win political asylum, caused a surge in interdictions. In the five days ended on Tuesday, the Coast Guard returned 768 Haitians without hearings. How much greater might the exodus be now that, commendably, the Immigration and Naturalization Service will grant Haitians hearings?

This embargo and the hope of asylum will give Haitians even more impetus to flee. Haiti's masses, poor and uneducated, cannot escape the economic garrote even if their army and its tuggish civilian "attaches" might.

Army commander Lt. Gen. Raoul Cedras got a deserved upbraiding on Monday. Robert Malval, Haiti's caretaker prime minister until the "president" installed last week dismissed him, accused General Cedras of disgracing his uniform. "The time has come for you to leave so that a new dawn may break for the Haitian people," Mr. Malval said. "Morally, you are not worthy of the title of commander in chief. . . ."

### IN ASYLUM SCREENINGS

**It's crucial because they'll have to meet the toughest test for asylum, not the easier one applied to Haitians at Guantanamo.**

Strong words, those. And brave: Many a Haitian has died for uttering lesser truths more mildly.

The first chartered ship on which asylum hearings could take place, the Ukrainian vessel *Gruziya*, will be available on Monday.

But INS Commissioner Doris Meissner yesterday said that the hearings won't resume until "appropriate facilities have been established and qualified personnel assigned."

The hearings also will apply the toughest test for asylum, requiring Haitians to establish a "well-founded fear of persecution." Haitians detained at Guantanamo a couple of years ago had to meet only a "credible fear" standard to gain admittance to the United States to pursue asylum claims.

No more. Detained Haitians will have their status determined *outside* U.S. territory, on land if a site can be found, aboard ship if not. Those deemed true refugees "will be resettled or provided refuge outside Haiti, not necessarily in the United States," the INS said yesterday. "Those who do not qualify will be returned to Haiti."

The finality of this one-stop procedure is a compelling reason for President Clinton to let the Haitians have legal counsel at their hearings. U.S. law doesn't require it for asylum hearings held outside U.S. territory. But America's moral conscience certainly should require it.

President Clinton did the right thing by reinstating hearings for all interdicted Haitians. He was morally right even if his action caused, as it seems to have, the past week's spurt in Haitians fleeing. He now should do the next morally right thing and let the Haitians have legal counsel at their hearings.

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***amnesty international***

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**UNITED STATES OF  
AMERICA/HAITI****The price of rejection - Human rights  
consequences for rejected Haitian  
asylum-seekers**

MAY 1994

SUMMARY

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As the United States (US) continues with its policy of intercepting Haitians at sea, those who are forcibly returned face the threat of serious human rights violations. Others, who make their asylum-claims in Haiti, may have to wait months for an interview, have to live in hiding and may face rejection of their claim in spite of repeated persecution, threats, arrests, ill-treatment or torture.

President Aristide recently decided to end Haiti's 13-year-old bilateral agreement with the US concerning the interdiction and return of Haitians by the US Coast Guard, apparently because of the lack of any progress being made to return him to power and because of a recent upsurge in killings of his supporters in Haiti. Since the signing of the treaty on 23 September 1981, the US Government has used this agreement as legal justification for its policy of intercepting Haitians at sea and returning them to Haiti. This policy violates international standards for the protection of refugees, and puts Haitians at risk of serious human rights violations.

Many Haitian asylum-seekers are arrested or ill-treated by the Haitian military after being forcibly returned to Haiti by the US Coast Guard. Others who have applied for asylum through the 'in-country processing' system have been rejected in spite of having suffered human rights violations at the hands of the security forces and their lives continue to be in danger. Other cases involve the killing of rejected asylum-seekers and the subsequent threats and harassment directed at their relatives who remain in Haiti.



## UNITED STATES OF AMERICA/HAITI

### The price of rejection - Human rights consequences for rejected Haitian asylum-seekers

As the United States (US) continues with its policy of intercepting Haitians at sea, those who are forcibly returned face the threat of serious human rights violations. Others, who make their asylum-claims in Haiti, may have to wait months for an interview, have to live in hiding and may face rejection of their claim in spite of repeated persecution, threats, arrests, ill-treatment or torture<sup>1</sup>.

#### President Aristide ends 1981 agreement with US Government

On 4 April 1994 President Jean-Bertrand Aristide notified the US Government that he was to end the 13-year-old bilateral agreement concerning the interdiction and return of Haitians by the US Coast Guard. Since the signing of the agreement on 23 September 1981, the US Government has used this agreement as legal justification for its policy of intercepting Haitians at sea and returning them to Haiti. President Aristide sent a letter to President Clinton giving the required six-month notice to terminate the agreement. However, the US Coast Guard has continued its interceptions as before and there are fears that it may continue beyond the six-month notice period.

President Aristide apparently decided to end the agreement because of the lack of any progress being made to return him to power and because of a recent upsurge in killings of his supporters in Haiti<sup>2</sup>.

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<sup>1</sup> For further information on the US policy on Haitian asylum-seekers, see *Forcible return of Haitian asylum-seekers by the United States*, AMR 51/07/94, January 1994.

<sup>2</sup> (See UA 166/94, AMR 36/21/94, 27 April 1994, UA 163, AMR 36/20/94, 26 April 1994, UA 151/94, AMR 36/18/94, 15 April 1994, UA 147/94, AMR 36/17/94, 14 April 1994, UA 142/94, AMR 36/16/94, 8 April 1994, UA 132/94, AMR 36/15/94, 31 March 1994, UA 62/94, AMR 36/08/94, 18 February 1994 and follow-up AMR 36/12/94, 11 March 1994, UA 42/94, AMR 36/07/94, 9 February 1994 and follow-up AMR 36/09/94, 4 March 1994 and UA 32/94, AMR 36/06/94, 1 February 1994).

President Aristide, overthrown by a military coup in September 1991, was due to return to power on 30 October 1993, according to the 3 July 1993 agreement signed by him and Commander-in-Chief of the Armed Forces, General Raoul Cédras. However, this did not happen 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 and widespread human rights violations continue to occur.

The US Government's policy of intercepting and forcibly returning Haitian asylum-seekers violates international standards for the protection of refugees, and puts Haitians at risk of serious human rights violations.

#### New Bill introduced in the US Congress

A new bill (H.R. No. 4114), cited as the "Governors Island Reinforcement Act of 1994", has recently been introduced by Representative<sup>3</sup> Ronald Dellums, a member of the Congressional Black Caucus (CBC)<sup>4</sup>. This bill is to "provide for sanctions against Haiti, to halt the interdiction and return of Haitian refugees, and for other purposes". The bill calls on the US President to notify the Government of Haiti immediately that the 1981 bilateral agreement is to be terminated. It also states, *inter alia*, that:

"The US Government shall not return ... to Haiti a national or habitual resident of Haiti, who is outside the territorial boundaries of Haiti,... unless the US Government first determines in a manner that incorporates procedural safeguards consistent with internationally endorsed standards and guidelines that such individual is not a refugee of Haiti under Article 1 of the Convention Relating to the Status of Refugees as applied under Article 1 of the United Nations Protocol Relating to the Status of Refugees or a person designated under Article 33 of the Convention Relating to the Status of Refugees."

The same obligations would be provided for Haitians within the territorial waters of Haiti. This bill apparently has the backing of the whole of the CBC.

Bill H.R. 3663, known as the "Haitian Refugee Fairness Act", introduced earlier by Representative Carrie Meek of Florida, apparently has over 75 co-sponsors. However, it is hoped that more representatives will support the bill. The Washington office of the

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<sup>3</sup> House of Representatives of the US Congress.

<sup>4</sup> The CBC is a grouping of black members of the US Congress.

United Nations High Commissioner for Refugees (UNHCR) wrote a letter to Carrie Meek expressing its support of Bill 3663<sup>5</sup>.

### **Further opposition to US policy**

The CBC are also apparently backing the hunger-strike of Randall Robinson, Executive Director of the human rights group TransAfrica, based in Washington. Randall Robinson, who reportedly began his hunger-strike on 12 April 1994, has vowed that he will continue until the US administration ends its policy of summarily returning Haitian asylum-seekers. Randall Robinson previously led a campaign of civil disobedience in front of the South African Embassy, which is generally believed to have helped convince Congress to pass sanctions against South Africa with the Anti-Apartheid Act of 1986.

Besides the backing of the CBC, his hunger-strike is also backed by a US group calling itself 'Artists for Democracy in Haiti', which includes many US celebrities, including Jonathan Demme, Robert De Niro, Paul Newman, Susan Sarandon, Harry Belafonte, Gregory Peck, Julia Roberts, Richard Gere, Robin Williams, Joanne Woodward, Jason Robards and Spike Lee. This group has begun an advertising campaign suggesting that the administration's policy toward Haitian asylum-seekers is racist.

### **Worsening of human rights situation in Haiti**

According to human rights groups in Haiti there has been an increase in the number of arrests and killings of Aristide supporters in recent weeks. The United Nations (UN)/Organisation of American States (OAS) human rights observer mission in Haiti recently announced that there have been at least 150 apparent extrajudicial executions recorded in the country since the end of January 1994, as well as a rise in the number of rapes and kidnappings.

### **Recent cases of arrest/ill-treatment of forcibly returned Haitian asylum-seekers**

Several Haitian asylum-seekers have recently been arrested or ill-treated by the Haitian military after being forcibly returned to Haiti by the US Coast Guard. According to the National Coalition for Haitian Refugees (NCHR), from the beginning of 1994 until 4 May, 139 of the 904 Haitians forcibly returned have been arrested on dock. On only two occasions were there no arrests, on 19 February and 29 March, but on both these dates returned asylum-seekers were ill-treated (see below). Although some of those arrested

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<sup>5</sup> This bill aims, *inter alia*, to "reaffirm the obligation of the United States to refrain from the involuntary return of refugees outside the United States".

are released quickly (usually after paying extortion fees), others remain in prison for weeks. None of those arrested after forcible return have been tried.

Most must pay to be released, often after being ill-treated whilst in detention. It is difficult to gain reliable information on the condition of those detained because, since February 1994, the military authorities have not permitted US officials nor representatives of the UN/OAS International Civilian Mission to visit the detained asylum-seekers.

According to an affidavit made available to Amnesty International of a former US Coast Guard interpreter, on 10 February 1994 sixty-four Haitian asylum-seekers were interdicted inside US territorial waters (not provided for in the May 1992 "Kennebunkport Order"<sup>6</sup>) and then forcibly returned to Haiti. All were reportedly residents of Cité Soleil, on the outskirts of Port-au-Prince, who had fled the area following an attack which took place on 27 December 1993 by members of the *Front Révolutionnaire pour l'Avancement et le Progrès Haïtien* (FRAPH), Revolutionary Front for the Advancement and Progress of Haiti<sup>7</sup>. Some 5,000 inhabitants of Cité Soleil were victims of this attack in which some 250 homes were destroyed by fire and dozens of people were killed or "disappeared". During the attack, in which many people were beaten, shot dead or burnt, the perpetrators are reported to have ordered firemen to go away, claiming that they were not needed. According to the US Coast Guard interpreter, the asylum-seekers told him that "in December 1993 every last one of their homes in Cité Soleil had been violated in some way, burnt out, their parents and relatives killed by military and *attachés* who were killing, burning and ransacking and violating them and their neighbours, terrorizing and intimidating them, and that that is why they fled... When I told the Haitians they were going back to Haiti, some seemed in shock, others cried, all were extremely upset. Many talked of jumping overboard".

According to reports, on 19 February a Haitian was beaten with a baton by a Haitian policeman after being forcibly returned by the US Coast Guard along with 97 other Haitian asylum-seekers.

141 Haitian asylum-seekers were forcibly returned on 26 February, nine of whom were arrested by the Haitian armed forces. They were attempting to flee Haiti by a boat which left from the northern town of Port-de-Paix on 24 February. All were subsequently

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<sup>6</sup> 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.

<sup>7</sup> This group is the political mouthpiece of the *attachés*, who are armed auxiliaries to the security forces.

released (see UA 90/94, AMR 36/10/94, 4 March 1994 and follow-up AMR 36/14/94, 28 March 1994).

On 23 March 244 Haitian asylum-seekers were forcibly returned, six of whom were detained for at least one week. By 15 April the US Embassy in Port-au-Prince had reported that they had all been released.

On 29 March 40 asylum-seekers were returned to Haiti by the US Coast Guard. In contrast to other recent cases of forcible return by the US, on this occasion no one was detained, although three men, including 26-year-old Luckner Joseph and a 16-year-old boy, were held briefly at the dock for questioning. A port security official in civilian clothes reportedly proceeded to press two of his fingers deep into the right eye of Luckner Joseph, in the presence of a member of the NCHR. Following this incident the military briefly suspended the practice of arresting forcibly returned asylum-seekers.

However, one week later, on 5 April, nine forcibly returned Haitians were arrested from a group of 79 asylum-seekers. According to the US Embassy in Port-au-Prince, all were subsequently released. In addition, on 8 April ten Haitians who had departed from Petite Rivière de Nippes were forcibly returned by the US Coast Guard, all of whom were arrested by Haitian police and transported to the Immigration and Identification Police. Three of these, all of whom are brothers, Ernst, Camille and Wilfrid Alexandre, were not released until the end of April.

On 22 April 15 Haitian asylum-seekers were forcibly returned to Haiti, eight of whom were arrested. Some of these were released later that day, but others remained in prison for several days before being released. On 25 April eighteen asylum-seekers were arrested, following the forcible return of 180 Haitians. All were released by 3 May.

According to the NCHR, this brings the number of asylum-seekers forcibly returned to Haiti by the US Coast Guard since President Aristide's overthrow in September 1991 to 31,938. Of these, 7,832 have been returned since the 1992 "Kennebunkport Order". They also maintain that there are presently some 55,000 asylum applications being processed through the 'in-country processing system'<sup>8</sup>. Some 1,000 of these applicants have been granted refugee status to go to the US.

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<sup>8</sup> 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) and in Cap Haïtien (North department) and Les Cayes (South department) two US non-governmental voluntary agencies, 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 an interview with the US Immigration and Naturalisation Service (INS) which will then decide whether they will be granted protection in the US.

### Killing of Oman Desanges following his forcible return to Haiti by the US authorities

A few days after the September 1991 coup soldiers attempted to arrest 27-year-old Oman Desanges, President of the *Association des Jeunes Progressistes de Martissant* (AJPM), Young Progressive Association of Martissant, a leading neighbourhood committee which he founded in 1990. However, he and his family managed to flee Port-au-Prince and went into hiding until February 1992 when they left Haiti by boat. They were interdicted by the US Coast Guard and taken to the US naval base at Guantánamo Bay, Cuba, in mid-February 1992. Oman Desanges, his brother Ronald Desanges and his sister had their cases approved to go to the US to lodge an asylum-claim. Although Ronald Desanges was taken to Miami, Oman Desanges, his children and his sister were returned, apparently mistakenly, to Haiti on 12 May 1992. His other brother was also forcibly returned, but it is not clear whether his case had been approved to go to the US.

Almost two years later, on 26 January 1994, the body of Oman Desanges was discovered near the international airport, just outside Port-au-Prince, with his eyes gouged out, his ear cut off, his stomach split, his hands tied and a cord around his neck. There was also a red handkerchief around his arm marked "President of the Red Army" and "*Indigent Lavalassement*" (*Lavalas* is the political movement that supports President Aristide, *indigent* means destitute).

According to reports, on 24 January 1994 soldiers and *attachés* had arrested Oman Desanges at his home in Martissant, Port-au-Prince. Whilst in detention he was reportedly blindfolded, beaten, macheted, knifed and then shot dead. On 26 January his brother went to the "*poste*" (security force detention centre) where Oman Desanges had been taken and asked where he was. An *attaché* reportedly shot Oman Desanges' brother in his hand. The body of Oman Desanges was subsequently discovered. The *attachés* reportedly returned to the Desanges household later that day and searched and ransacked it. Neighbours said that the *attachés* said they were looking for the brother and sister of Oman Desanges "to prevent them from taking revenge".

Other members of the AJPM, including its vice-president, secretary, treasurer and first delegate, were reportedly killed by the military during or just after the 1991 coup. The AJPM reportedly held regular meetings and cleaned the streets. Amnesty International is now extremely concerned for the safety of the relatives of Oman Desanges who remain in Haiti, as well as other members of the AJPM.

**APPENDIX 11.—REPORT FROM HUMAN RIGHTS WATCH/AMERICAS  
WATCH AND THE NATIONAL COALITION FOR HAITIAN REFUGEES**

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**HUMAN RIGHTS WATCH/AMERICAS  
(formerly Americas Watch)  
NATIONAL COALITION FOR HAITIAN REFUGEES**

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April 1994

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**TERROR PREVAILS IN HAITI  
Human Rights Violations and Failed Diplomacy**

I. INTRODUCTION	3
II. OVERVIEW	5
International Efforts Intensify	7
Implementation of Governors Island Accord Collapses	8
III. THE INTERNATIONAL CIVILIAN MISSION	9
IV. FRONT FOR THE ADVANCEMENT AND PROGRESS OF HAITI (FRAPH)	11
V. POLITICAL ASSASSINATIONS	12
Assassination of Antoine Izméry	12
Assassination of Justice Minister Guy Malaré	14
Other Assassinations	14
VI. BEFORE THE GOVERNORS ISLAND AGREEMENT OF JULY 3	16
Trade Unionists Arrested and Tortured	16
Aristide Supporters Arrested and Tortured	17
Attacks on Congregations and Religious Leaders	18
Attacks on Popular Organizations	19
Attempts by Displaced Persons to Return Home	20
Violations of Press Freedom	22

Human Rights Watch/Americas  
1522 K Street, N.W., #910  
Washington, DC 20005-1202  
Tel: (202) 371-6592  
Fax: (202) 371-0124

National Coalition for Haitian Refugees  
16 West 42nd Street  
New York, NY 10017  
Tel: (212) 867-0020  
Fax: (212) 867-1668

VII. VIOLENCE LEADING UP TO ARISTIDE'S SCHEDULED RETURN, OCTOBER 30, 1993	24
Three Killed at the Reinstatement of Mayor Evans Paul	24
Army-supported Attachés Thwart Malval Government	25
Mirebalais September Repression	25
Assault on Jean-Claude Bajoux's House	26
FRAPH Assault at Hotel Christopher	26
FRAPH General Strikes	27
<i>USS Harlan County</i>	27
Wave of Arrests in Belle Anse	28
Attacks in Desarmes, Verrettes	28
Terror in Saut d'Eau	28
Other October 30 Violence	29
VIII. TERROR CONTINUES	30
Persecution Intensifies in the Artibonite	30
Rape in the St. Marc Prison	30
Soldiers Sweep Gonaïves Shantytown	31
Torture and Arbitrary Arrest in Les Cayes	31
FRAPH Arson in Cité Soleil Kills at Least 36	32
Assassinations in Sarthe	34
Killings Continue in Cité Soleil	34
IX. INTERNATIONAL ACTORS	35
U.S. Policy	35
Governors Island Accord and Accountability	35
U.S. Military Assistance	36
Breakdown of the Governors Island Accord	37
Refugee Policy	38
Role of the Central Intelligence Agency	40
State Department's Country Reports on Human Rights Practices	42
Current Impasse	43
The United Nations	43
The Role of UN/OAS Special Envoy Dante Caputo	43
The UN Embargo	44
X. RECOMMENDATIONS	44
Recommendations to the United States	45
Recommendations to the UN, OAS, and their Special Envoy	46



## I. INTRODUCTION

President Clinton's policy of disregarding fundamental human rights issues to resolve Haiti's political crisis, combined with his inhumane and illegal practice of summarily returning Haitian refugees, has contributed to a human rights disaster that has tarnished his presidency and discredited its stated commitment to democracy and human rights around the world. Constant concessions to the Haitian military by the President's Special Envoy, Ambassador Lawrence Pezzullo, and the refusal to support President Aristide's position that members of the army must be held accountable for human rights abuses, have resulted in the current political stalemate; more importantly, they have strengthened the army's hold on Haiti and prolonged its reign of terror.

By late March, this Haiti policy had come under increasing public criticism from human rights groups, Members of Congress, and the American civil rights community. To appease critics, the executive branch began to tinker with the details of the Governors Island Accord, still failing to address the underlying flaw in the Accord: the absence of any human rights guarantees.

The human rights issue at the core of Haiti's crisis is the army's responsibility for continuing widespread abuses against the Haitian people and its demand for impunity for those violations. To its shame, the Clinton administration supports a broad amnesty that would ensure that the thousands of murders committed since the September 1991 coup will go unpunished. Passage of an amnesty law is one of the three priorities in the Administration's latest proposal to implement the Governors Island Accord. Further, the administration suggests that only General Raoul Cédras will resign his post, leaving the rest of the killers on duty in the armed forces of a "democratic" Haiti. While it is clear that the Haitian judicial system is currently incapable of adjudicating the many cases of serious human rights violations since the coup, it is essential that the right of victims to seek justice in the future be preserved. More immediately, any settlement should ensure that abusive members of the security forces are dismissed to prevent them from using their official capacity to further abuse Haitians.

The Clinton administration's opposition to efforts to hold senior military officials accountable for the killing has had an insidious effect on the political negotiations. For over two years, since the Washington Accord of February 1992, President Aristide has insisted on immediately dismissing these killers from the army and preserving the option of later prosecution. International law fully supports his position. Nonetheless, the administration has failed to support a purge of the murderers in the Haitian army or to oppose a blanket amnesty for these killers, thus supporting the army high command's demand for impunity. Long ago the administration should have made clear that this option is not on the negotiating table. Instead, it has embraced a murderous armed force as a counterweight to a populist president it distrusts. This inexcusable compromise has encouraged the army to sit back and wait while the administration itself presses Aristide to abandon the principle of accountability which international law, and the long-term best interests of Haiti, compel him to uphold.

For its part, the Haitian army has long expressed fear of President Aristide's capacity to inspire mob violence. This concern has only magnified as severe repression and the bite of economic sanctions breed a heightened desire for revenge. In these circumstances, some form of accountability is arguably even in the army's interest, since Haitians will be less likely to impose "justice" in the streets if they can foresee the prospect of justice being done in a court of law.

The small team of UN/OAS International Civilian Mission observers who have returned to Port-au-Prince have documented an escalating number of murders, disappearances, politically-motivated rapes, and arbitrary arrests during the first months of 1994. Residents of Port-au-Prince's Cité Soleil, who are perceived by the military and its backers as Aristide supporters, have been particularly targeted by the heightened violence, especially since the December 27, 1993 massacre there. The administration's failure to support accountability for abusive individuals has no doubt convinced the army and its supporters that they can, in fact, get away with murder.

The Clinton administration has continued to forcibly repatriate Haitian refugees with no prior screening for asylum seekers, in violation of international principles of refugee protection. Worse, throughout the negotiation

process, the Administration's support for President Aristide has been tacitly conditioned upon his silence on the refugee issue. In recent months, as even Haitians deemed high priority asylum cases were arrested upon return to Port-au-Prince, the U.S. has continued to defend this abhorrent policy. In order to justify the continuing practice of summary repatriation, the Clinton administration has relied on the fig leaf of a seriously flawed in-country processing program. The Administration steadfastly refuses to consider alternatives to this policy, such as regional safe havens, and instead downplays the risks faced by Haitians who are returned to Port-au-Prince. Despite the violence in the streets of Port-au-Prince, the U.S. Embassy remains largely silent on human rights abuses, an approach reflected in the errors and omissions in the State Department's annual country report.

If the Clinton administration intends to regain the credibility it has lost, it must take the following steps immediately:

- ◆ Review the entire U.S. strategy for restoring democracy to Haiti by starting anew with a commitment to emphasize human rights protections and accountability for abusers.
- ◆ Oppose publicly and explicitly any broad amnesty that would absolve members of the Haitian armed forces and their supporters for serious human rights abuses committed since the September 1991 coup. U.S. support for a blanket amnesty undermines the very goals the U.S. claims to advocate — support for human rights and the rule of law. Any quick political advantage gained by supporting a broad amnesty will be short-lived since democracy cannot be built on a foundation of impunity for murder and torture.
- ◆ Appoint a new special envoy to Haiti in order to signify a change of policy. By promoting a flawed U.S. policy that downplays human rights concerns, Ambassador Pezzullo has lost credibility. He should be replaced by an individual with a proven commitment to human rights.
- ◆ End the summary repatriation of Haitian boat people. Forcibly repatriating fleeing Haitians, without regard to their legitimate claims for asylum, violates internationally recognized principles of refugee protection. The in-country refugee processing program is chronically deficient and under no circumstances should serve as the only alternative for asylum seekers.
- ◆ Promote a multilateral, regionally-based response to the refugee crisis, including the establishment of one or more safe havens where screening can occur so that those with credible claims of persecution are not forcibly returned. Any safe haven should employ the good offices of the United Nations High Commissioner for Refugees to ensure observance of basic principles of refugee protection.
- ◆ End the current policy of downplaying the human rights crisis in Haiti by immediately and publicly denouncing serious human rights abuses as they occur and identifying the perpetrators.
- ◆ Insist on the creation of a separate police force, answerable to the Ministry of Justice, as an essential component in restoring democracy and bringing the Haitian police under the rule of law.
- ◆ Call for the return of a significantly enlarged UN/OAS International Civilian Mission to monitor human rights throughout Haiti and to collect information about abuses that could be used to purge the armed forces of abusive members and to prevent the hiring of the armed civilians now engaging in widespread human rights abuses.
- ◆ Target sanctions more carefully to exert pressure on those who have in their hands the key to change in Haiti. The list of approximately 564 Haitians whose assets will be frozen and who will be denied visas by the U.S. is not enough. Much of its impact is lost by the fact that the complete list is not public. An effort must be made to include civilians whose support for the de facto regime warrant personalized sanctions.

- ◆ Propose to the UN and OAS that all other countries join in similar targeted sanctions and make public the list of those individuals whose actions against democracy and human rights in Haiti deserve international stigmatization.

## II. OVERVIEW

Terror, intimidation, and the nightmare of reborn Duvalierism have become the Haitian citizens' daily reality as military rule continues for a third year. As successive internationally-supported efforts to negotiate President Jean-Bertrand Aristide's return have failed, the army has come to believe that it can retain power indefinitely. To this end, it has reneged on successive agreements and used armed civilian thugs to drive off United Nations-backed U.S. and Canadian military instructors. Although the Armed Forces of Haiti (*Forces Armées d'Haiti*, FAD'H) remain nominally steady at some 7,000 men, their strength and sway has grown since the coup with the addition of tens of thousands of civilian *attachés*.<sup>1</sup> In the second half of 1993, these bands of thugs were fashioned into the quasi-political organization known as the Front for the Advancement and Progress of Haiti (*Front pour l'Avancement et le Progrès d'Haiti*, FRAPH). FRAPH, which sounds like the French word for "hit," has been nurtured by the military since its emergence in September 1993.

The Clinton administration, while more active than the previous administration in pushing for the restoration of democracy to Haiti, has failed to make respect for human rights a central component in its policy toward Haiti. Throughout the year, the administration carried out an indiscriminate and inhumane policy of forcibly repatriating Haitians fleeing well-documented persecution. And, in order to defend its refugee policy, the administration alternately ignored or downplayed human rights, despite the obvious deterioration in the human rights situation. (See Section IX)

The administration continued to ignore human rights during the Governors Island negotiations, when it refused to support proposals that would hold human rights violators accountable or guarantee respect for human rights in the future. The administration's public reaction to an alarming increase in reports of political killings in Cité Soleil in February and March, for example, was limited to a weak press statement issued only in Haiti that failed to blame the army and its supporters for the murders.<sup>2</sup>

As a political solution appeared more and more remote, political violence continued unimpeded, with seventy-one murders committed between February 1 and mid-March, in Port-au-Prince alone, under investigation by the United Nations/Organization of American States' International Civilian Mission. There has also been an increase in reports of disappearances, politically-motivated rapes, and arbitrary arrests during the first months of 1994. Residents of Port-au-Prince's Cité Soleil, who are perceived by the military and its backers as Aristide supporters, have been particularly targeted by the heightened violence, especially since the December 27, 1993 massacre there. (See Section VIII).

The recent violations are only the most recent attacks in the consistent campaign of terror against Haitians. In the first half of 1993, the military continued to restrict basic freedoms in Haiti — banning public support for Aristide, barring most meetings, and intimidating the independent media with violence and threats. Arbitrary arrest, beatings, and torture, including rape, while in detention continued to be the rule rather than the exception. The deployment of the International Civilian Mission (MICIVIH) beginning in February led to certain modifications in the repression, particularly outside the capital. Consistent intervention by observers on behalf of people

<sup>1</sup> *Anachés* are civilian, paramilitary troops supported and armed by the Armed Forces of Haiti.

<sup>2</sup> A March 18, 1994 press guidance prepared by the State Department could be interpreted as indirectly blaming President Aristide for the killings. The guidance states, in part: "We believe this repression is a result of the pressure put on all sectors of Haitian society by the existence of a political vacuum and the continuing crisis in the country." The State Department has frequently criticized President Aristide for not appointing a Prime Minister, and therefore creating a political vacuum.

illegally arrested or mistreated in detention led to releases from prison and somewhat fewer arrests. It also persuaded the military to make greater use of civilian attachés, making it more difficult to implicate the army in illegal acts. The presence of the mission emboldened local groups to organize pro-Aristide rallies in some cities (most of which were swiftly repressed) and communal meetings in several rural areas.

Human rights conditions began to deteriorate immediately following the signing of the Governors Island Agreement in New York on July 3, 1993. The military, aided by its attachés or armed civilians, began a deliberate campaign of heightened terror and violence. Killings, forced disappearances, illegal arrests, beatings, and torture increased sharply in July and August. Conditions deteriorated further after the inauguration of the short-lived constitutional government of Robert Malval and the lifting of the international oil and arms embargo. In the two months before President Aristide's scheduled return on October 30, the army increasingly collaborated with gangs of armed civilians who kidnapped, tortured, and killed Aristide supporters. Armed civilians made nightly visits to many neighborhoods of Port-au-Prince, firing their guns in the air, threatening and arresting residents. Similar bands prevented the Malval government from functioning and blocked the implementation of measures approved at Governors Island that would have led to a restoration of President Aristide's government.

The parameters of the crisis are graphically demonstrated by the rising death toll following the Governors Island agreement. Using figures for political killings or suspicious murders from the International Civilian Mission for the months of May through September 1993, and February 1994, and from Haitian human rights groups in the intervening period, the pattern of violence in relation to political developments is clear.

#### Political Killings and Suspicious Murders, May 1993-February 1994<sup>3</sup>

May	9
June	5
July	34
August	33
September	60+
October	80+
November	70+
December	55+
January	30+
February	50+

Many of the victims were community leaders or members of groups favoring Aristide's return. Others, such as the people killed in the December 27 arson attack in Cité Soleil<sup>4</sup>, died because they lived in the shantytowns where there existed considerable support for Aristide.

<sup>3</sup> The presence of the International Civilian Mission around the country made it possible for the first time to obtain relatively comprehensive figures on the numbers of victims of human rights violations. Figures from May through September 1993 and February 1994 come from the Mission.

<sup>4</sup> The Justice and Peace Commission reported the identities of 36 people killed during the incident, as well as 25 people disappeared or unaccounted for, and four injured. Investigations into the massacre are continuing, and another credible estimate has put the number of people dead as high as 102. (See Section VIII)

Throughout 1993, civil society continued to fall victim to repression, as it had in the first year after the coup, as HRW/Americas reported in *Silencing a People*.<sup>5</sup> Restrictions on the rights of free speech and free assembly and the virtual ban on meetings by popular organizations, even nonpolitical ones, led to fragmentation and increased demoralization that had a negative impact on grassroots development and self-help projects. The fledgling efforts to organize demonstrations in support of Aristide's return, strengthened by the arrival of the International Civilian Mission, collapsed with the renewed terror that began in September. The only public demonstrations tolerated by those in power since then have been organized by FRAPH and other like-minded groups.

The repression since the Governors Island Accord has created increasing numbers of internally displaced people, described as "in hiding" or *marronage*. The forced displacement of tens, if not hundreds of thousands of Haitians is part of the military's strategy to destroy all forms of organization or opposition. The high level of internal displacement has resulted in severe economic hardship as families are separated and lose their already limited sources of income.

Pressures on the independent media, in the form of threats, intimidation, arrests, and violence, have forced provincial radio stations to shut down and caused radio and television stations in Port-au-Prince to practice increased self-censorship. Journalists have been forced into hiding, further impeding the flow of information both locally and internationally.

#### International Efforts Intensify

The international community actively engaged in efforts to resolve the Haitian crisis in 1993. Dante Caputo, the former Argentine foreign minister named as mediator by the United Nations (UN) and the Organization of American States (OAS), shuttled back and forth from Port-au-Prince to Washington and New York throughout the year. His first success came on February 9, when *de facto* Prime Minister Marc Bazin agreed to President Aristide's request for the deployment of a civilian human rights monitoring team. When in June the military failed to abide by its commitment to seek a resolution to the crisis, the hitherto feeble OAS trade embargo was transformed into a worldwide oil and weapons embargo enforced by a cordon of international ships (primarily from the U.S.) and a worldwide freeze of Haitian government assets and those of a small number of wealthy coup supporters. With gasoline growing scarce, and its elite supporters anxious over the actions taken against them, the military indicated its willingness to meet with Aristide and negotiate a settlement. At Governors Island, Caputo and Lawrence Pezzullo, the U.S. Special Advisor on Haiti, crafted an agreement that called for Aristide's return on October 30, after the confirmation of a new prime minister, the "early retirement" of General Raoul Cédras, the appointment of a new commander-in-chief, who would appoint the members of the army general staff, an amnesty granted by Aristide within the terms of the Haitian Constitution, and the adoption of a law establishing a new police force, separate from the armed forces, with a commander appointed by the president.

There were troubling elements of the agreement, however, including the pledge to lift the embargo before Aristide's actual return to Haiti, the option for the Haitian parliament to institute a broader amnesty that would encompass serious human rights violations, and the lack of any direct reference to human rights concerns. Aristide, unhappy with the concessions he was forced to make and threatened with the loss of international support, signed the accord under strong pressure from the U.S. and the UN.

Several days of meetings in New York between parliamentarians and representatives of political parties followed, during which the so-called New York Pact, signed on July 16, was hammered out. The Pact called for:

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<sup>5</sup> Americas Watch (AMW) and the National Coalition for Haitian Refugees (NCHR), *Silencing a People: The Destruction of Civil Society in Haiti* (New York: Human Rights Watch (HRW), 1993). See also: AMW/NCHR, *No Port in a Storm: The Misguided Use of In-country Refugee Processing in Haiti* (New York: HRW, 1993); AMW/NCHR, *Half the Story: The Skewed U.S. Monitoring of Repatriated Refugees* (New York: HRW, 1992); AMW/NCHR, *Return to the Darkest Days: Human Rights in Haiti since the Coup* (New York: HRW, 1991); and AMW/NCHR, *The Aristide Government's Human Rights Record* (New York: HRW, 1991).

a six month "political truce" to facilitate the work of the new government of "national concord;" the swift adoption of legislation by Parliament on nine key points, including the establishment of the new police force; an amnesty; a compensation fund for victims of the coup; the abolition of all paramilitary forces; and the establishment of a Conciliation Commission to resolve outstanding disputes, such as the status of members of parliament elected in the disputed elections of January 19, 1993.

President Aristide announced his choice of Robert Malval as prime minister on July 27. Malval, a businessman and scion of an elite family who helped Aristide organize a successful conference in July of Haitian businesspeople in Miami, was ratified without difficulty by the two houses of Parliament and on August 27 the embargo was suspended. Malval's cabinet, including representatives of five political parties and two members of the original Aristide cabinet, was sworn in on September 2.

#### Implementation of Governors Island Accord Collapses

Throughout September and October, members of the Malval government were prevented, sometimes violently, from assuming office. Groups of armed civilians assembled around and within government buildings, deterring government officials from approaching their own offices. Even Prime Minister Malval was forced to work at home for his entire tenure because the state-owned building where he proposed to establish his offices remained occupied by attachés.

The most violent attack by armed civilian attachés attempting to block officials from assuming their posts took place on September 8, 1993 during the ceremony to reinstate Evans Paul as mayor of Port-au-Prince. (See Section VII) The attachés killed at least three people and seriously wounded many others as the police stood by and did nothing. The preliminary account of the incident prepared by the public prosecutor identified some of the armed men as active members of the armed forces.<sup>6</sup>

Although serious human rights violations had increased following the signing of the Governors Island Accord on July 3, the attack at city hall was the first significant indication that the military would betray its Governors Island commitment. Confirmation of their intentions quickly followed:

- ◆ On September 11, prominent Aristide supporter and businessman Antoine Izméry was assassinated by men in civilian clothes who received assistance from the military to carry out the murder. (See Section V)
- ◆ Armed attachés and FRAPH members staged a loud demonstration at the Port-au-Prince dock — in the presence of a large number of police who did not intervene — leading to the withdrawal of the USS *Harlan County* on October 11. (See Section VII)
- ◆ Guy Malary, minister of justice in the Malval government, was gunned down in his car as he left work in the early afternoon of October 14, just after he had presented to parliament a proposed law creating the new civilian police force. (See Section V)

While these prominent cases were the clearest demonstrations of the human rights crisis in Haiti, this report describes a relentless campaign of terror throughout the past year against Haitians citizens. The report also graphically illustrates the disastrous consequences of the international community's insistence on pursuing a solution to Haiti's crisis without due regard for human rights concerns. In one positive development, the international community supported the creation of the UN/OAS International Civilian Mission to monitor human rights, yet it too fell victim to the generally flawed policy toward Haiti.

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<sup>6</sup> The prosecutor resigned and the final report was never issued.

### III. THE INTERNATIONAL CIVILIAN MISSION

After months of urging non-governmental human rights groups to make frequent visits to Haiti, President Aristide in mid-1992 began to prod international organizations to dispatch a team of observers. Many Haitians hoped that civilian monitors would have the same effect that hundreds of UN and OAS observers had during the December 1990 elections, when they helped to deter violence, allowing Haitians to express themselves without fear of military retaliation. The OAS obtained the *de facto* government's approval for a group of eighteen monitors in September 1992, but the army restricted their freedom of movement and limited their effectiveness.

These eighteen monitors were incorporated into the new mission, forty members of which arrived in Haiti on February 14, 1993. The International Civilian Mission in Haiti (MICIVIH) opened its first provincial office in Jérémie, in the Grand Anse province, on March 5; by the end of March, the Mission had offices in all nine departmental capitals. At the time of its evacuation from Haiti, the mission comprised over 160 observers in thirteen regional team offices, thirty human rights and media personnel in the central office, in addition to the administrative staff. It was the largest deployment of human rights observers in any international operation to date. Colin Granderson, the Trinidadian diplomat who supervised the earlier, smaller OAS mission, led the international team. Ian Martin, the former secretary-general of Amnesty International, served as the Director for Human Rights, and brought the perspective and experience of a nongovernmental human rights organization to the operation. For several months, the International Civilian Mission did not issue public reports on the human rights situation. Beginning in June, soon after Martin's arrival, the Mission began regularly to denounce human rights violations publicly.

The Mission's terms of reference defined its role as "help[ing] to guarantee the respect in Haiti for the human rights mentioned in the Haitian Constitution and in particular the international instruments to which Haiti is party, in particular the International Convention on Civil and Political Rights and the American Convention on Human Rights." It was to "obtain information on the human rights situation in Haiti and make appropriate recommendations to promote and protect human rights," paying "special attention to respect for the right to life, personal safety and security, freedom of expression and freedom of association."

The observers had the right to go "immediately...to any place or establishment where possible human rights violations may have occurred" (*ou seraient signalées d'éventuelles violations des droits de l'homme*). The Mission was forbidden "to participate or join in political demonstrations" but could observe them. For their part, the Haitian authorities promised to "see to...the security of persons who have communicated information, brought testimony or furnished evidence of any kind" to the Mission, and to take measures to ensure the safety of Mission members.

The military often violated the Mission's terms of reference, by arbitrarily denying observers access to many prisons and lockups, by failing to protect people who communicated with the Mission, and by allowing soldiers to threaten and harass observers.<sup>7</sup>

The Mission sought to have a "correct dialogue" with the army at national, regional and local levels, and contacts were made with most commanders. The Mission reported in late October, however, that "attempts since July to meet with the Chief of Police of the metropolitan area [Joseph Michel François] have been unsuccessful."

In a July interview, François leveled bizarre charges against the Mission.

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<sup>7</sup> In Petite Rivière de Bayonnais in the Artibonite, for instance, immediately after a human rights education meeting organized by the Mission on October 13, "the only two people who spoke during the meeting were arrested in full view of mission observers and others by a corporal and an attaché and taken to the military post." One of them was seen by observers in the folded *djak* position, where a stick is placed behind a person's knees while his wrists and ankles are tied together. He is then either pushed to the ground or suspended from a bar and beaten. (United Nations Secretary-General, *The Situation of Democracy and Human Rights in Haiti*, A/48/532/Add.1 (New York: UNIPUB, November 18, 1993).

If everything were quiet in the country, they would have no reason to stay here. So they encourage people to have demonstrations so that they can have the police beat them, they make the police nervous so they do bad things.<sup>8</sup>

In each report it issued, the Mission noted the military's failure to launch investigations and take action against abusive officers and enlisted men when presented with information of particularly egregious human rights violations. "In a very small number of cases the Mission has been informed orally that the alleged perpetrator of a human rights violation has been placed under arrest. It has never been informed of any subsequent action and is certainly not aware of any member of the FAD'H being brought before the civilian courts, which under the Constitution have jurisdiction over such matters."<sup>9</sup>

The Mission urged the army high command to stress publicly the importance of all FAD'H members to respect the rights of personal safety and security and to assure those who had gone into hiding that they safely could return home. No such statements were ever made.

When members of the Mission first began to work in the provinces, the army was wary and somewhat cautious. In some areas, soldiers warned the population not to make contact with the Mission. Nevertheless, thousands of people did report human rights violations to the Mission, often jeopardizing their own safety.

Ricardo Chery, a founder of the Union of National Democratic Youth, who lived in the Raboteau neighborhood of Gonaïves, frequently exchanged information about human rights violations with the local office of the Mission. On April 21, soldiers arrested him and took him to the Raboteau police post, where they beat him violently on his left side and the head. They told him to lie on the ground and they began pulling him in opposite directions. Then a soldier known as Karetane began whipping him. After a while the soldiers took him to the Toussaint L'Ouverture army base. At the base, he said,

the jailer of the prison, Corporal Manno, searched my pockets and found the telephone number of the civilian mission. Sergeant Fanor then hit me. Corporal Manno ordered me to be tortured with the *djak*. I was beaten 100 times with a club. The next day I was hit with a club ten more times.

On Thursday April 22, Chery was brought before Justice of the Peace Pierre-Antoine Cherilus. The judge said he had no time to deal with the case, and Chery was sent back to prison, where he continued to be beaten until his release on April 29.<sup>10</sup>

In another case, André Elie, a member of the Papaye Peasant Movement (*Mouvement Paysan de Papaye*, MPP) with a small shop in Hinche, became friendly with observers of the Mission. One night in early May, men in civilian clothing broke into Elie's house and took him away. His frantic wife ran to the office of the Mission at 4:00 A.M. The Mission found Elie on the side of the road an hour later, where he had been left for dead. "His body was covered with at least a half-inch of coagulated blood in the areas where he had been beaten," the local coordinator for the Mission, Jean René Marcoux, reported. Elie said that he had been beaten 750 times: 250 for his membership in MPP, 250 for the contacts with Mission observers, and 250 for allegedly being pro-Lavalas,<sup>11</sup> according to his assailants.

<sup>8</sup> Kathie Klarreich, "Haitian Military Puts Positive Spin on Its Rule," *San Francisco Chronicle*, July 23, 1993.

<sup>9</sup> UN Secretary-General, *The Situation of Democracy and Human Rights in Haiti, A/48/1993* (New York: UNIPUB, October 25, 1993).

<sup>10</sup> Interview, Port-au-Prince, May 1993.

<sup>11</sup> *Lavalas* is the Creole word meaning "flood" or "landslide"; as used colloquially, it refers to the broad-based popular movement that elected President Aristide.



The Mission was evacuated from Haiti in the middle of October, ostensibly out of concern for the security of its personnel. The decision to leave, however, was precipitated by the USS *Harlan County's* retreat and was more political than practical. Interim measures, such as keeping the observers on suspended duty in Port-au-Prince, might have satisfied security concerns. Within two days of the United States' loss of will, the French cancelled their training mission, the Canadians withdrew police personnel already in the country, and the Mission was sent to Santo Domingo, sending the clear message that the international community was retreating from Haiti.<sup>12</sup>

The Mission's absence was keenly felt in provincial towns, where their presence had reassured ordinary Haitians of the international community's concern and kept the military, if not on good behavior, at least wary of exposing themselves to criticism. In towns like Gonaïves, the Mission's presence helped make it possible for Haitians to demonstrate their support for President Aristide. In Port-au-Prince, its presence was less effective, and indeed the observers felt helpless in the face of the increasing violence in September and October. Instances of deliberate violence in front of the mission led many Haitians to question the value of a mission that had no mandate to intervene to prevent human rights violations.

#### IV. FRONT FOR THE ADVANCEMENT AND PROGRESS OF HAITI (FRAPH)

Many of the worst abuses of the post-Governors Island period have been carried out by the neo-Duvalierist group Front for the Advancement and Progress of Haiti (*Front pour l'Avancement et le Progrès d'Haiti*, FRAPH), which has cultivated anti-foreigner nationalism and called for an end to UN and OAS involvement in Haiti.

FRAPH, while ostensibly an independent political organization, functions as a surrogate for the military. Its activities, including public demonstrations, violent thuggery, and assassinations, are tolerated, and even encouraged, by the army. FRAPH openly identifies with the late François Duvalier (Papa Doc), who ruled Haiti through terror from 1957 to 1971. Its leaders and spokesmen are Emmanuel Constant, 37, son of an army commander under Duvalier and nephew of Bishop Emmanuel Constant of Gonaïves, and Jodel Chamblain, a former soldier said to have taken part in the November 1987 election massacre and a participant in the January 1991 attempted coup d'état led by Roger Lafontant.<sup>13</sup> Chamblain is also a former Tonton Macoute who claims his pregnant wife was murdered by a pro-Aristide mob in 1991.<sup>14</sup>

The group has attracted the support of Duvalierist political movements disenfranchised since 1986 and conservative anti-Aristide politicians not previously identified as Duvalierists. It makes use of its virtual monopoly on public discourse by building local chapters around the country, during a time when the democratic, popular organizations that emerged since 1986 have been rooted out or forced underground by violent persecution. FRAPH leaders claim the organization has 300,000 members. (This figure is probably optimistic but FRAPH is recruiting throughout the country and from all accounts its membership is growing rapidly.) By January 1994, the group had a presence in virtually every town and communal section. Although many members are attachés, thugs or former Tontons Macoutes, some men (and women) join defensively, seeking a FRAPH card as protection for themselves and their families. The decision has also been described as a desperate reaction to poverty and despair of political change, as FRAPH membership carries with it economic benefits.

In one town in the Central Plateau, for instance, a lay Catholic Church leader who was arrested and badly beaten in September 1993 joined FRAPH in early 1994 in order to remain in his home town. An elderly man,

<sup>12</sup> At the beginning of February 1994, a small group of observers returned to Haiti.

<sup>13</sup> OAS/UN International Civilian Mission in Haiti, *Report on the Assassination of Antoine Izméry*, November 1993.

<sup>14</sup> Bella Stumbo, "A Place Called Fear," *Vanity Fair*, February 1994.

whose son is the town's deputy mayor and has been in hiding for months, had to leave the area himself after he refused to join FRAPH.

FRAPH's national network owes a great deal to the old Tontons Macoutes organization. Unlike the Macoutes, however, which were created to serve as a counterweight to the army, FRAPH and the army work hand in hand. In Port-au-Prince, FRAPH is organizing in such slums as Cité Soleil, where it is campaigning to return the neighborhood to its old name of Cité Simone, honoring François Duvalier's wife.<sup>15</sup> In this area, as in others, FRAPH campaigns through intimidation and threats of violence. Its members are forcing bus drivers, under threat of violence, to replace direction signs reading Cité Soleil with Cité Simone.

On September 22, the anniversary of François Duvalier's 1957 election, several hundred people supporting FRAPH held a rowdy march through central Port-au-Prince. Carrying the pre-1986 black and red flag and chanting, "Long live Duvalier, Aristide is finished," they entered the Museum of the National Pantheon for the unveiling of a new exhibit honoring Duvalier. The museum exhibit, displaying Papa Doc's pistol, black homburg and medical bag — items that are horrifying to many Haitians — was an ideological coup for the neo-Duvalierist movement.

## V. POLITICAL ASSASSINATIONS<sup>16</sup>

### Assassination of Antoine Izméry

On September 11, 1993, Antoine Izméry was dragged from a church during mass and shot point blank in the head as he knelt on the street. The shocking murder of this militantly pro-Aristide businessman was carried out by men in civilian clothes, with active support from the military.

Izméry was a founding member of the Helping Hands Committee to Spread the Truth (*Komite Mete Men pou Verite Blayi*, KOMEVEB), which organized the September 11 event — a mass in memory of the victims of the St. Jean Bosco massacre of September 11, 1988, a display of pictures of victims of the coup d'état, and the posting of leaflets in the nearby Place Jérémie.<sup>17</sup> The mass began at 9:00 A.M., an hour later than planned. Approximately sixty people attended the event, many of them journalists and foreign observers. According to Father Antoine Adrien, one of President Aristide's close advisors, just before the service, an unidentified man entered and said, "Bunch of communists watch out! The blood that will flow outside will be on your hands!" The priests and organizers met and discussed whether they should proceed with the mass. Izméry, Adrien said, told them "Listen, we won't do the march outside, but we came to do a mass, there's no reason not to do it. Because the people who have been waiting for an hour for us, we should respect them. They came for that, let's do a short mass."<sup>18</sup>

The service went forward, with eight priests participating. At 9:30 a tall man carrying a gun (and by some accounts, a walkie-talkie), entered through the main door of the church. Father Antoine Adrien had just finished his sermon, calling for an end to the spilling of blood. Shots were heard outside the church and the people inside

<sup>15</sup> An Aristide stronghold, Cité Soleil, or Sun City, took its name from the Catholic Radio Soleil, which played a key role in overturning the Duvalier dictatorship.

<sup>16</sup> This section contains political assassinations that took place between the July 3, 1993 signing of the Governors Island Accord and the October 30, 1993, scheduled return of President Aristide. More recent political assassinations are included in the section entitled, *Terror Continues*.

<sup>17</sup> The group, which was formed in May 1993 by several church, trade union, and popular organizations to spur resistance to the coup d'état, had previously issued several press releases and sponsored a day of pasting posters and raising banners in Petionville on August 17, calling for the return of Aristide. On that occasion, police arrested Father Yvon Massac, Jonathan Vergile, and Victorin Andre. They were transferred to the National Penitentiary and freed on August 19.

<sup>18</sup> Interview with Adrien. "Yo touye Antwàn Izmeri an piblik," *Libète*, September 15-21, 1993.

ran toward the altar or out the doors. A group of men entered and ordered Izméry to leave the church with them. On the street outside the church, they forced him to his knees, struck him, put a gun to his head, and shot him. A second man, Jean-Claude Maturin, who probably witnessed the attack, was also shot to death. His body was left just across the avenue from the church.

The International Civilian Mission conducted a thorough investigation into the killings. They interviewed twenty-seven eyewitnesses, located photographic and documentary evidence, and took testimony from the Mission team members present. The Mission's *Report on the Assassination of Antoine Izméry* concluded that "the elaborate plan to assassinate Antoine Izméry could not have been carried out without the complicity, if not the direct participation, of highly placed members of the Haitian armed forces."<sup>19</sup>

This conclusion is based on the identification of a "sophisticated two-phase control operation." The first phase consisted of "systematic and intensive patrol of the zone" by police and attachés. "One group who participated in [the] operation was deployed from a police office and a military office situated only 100 meters from the church." The preliminary phase had three objectives: to intimidate and deter KOMEVEB, which organized the march and memorial mass; to contain and repress those who participated in the planned activities; and to support the group responsible for executing Izméry. Another group, the Mission report concluded, was responsible for the second phase of the operation.

The group charged with carrying out the assassination included at least 15 people. Witnesses identified some of them, in particular one officer of the FAD'H, one man who had been recognized as a torturer in a clandestine detention center a short time before, and several attachés. The group was equipped with automatic handguns and hand-held and mobile radio equipment. The attack itself was well-coordinated and aimed solely at Antoine Izméry. The church grounds and the adjacent street were placed under the control of armed men, who violently dispersed passersby. Other armed men, some carrying machine guns, blocked traffic in order to create an outer controlled zone for the execution.

The killers benefitted from the complicity and support of members of the security forces (some of them in uniform) present at the scene. For instance, the assassination team arrived and departed the scene protected and escorted by police vehicles.

The report names the following participants in the operation: Lamour, an officer from the Cafeteria (the major downtown Port-au-Prince police station); Simon, the former director of the National Office of Life Insurance (ONAV); Claudette Godet, a minister in the Jean-Jacques Honorat government of 1991-1992; Ti Lamarre, an employee of the immigration service; and attachés Elysée Jean-François,<sup>20</sup> Franklin Ronald, Zimbabwe, Ti Nono, Ti Blan, Eddy le Tueur, and Rigal. The attaché reported to have killed Izméry is identified as Gros Fanfan,<sup>21</sup> while officer Lamour was said to have been inside the church directing the operation. Spotted in a car with Gros Fanfan were three prominent opponents of Aristide: Louis Jodel Chamblain, leader of FRAPH; Mirabeau, former bodyguard for murdered Duvalierist leader Roger Lafontant; and Fritz-Pierre, a leader of attachés in Port-au-Prince.

<sup>19</sup> OAS/UN International Civilian Mission in Haiti, *Report on the Assassination of Antoine Izméry*. November 1993.

<sup>20</sup> Jean-François is believed to have participated in the November 29, 1987 election day massacre and was sentenced to seven years in prison for his part in the September 11, 1988 massacre at the church of St. Jean Bosco. He was released, however, following the 1991 coup d'état. Since his liberation, he has been identified as a torturer in a clandestine detention center and as an accomplice in the February 25, 1993, attack on Bishop Willy Romelus at the Port-au-Prince cathedral.

<sup>21</sup> The Mission report describes Gros Fanfan as a former *Tonton Macoute* from the National Palace, and "according to one source, he is one of Lieutenant Colonel Michel François's confidantes."

### Assassination of Justice Minister Guy Malary

Guy Malary, minister of justice in the Malval government, was gunned down in his car as he left work in the early afternoon of October 14. His driver and a bodyguard were also killed, and a fourth man, possibly another bodyguard, was wounded.

The minister was ambushed leaving his private law office on Avenue Jean Paul II, reportedly after learning that armed men were in the area. People in the neighborhood heard a barrage of gunfire lasting several minutes. Malary's driver lost control of the car, which slammed into a wall and flipped over on Rue Jose Marti. The evidence suggests that Malary and his companions were shot at close range after the accident.

The International Civilian Mission was prevented from approaching the scene of the crime for more than an hour. When finally granted permission, they saw the commander of the Investigation and Anti-gang Service of the Police (*Service d'investigation et de recherches Anti-gang*) ordering the round-up of frightened witnesses. They also noted that Malary's vehicle "bore the marks of a large number of small-calibre bullets and several holes of large diameter indicating the use of heavy assault weapons."<sup>22</sup>

The fifty-year-old Malary was an established Port-au-Prince attorney, a graduate of Howard University in Washington, D.C., and a political moderate, counting the U.S. embassy among his clients. Before accepting his first government post, Malary represented several victims of military violence in their efforts to seek justice, was a consultant to the International Civilian Mission and assisted in the training of its observers. Just before his assassination, he presented parliament with a proposed law creating the new civilian police force.

### Other Assassinations

Most of those killed since the signing of the Governors Island Agreement were not known beyond their communities; in many cases we do not even know their names. The International Civilian Mission reported on activists killed in September and October.

The victims were members of popular organizations considered *pro-Lavalas*...in particular leaders who continued to be active in their localities. The perpetrators were armed men mostly operating in civilian clothing, usually at nightfall, without covering their faces. They were armed with automatic weapons (Uzis and M16s) and operated in red or white pick-up vehicles, sometimes with government plates. In several cases there was information regarding a direct link between the perpetrators and the FAD'H, and the impunity and logistical support of their operation is strongly indicative of FAD'H involvement. Their activities appear to be supported by a major intelligence operation...<sup>23</sup>

Here, in brief, are the stories of some of their deaths.

- ◆ Martial Milord Auréus, an active member of the *Organization Populaire de Bolosse* (OPB) in Carrefour, was seized on September 26, 1993, by armed men in a white pick-up truck without plates. His body was found several hours later on the Route de Pharnal, with his hands tied behind his back and a bullet hole in the left temple. During his funeral on October 4, four other members of the OPB were abducted by armed men in a white pick-up without plates. Their fate is unknown.<sup>24</sup>

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<sup>22</sup> UN Secretary-General, *The Situation of Democracy and Human Rights in Haiti A/48/532/Add.1* (New York: UNIPUB, November 18, 1993).

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

- ◆ Two armed men in civilian clothes seized Orilia Joseph, 41, at her house in Cité Soleil at 10:00 A.M. on October 10. In the presence of her two teenage daughters, they tied her up with electric cable and took her away on their motorcycle. Neighborhood residents said that the men, believed to be attachés associated with the military hospital, tortured Joseph in a house in Drouillard 2 and then tried to hand her over to the Cité Soleil police post, which refused custody because of her condition. Her mutilated body was found by her daughter the following day on the road near Drouillard. Joseph had worked as a nanny for Rolande Dorancy, director of the Miami Haitian Refugee Center, and had been associated with the Salesian Brothers center in Cité Soleil and the popular organization *SAJ-Veye Yo*.
- ◆ Andreï Fortuné was shot dead by an army corporal in Lascahobas in the Central Plateau on August 16. A political activist and member of the Papaye Peasant Movement (*Mouvement Paysan de Papaye*, MPP), Fortuné had been arrested in May 1992 and lived in hiding most of the time. He was turned down twice for refugee status in the United States.
- ◆ Ronald Jean-François was shot dead on September 16 by a police corporal after he was taken from his home in Cité Soleil by three armed men in civilian clothes. Eyewitnesses said attachés with machine guns started beating him as they interrogated him about pasting up leaflets with pictures of Aristide a few days earlier. They took him to the Soleil 17 area, where he was shot several times by a corporal assigned to the port police.<sup>25</sup>
- ◆ The body of Délice Jackie was found on July 13 in Source Puantes on the main road north out of Port-au-Prince. The young man shared a house with his cousin, press photographer Claudy Vilmé, who had been arrested on July 2 while taking pictures of soldiers at a gas station. After Vilmé was released, he said publicly that he had been held at the old Fort Dimanche, an infamous police station and prison supposedly closed several years ago. Délice Jackie is believed to have been shot to death because of his connection to Vilmé.<sup>26</sup>
- ◆ Jean-Marc Dessources was killed in the Canapé Vert neighborhood of Port-au-Prince on July 14. Witnesses said two men wearing military uniforms burst into his house at 2:00 A.M. and shouted "You are always talking about the return of Aristide, but you won't live to see it." They shot him in the back and head.<sup>27</sup>
- ◆ Christiane Sarnon, 24, was shot dead on August 13, outside her home in Quartier Morin, near Cap Haïtien. A group of six men in military uniforms forced their way into her house, demanding all the family's money. Survivors said two of the men carried .38-caliber revolvers and addressed each other as "sergeant" and "corporal." They shot Sarnon at about 2:00 A.M., when she surprised them in the living room.<sup>28</sup>
- ◆ The bullet-riddled bodies of two men were discovered near the Port-au-Prince airport on July 27. Eyewitnesses told the International Civilian Mission that they recognized two of the assassins as policemen who lived in the area and worked for the Anti-gang Service.<sup>29</sup>
- ◆ In an attempted assassination, a political activist who was a member of several community organizations in Carrefour was stopped on the street late in the evening of September 23 by a patrol of some twenty soldiers

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<sup>25</sup> UN Secretary-General, *Situation*, October 25, 1993.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

<sup>28</sup> *Ibid.*

<sup>29</sup> *Ibid.*

in olive-green uniform. They ordered the man to walk in front of them and then shot him several times. Although left for dead, the man was found and brought for medical treatment.<sup>30</sup>

## VI. BEFORE THE GOVERNORS ISLAND AGREEMENT OF JULY 3

Although human rights conditions dramatically worsened following the Governors Island Agreement, abuses were common in the first six months of 1993 as well. The repression that characterized military rule since the coup — silencing dissenting voices and the destruction of popular democratic organizations — continued to prevail. Throughout most of the country, meetings by groups not supportive of army rule were, in effect, banned. Following the arrival in Haiti of the International Civilian Mission, attempts were made on a number of occasions by Aristide supporters to organize demonstrations, most of which were repressed by the military. People caught carrying pro-democracy leaflets faced arrest and torture. Journalists reporting human rights abuses or viewed as favoring Aristide were frequently arrested or forced into hiding.

### Trade Unionists Arrested and Tortured

On April 23, police arrested three trade unionists from the General Worker's Union (*Centrale General des Travailleurs*, CGT). Cajuste Lexius, Fabonor St. Vil, and Sauver Aurelus were arrested in front of Radio Caraïbes in Port-au-Prince where they had gone to distribute a press release announcing a national strike.

The soldiers took the three men to the Anti-gang Service, where they placed Lexius in a small room and tortured him in the *djak* position, beating him with a club. "There were about 50 soldiers," Lexius described in a June 1993 interview with NCHR.

They got on top of me one after the other. One of them took a club and began to beat me on the buttocks. When he was tired he passed the club to another, and on and on until I lost consciousness. When I regained consciousness [the following afternoon] I was in a nasty smelling cell with about 25 other prisoners. I was really suffering and my buttocks were bleeding. Saturday evening members of my family brought food, but I was not allowed to see them. Before the visit of my family, I had received neither food nor drink. I was in very bad health—I was not able to do anything by myself; I was not even able to eat until Monday April 26.

On the morning of the 26th, the police fed and cleaned up Lexius in preparation for a visit from members of the International Civilian Mission, who had been trying to visit him since April 24. The Haitian doctor who accompanied the mission recommended that Lexius be hospitalized immediately. He was sent to the military hospital, where he was guarded by four men in civilian clothes who Police Chief Michel François described as there for "his protection." On April 28, military doctors operated on his buttocks. On May 21, he was freed without a hearing. "After I was released I went into hiding. I am worried about my health. I have never seen the results of my X-ray and I still have pain where they operated. Currently I am seeing a private doctor." Lexius continues to suffer from severe kidney problems.

Sauver Aurelus described a similar beating by the Anti-Gang Service police.

They kicked me, beat me and used the *djak*. Two military held my head and beat it against the ground. There were about 25 soldiers in my room and they took turns beating me while I was lying on the ground. I received about 150 blows from a club. I received one which crushed my finger and I lost consciousness.<sup>31</sup>

<sup>30</sup> UN Secretary-General, *Situation*, November 18, 1993.

<sup>31</sup> Interview, Port-au-Prince, June 1993.

### **Aristide Supporters Arrested and Tortured**

Members of the Lavalas Political Organization (*Organization Politique Lavalas*, OPL)<sup>32</sup> in the northwest town of Mole St. Nicolas were targeted after leaflets were distributed announcing the March 29 commemoration of the ratification of the 1987 Haitian Constitution.

In an illegal search on March 30, soldiers discovered pictures of Aristide and OPL documents in Manistin Capricien's house. They arrested and later tortured him and sought other members of the group, all of whom fled to Port-au-Prince.

Describing his treatment at the army post where he was held, Capricien told NCHR that

they began beating me on my back, my buttocks, my midsection and my eyes....I lost consciousness. Later I was forced to cut up pictures of Aristide and eat them while drinking a glass of water. They continued to hit me on my stomach, my eyes and my waist....The next morning they stuck a rock in my mouth and shaved my head. They forced me to eat my hair with bread. Later the Captain [Gérard Pierre Charles, no relation to the OPL leader] came into my cell with other soldiers armed with a heavy stick. They forced me to read names taken from the papers found at my house, hitting me after each one I read.<sup>33</sup>

Later that day, March 31, Capricien was brought before the Justice of the Peace, where he was given permission to receive medical treatment at the local hospital. Although he was then told that he was free, police continued to guard his hospital room. Capricien remained at the hospital until April 19, when he felt that he was no longer safe there.

Chantal Bien-Aimé, 28, mother of two and a member of the Popular Assembly of Saint Martin in Port-au-Prince, was arrested on May 11 near the Tête Boeuf market, blindfolded, and taken to the downtown police station known as the Cafeteria. She was accused of distributing leaflets in favor of President Aristide, and beaten on the head and stomach. She was released May 12, complaining of stomach pains; she died from her injuries on May 16. On June 2, at 1:00 A.M., four armed men broke in and searched Bien-Aimé's home, while six others stood guard outside. After searching her home, they beat the occupants.<sup>34</sup>

Louis Gregoire Lauture, who had been employed since April 1991 as the doorkeeper at Lafanmi Selavi, the haven for street boys founded by Father Aristide, was seized on a street in the Pacot neighborhood of Port-au-Prince on August 16. He was blindfolded by men in civilian clothes who took him in a blue pick-up truck to an unknown building where they beat him. The men, whose identity he never learned, also shaved Lauture's head and took all his clothes. They questioned him about Lafanmi Selavi and Aristide and told him they would kill him. Very early on August 18, however, he was driven, while still blindfolded and naked, to a spot on the Boulevard Harry Truman, where he was pushed out onto the street.<sup>35</sup>

### **Attacks on Congregations and Religious Leaders**

As in the early months after the coup, Haiti's churches have proved no sanctuary from military violence. Soldiers and armed civilians have not hesitated to enter churches to beat and arrest congregants when a priest's sermons touched on politics or when they chanted pro-Aristide slogans.

<sup>32</sup> The OPL is a loose national network founded since the coup by prominent Aristide supporters.

<sup>33</sup> Interview, Port-au-Prince, May 4, 1993.

<sup>34</sup> UN Secretary General, *Interim Report of the International Civilian Mission to Haiti for the Period 9 February - 31 May, 1993*, AJ/47/960 (New York: UNIPUB, June 3, 1993).

<sup>35</sup> Interview, Port-au-Prince, August 26, 1993.

On February 25 at Port-au-Prince's cathedral, a memorial mass was said for the hundreds of victims of the Neptune ferryboat disaster. Bishop Willy Romelus of Jérémie, and a known Aristide supporter, led the mass. His announcement that the authorities had refused to release the victims' corpses for burial caused the congregation to erupt in anger.

Shortly after, armed men in civilian clothes threatened people outside the church, and later surrounded it. The leaders of the International Civilian Mission, Colin Granderson and Michael Moeller, escorted several hundred people out of the cathedral in small groups and drove them to safety. The attachés, nevertheless, beat and arrested dozens of people.

Bishop Romelus, one of the last to leave the cathedral, had been speaking with several foreign diplomats when a crowd of approximately twenty men surrounded him and Paul Dejean of the Karl Leveque Center. They pushed the bishop to the ground, and proceeded to beat and kick him.

Michelet Gelin, 29, among the group providing security for Romelus, was assaulted by attachés outside the cathedral but avoided further injury due to the timely appearance of members of the Mission. In the days and weeks that followed, men in civilian clothes searched his home in Fermathe and threatened his family.

A car carrying Father Joseph Simoly, reporter Arlette Joseph of the Voice of America, and eight seminarians was surrounded by trucks just after the mass. Father Simoly later told NCHR,

A policeman forced one person out of my pick-up and took his place, then forced me at gunpoint to drive to the Anti-gang Service. Three or four policemen beat Arlette Joseph, causing her mouth to bleed. They hit me and seminarian Marc Antoine Casimir, who fell to the ground. We were harassed and humiliated. They released us several hours later, telling us that next time we would not be leaving.

Father Simoly also reported previous incidents with the police in Hinche, where he lives. Almost two months before the disturbance at the mass, on January 8, soldiers at the small police post in Hinche had stopped Father Simoly, searched his bag and found a photo of him, which they claimed was of Aristide. They arrested him on charges of distributing leaflets and photos of Aristide.

I drove my truck to the army base with Sergeant Rosalvo Bastien holding his gun and following me in his car. The sergeant called the major and they both proceeded to humiliate me. They accused me of looking like Aristide and preaching liberation theology. They said I was leading Christians into politics and that next time they would beat and kill me.

A week later two soldiers sat in their vehicle in front of the church, waiting for him to begin preaching. "When I saw them," Simoly said, "I decided not to preach, but just to read from the Bible so they wouldn't have any reason to come into the church and harass the people. When the military and section chief saw that I was not going to preach, they left."<sup>36</sup>

In another incident, uniformed soldiers and men in civilian clothes interrupted the Sunday mass at the Church of Notre Dame de Perpetuel Secours in the Bel Air neighborhood of Port-au-Prince on June 27, after young people began shouting "Aristide or death." The mass was televised live on government-run television, allowing viewers nationwide to watch the beatings.

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<sup>36</sup> Interview, Hinche, June 25, 1993.



The soldiers released tear gas inside the church and arrested and beat seven people, including Nickson Desrosiers and Enif Pierre, members of the *Plaforme Fond Sant Clair*. The detainees were transferred to police headquarters where they were severely beaten during their interrogation before their release later that day.

Protestant pastors, too, have increasingly been victims. On June 20, Pastor Joseph Ronald of the Evangelical Church of Jesus Christ on Delmas 2 in Port-au-Prince, was kidnapped and tortured after preaching at the former luxury hotel, Habitation LeClerc, in the Martissant neighborhood south of Port-au-Prince.

Pastor Ronald, his wife, and one other person were waiting for a bus in Martissant around 11:00 P.M. when four armed and masked civilians got out of a pick-up truck, grabbed Ronald by the neck and started to beat him.

My wife started to cry and begged them to release me. They hit her on the head, then forced me into the pick-up. They blind-folded me. The truck stopped and I was led out, still unable to see. They grabbed my tie and used it to tie me in the *djak* position. I fell on a cement floor. I was beaten severely and could not lift my left arm because of the extreme pain.

Pastor Ronald's captors accused him of taking money from Aristide and preaching politics. Later, two men beat him again, tying each of his hands to a fixture above his head. Then they tortured him in the *djak* position. On July 6, over two weeks after his capture, Pastor Ronald was left on the road near Gressier, approximately 20 kilometers south of Port-au-Prince.<sup>37</sup>

#### Attacks on Popular Organizations

On April 3, Corporal Charles arrested Ronial Noregène, a member of the Agricultural Workers Union of Savanette (*Syndicat des Travailleurs Agricoles de Savanette, STAS*), in the Central Plateau, and took him to the Savanette police station, accusing him of distributing pamphlets. He attempted to escape but was apprehended, severely beaten on his head and back, and held in prison for two days before he was released.

Members of the Papaye Peasant Movement (*Mouvement Paysan de Papaye, MPP*), based in the Central Plateau, were arrested and beaten for allegedly having leaflets and photos of Aristide. Leonel Paul, president of the Marecage chapter of the MPP, was arrested and severely beaten on May 9 on trumped up charges of possessing propaganda. "It was about 8:00 A.M. when about thirty deputies [of the section chief] came to my house. They tied me up and one of them hit me three times with a club, forcing me to take two tracts [leaflets] that said 'Long Live Aristide's Return.'"

The deputies took Paul to Thomonde, where he spent four days in prison and was beaten sporadically. Members of the International Civilian Mission came to visit him on the fourth day, but they weren't allowed to speak with him. On the fifth day he was transferred to the prison in Hinche, and taken before Major Charles Josel, known as Commander Z. "He ordered me to lie down," Paul said, "and he walked on me. Afterwards, he ordered a soldier to hit me 250 times with a club." Two days later Commander Z ordered soldiers to beat Paul 250 more times. After his wife paid US\$40 (500 gourdes), Paul was freed and subsequently warned not to speak to the Mission. He was told if he ever returned to Hinche he would be killed.<sup>38</sup>

Three section chief deputies arrested Previlus Elvian on June 5 at his home in Perodin, the fifth section of Petite Rivière de l'Artibonite. Section Chief Edner Odeide beat Elvian, a member of the Assembly of Perodin Peasants (*Rassemblement Paysan de Perodin, RPP*), for several hours each day, repeating that he did not like the

<sup>37</sup> Interview, Port-au-Prince, July 9, 1993.

<sup>38</sup> Interview, Port-au-Prince, May 1993.

work Elvian was doing with RPP. Elvian's family had to pay US\$60 (750 gourdes) for his June 9 release after which he went into hiding.<sup>39</sup>

On June 9, police and deputies of the local section chief of Savanette in the Central Plateau arrested MPP member Sylvestre Pedanois, 36. They searched his bag and discovered MPP documents. Pedanois was taken to the home of the section chief, where he was beaten fifty times with a club. The following day he was transferred to the army post where they continued to torture him with the *djak* and *kalot marasa*.<sup>40</sup> He was taken before the justice of the peace on June 11 and released by the prosecutor on the 14th. He later escaped an attempted arrest on the 22nd, following which, he went into hiding.<sup>41</sup>

On June 29, in Zabricot in the Central Plateau, the section chief arrested Odette Fausten and twelve others and brought them to Juanaria, the first communal section of Hinche. He accused them of having a relationship with the section chief under Aristide. They were beaten with clubs and rifle butts and received the *kalot marasa*. On July 2 they were brought before the justice of the peace in Hinche, where they were charged with illegally meeting to disturb the peace. They were later released on July 5 or 6.<sup>42</sup>

#### Attempts by Displaced Persons to Return Home

Tens of thousands fled their homes in the immediate aftermath of the coup and though many later returned, waves of renewed repression forced them to take flight once again.

With the establishment of offices of the International Civilian Mission in provincial towns, some popular organizations thought it possible for their members to return home from hiding. At least thirteen people belonging to the Papaye Peasant Movement (MPP) returned to the Central Plateau in March and April. By the end of July, however, all had fled once again having encountered a variety of reprisals.

One of those who tried to return to his home was Hilton Etienne, an active MPP member who had been in hiding for eleven months. Having lived at home for about one month, he told us that "On April 29, about 2:00 A.M., three military and a number of civilians armed with machetes and clubs came to my house. They broke in and arrested me. They tied me up with a cord and began to beat me. Some of the men in civilian dress hit my wife's head against the wall."

They took Etienne to the police post where they tortured him in the *djak*, beating him 200 times with a club. In the car on the way to the Hinche army base, they forced him to lie flat and beat him 150 more times with a club. Once they arrived, he said "they forced me to lie on the ground and I received another 100 blows of the club. I was not able to get up. They dragged me, kicked me and forced me to run."

The next day he was taken to the office of the army commander where he met with International Civilian Mission monitors, who demanded that he be brought before the justice of the peace. At about 11:00 A.M. he was taken there, accompanied by the monitors. The justice of the peace accused Etienne of associating with criminals in order to disturb public order. He was released, however, about 10:00 P.M. that evening.<sup>43</sup>

<sup>39</sup> Interview, Port-au-Prince, July 8, 1993.

<sup>40</sup> The *kalot marasa* is a common form of torture in which the assailant simultaneously claps his hands as hard as possible on the victim's ears.

<sup>41</sup> Interview, Hinche, July 25, 1993.

<sup>42</sup> UN Secretary-General, *Situation*, October 25, 1993.

<sup>43</sup> Etienne was a member of the *Ti Komite Legliz*, the Justice and Peace Commission of the Catholic Church in Hinche, and was employed in the December 1990 elections as a messenger for the Departmental Electoral Office. He was also responsible for a literacy program that started under Aristide in 1991.

Junior Esta, an MPP member living in Grand Rivière du Nord, had been in hiding since January 1993, following a November 1992 arrest. He returned to Grand Rivière June 17 to see his sister who was ill. On June 20, accused him of being pro-Lavalas and threatened to kill him. His bag was searched, his belongings taken, and he was beaten by policeman in the street. He spent three days in prison where he was severely beaten. Esta's brother-in-law paid US\$35 (450 gourdes) for his release.<sup>44</sup>

André Pierre, a member of the Assembly of Perodin Peasants (*Rassemblement Paysan de Perodin*, RPP) who had been in hiding since September 1992, returned to Perodin (in the fifth section of Petite Rivière de l'Artibonite, a town five hours walk from any road) on June 10, 1993, after he learned that his father had died.

I was walking in the streets and the section chief, Edner Odeïde, who had arrested me last year, arrested me again with the same accusations, that I was *Lavalas*. He beat me with a club, and told my mother and sister if they did not pay US\$60 (750 gourdes) they would kill me. I spent three days in prison until my family paid the money and I was released.

Following his liberation, Pierre went back into hiding.<sup>45</sup>

Silon Drystal, Elianse Excilan, and Jerome Pierre of Perodin had been in hiding since January 1992. They also returned home for the first time in June 1993. Drystal explained to NCHR, "We were walking on the road home when we crossed paths with the section chief, Edner Odeïde, who was with three attachés: Anatas, Estorage and Dufel. They immediately recognized us as people who left the area, and they began to beat us with clubs."

Drystal escaped, but attachés beat Excilan and Pierre with their hands and batons and led them to the Perodin military post. They were accused of being pro-Lavalas and were forced to lie down while men in the barracks took turns beating, kicking, and walking on them. They were released the following morning, after their families paid US\$120 (1,600 gourdes).

On July 6, when the interview was conducted, Excilan's arm was broken and his body was badly bruised. He had trouble walking and holding his head up, as did Pierre, who received most of the blows to his face. His jaw was still grossly swollen and he had trouble speaking.<sup>46</sup>

Lormil Rodrigue had been in hiding since his January 1992 arrest in Grand Goave, a town about fifty kilometers west of Port-au-Prince, and returned home on June 4, 1993. As he approached his house, three men in civilian clothing demanded he turn over his weapons to them.

I said I didn't carry arms. They took my International Organization for Migration<sup>47</sup> card which had the date of my interview and said they would take that card to [Police Chief] Michel François to show him that I was leaving the country. They threw me in a pick-up that was headed in the direction of Port-au-Prince. They blindfolded me, and after a little while the truck stopped and they threw me on the ground. I received two *kalot marasa*.

<sup>44</sup> Interview, Port-au-Prince, July 12, 1993.

<sup>45</sup> Interview, Port-au-Prince, July 12, 1993.

<sup>46</sup> Interview, Port-au-Prince, July 6, 1993.

<sup>47</sup> The IOM, under contract with the U.S. in-country refugee processing program, conducts preliminary interviews with asylum applicants.

Rodrigue was held blindfolded in a room by himself, without food, until the next day. He was then taken to another place where he spent eight days blindfolded and received almost nothing to eat or drink. He was released without explanation.<sup>48</sup>

#### Violations of Press Freedom

While there is no formal censorship of the media, reporters and media outlets know that they are constantly at risk. Many reporters for Radio Tropic-FM, a station that has continued to broadcast news reports throughout the post-coup period, have been arrested, mistreated or threatened in recent months. The best known case is that of Colson Dormé. Dormé, a reporter and archivist for Tropic-FM was kidnapped on February 1, 1993, while covering the arrival of mediator Dante Caputo at the Maïs Gaté Airport. Hundreds of rowdy anti-Caputo demonstrators had gathered there. "I was one of the first journalists to arrive and I felt threatened," he told NCHR.

After filing a brief, live report, Dormé took shelter from the hostile crowd in an outdoor waiting area. "I received a blow to the head from behind. I fell down and felt someone lift me up. They threw me into the back of a pick-up."

Dormé was held blindfolded for a week in a clandestine detention center. His captors shaved his head, made him sleep on a bare floor and fed him only three times. For several days they played Radio Tropic-FM, and whenever the half-hourly news bulletin aired, they kicked and beat him.

During his interrogation, his captors insisted that his radio station was financed by the Lavalas movement and tried to persuade Dormé to become an informant. At 10:45 P.M. on February 8, he was dumped, still blindfolded, in front of Tropic-FM on Rue Pavée, Port-au-Prince, wearing only his undershorts and a T-shirt.<sup>49</sup>

On Friday, January 22, Jean-Emile Estimable, a correspondent for Radio Cacique, which has been closed since the coup, was arrested by Section Chief Geles of Ogé, the third section of Marchand Dessalines. Geles took Estimable to Geles's house, where Estimable watched the section chief place leaflets in the correspondent's briefcase. Geles notified the military sub-district at Marchand Dessalines and five soldiers arrived in a pick-up. They tied Estimable up with a rope, put him in the truck and began to beat him.

The section chief's son and about twenty other men in civilian clothes traveled with the soldiers and joined in beating Estimable. They hit him with their rifle butts, hands, and fists and kicked him. Drinking rum, they struck Estimable on the chest with the bottle. Sergeant Amos, identified as the leader of the group, and Corporal Charlemagne were also present.

"They treated me like a football," he said, describing how they beat him the next day at the police station at Dessalines before transporting him to the St. Marc army base. There a Lieutenant Placide and four soldiers continued to torture him. "They pulled on both my ears and folded them. They kicked me many times in the chest. Lt. Placide grabbed my head and banged it several times against the wall. I lost consciousness."

Estimable was not permitted to see a lawyer until February 1. He was sent to the Correctional Court and granted provisional freedom on February 2, 1993.<sup>50</sup>

Reporters for the popular Creole language weekly newspaper, *Libète*, outspoken in its support of President Aristide's return and denunciation of corruption and human rights violations, have received many threats. For

<sup>48</sup> Interview, Port-au-Prince, June 22, 1993.

<sup>49</sup> Interview, Port-au-Prince, March 9, 1993.

<sup>50</sup> Interview, Port-au-Prince, February 9, 1993.

security reasons they all write under pseudonyms. The office has received phone threats and street vendors who carry the newspaper have been threatened, beaten, and arrested.<sup>51</sup>

On February 4, 1993, armed men in civilian clothes roughed up three *Libète* vendors, Wilfrid Jean, 30, Jean-Robert Guillaume, and another unidentified man, and destroyed 300 copies of the paper. The incident occurred in front of the government immigration service offices on Avenue John Brown in downtown Port-au-Prince. On the same day, Duval Azolin, 25, was beaten while selling copies of *Libète* near the Marché Salomon.

On February 25, *Libète* reporter Emmanuel Eugene narrowly escaped arrest or kidnapping, while reporting at the Port-au-Prince cathedral on the mass for victims of the shipwrecked Neptune. Eugene was approached outside the cathedral by a man in civilian clothes, who asked Eugene to follow him. When he refused and attempted to enter the building, the man grabbed him by the collar. Eugene was able to escape into the cathedral, but later, another man in civilian clothes blocked his car when Eugene tried to leave, and ordered him to get into his vehicle. Eugene, luckily, was able to escape this abduction attempt.

The following are brief descriptions of additional press-related harassments and attacks.

- ◆ On June 24, uniformed police officers arrested six *Libète* vendors by the Champ de Mars in Port-au-Prince. Among them were Melorm Compère, Luckner Mandena, Jean Azolin, and Justin. The police burned their papers and took their money. Five were taken to an Anti-gang Service office, where they were badly beaten. They were all freed several hours later.<sup>52</sup>
- ◆ On July 3 in Mirebalais in the Central Plateau soldiers arrested a peasant in possession of *Libète*. He was taken to the Mirebalais barracks, and released several hours later.<sup>53</sup>
- ◆ On June 29, then *de facto* Minister of Information, André Calixte, summoned Associated Press reporters and the local Agence Haïtienne de Presse. He reprimanded them for anti-military bias in their reporting of a June 27 event, where churchgoers were beaten by soldiers and men in civilian clothes.<sup>54</sup>
- ◆ Clarens Renois, news director for the independent Radio Metropole, was summoned to army headquarters on July 29. He was forced to wait for five hours and then told to return the next day. After waiting four hours the next day, he was seen by a low ranking officer who reprimanded him for reading an Agence France Presse story that mentioned the possibility of the resignation of Police Chief Michel François. Renois was initially told to return the next day, but his summons was later dismissed.
- ◆ On July 2, Claudy Vilmé, reporter and photographer for the French-language daily, the *Nouvelliste*, was arrested in Port-au-Prince while taking a photo of soldiers taking money at a gas pump during the period of rationing. Vilmé was seized by five civilians driving in a pick-up with military license plates. "The men beat me and forced me to lie down in their pick-up truck with their feet on me. They brought me to Fort Dimanche where they tortured me." The men placed Vilmé in a tiny three-sided cell in which they beat him from behind. "I lost consciousness twice so they threw cold water on my face to revive me. They accused me of giving false information and kicked me, saying 'Lavalas journalist.' Finally...they released me."<sup>55</sup>

<sup>51</sup> Due to intensified repression against its staff, *Libète* suspended publication in October 1993.

<sup>52</sup> Agence Haïtienne de Presse, "182 Resume de Nouvelles Nationales, 21-27 June, 1993."

<sup>53</sup> UN Secretary-General, *Situation, October 25, 1993*.

<sup>54</sup> Interview with Venel Remarais, Director of the Haitian Press Agency (*Agence Haïtienne de Presse*), June 29, 1993.

<sup>55</sup> Vilmé's report of being jailed at Fort Dimanche is one of several recent testimonies indicating that the infamous torture center, closed in 1990, is once more being used by the military. Interview, Port-au-Prince, July 16, 1993.

## VII. VIOLENCE LEADING UP TO ARISTIDE'S SCHEDULED RETURN, OCTOBER 30, 1993

In the weeks leading up to October 30, 1993 — the deadline set by the Governors Island agreement for Aristide's return to Haiti — paramilitary groups, such as FRAPH, increasingly claimed the streets of Port-au-Prince, acting with the blessing and cooperation of the army. Although the greatest violence occurred in the capital, towns and villages throughout the country experienced a striking rise in repression. In addition to the shocking assassinations of Aristide supporter Antoine Izméry (on September 11) and Justice Minister Guy Malary (October 14), as described in Section V, many other serious human rights violations were committed by the army and its supporters during this period.

### Three Killed at the Reinstatement of Mayor Evans Paul

Armed civilians killed at least three people and badly wounded many others during the September 8, 1993 ceremony to reinstate Evans Paul as mayor of Port-au-Prince. The event was a turning point in the Haitian crisis, revealing the lengths to which the military would go to prevent a popularly elected leader from resuming office, and providing an inkling of what would later become only too clear — that the army had no intention of allowing Aristide to return and would not respect the Governors Island agreement.

When Mayor Paul announced on September 2 his intentions to resume office, gun toting strongmen seized and occupied city hall. Attachés brazenly told local Radio Metropole that they did not recognize Malval as prime minister or Evans Paul as mayor. If the two tried to enter city hall, one man told a reporter, "they will be corpses."

Until half an hour before the scheduled ceremony over 200 armed civilian attachés continued to occupy city hall. Finally, at 11:40 A.M., about thirty uniformed police escorted the occupiers from the building allowing Paul, Prime Minister Robert Malval, members of his government, and foreign diplomats to enter.

During the brief ceremony inside city hall, violence began outside. Armed men began beating Paul supporters, as well as journalists, street vendors, and other bystanders. The crowd was violently dispersed by civilians wielding large sticks, knives, and guns. At least three people — Cléber Rivage, Edris Bayard, and Lévius Brunis — were killed and eighteen wounded, while uniformed police stood by and did nothing.

Among the wounded was thirty-three-year-old Bellony Jeannot, who was slashed across the stomach by a knife-wielding man approximately fifty-years-old. Jeannot described the scene:

When the attachés took the building hostage, I was standing outside, across the street. They were watching us. I was with a whole crowd of people. At about noon, when the mayor appeared, we all began to applaud. That's when the shooting started. I saw people who appeared to be shot fall to the ground....Someone near me hit me on my right temple with his fist. Then a guy standing right behind me on my right side pulled out a knife and slit my stomach. My whole insides seemed to fall out. I had on a shirt which I used to keep everything from spilling over.<sup>56</sup>

Police, who remained on the scene as Mayor Paul and the other dignitaries left city hall in their cars, would not protect journalists inside the building. Radio Tropic-FM reporter Emmanuel Laurent was beaten by armed men, who yelled curses at the journalists, blaming them for selling out the country.

The police also proved helpless in guaranteeing the safety of government personnel leaving the scene. Armed men assaulted many of the cars, and the new Minister of Information, Hervé Denis, was wounded in the head

<sup>56</sup> Interview, Port-au-Prince, September 21, 1993.

by glass shards when rioters attacked his car, shattering the windshield. One of his bodyguards was also wounded.

Not long after Paul left city hall, armed civilians retook the building. The mayor has asked Police Chief Michel François to rid the premises of the attachés and provide police security, but as of the publication of this report, they remain entrenched.<sup>57</sup>

The International Civilian Mission described the preliminary report prepared by the public prosecutor (*commissaire de gouvernement*) as identifying some of the armed men as active members of the armed forces. The prosecutor resigned, however, and the final report was never issued.

#### Army-supported Attachés Thwart Malval Government

Throughout September and October, members of the Malval government were similarly, if less dramatically, prevented from assuming office. In most cases, groups of aggressive, armed civilians would gather outside and often inside government buildings. Prime Minister Malval himself was forced to work at home for his entire tenure because the state-owned Villa D'Accueil where he proposed to establish his offices remained occupied by attachés. The newly appointed directors of state-owned television and radio were delayed for days from assuming their posts. After briefly exercising control in late September, they were ousted by armed supporters of a Duvalierist organization who took over the station's facilities on October 11.

On September 14 and 15, Finance Minister Marie Michelle Rey was forced to call on diplomats to escort her from her office because of crowds of armed men threatening her ministry. On September 16, demonstrators inside the Ministry of Foreign Affairs disrupted the installation of Malval's foreign minister, Claudette Werleigh, yelling "Down with Caputo" and noisily occupying rooms on the building's second floor. They chased reporters from the building with threats.

A band of men surged into the offices of the Superior Court of Audits and Administrative Disputes (*Cour Supérieure des Comptes et du Contentieux Administratif*) on October 4, pushed around and threatened newly-chosen court president, Duti Mackenzie, and forced him into a private jeep. They also threatened the court's vice president before letting both men go. On the same day, the Supreme Court chief appointed after the coup d'état, Emile Jonassaint, defied Justice Minister Guy Malary's order that he retire and, instead, held ceremonies marking the reopening of the judicial calendar. The ceremonies were attended by General Raoul Cédras and other members of the high command and were protected by a strong police presence.

#### Mirebalais September Repression

In Mirebalais, in the Central Plateau, soldiers beat up eight people and tried to arrest the town's deputy mayor after they found pro-Aristide leaflets in the town on September 13, 1993. According to Jean Elvé Tironé, 39, a coordinator of the Agricultural Workers Union of Savanette (*Syndicat des Travailleurs Agricoles de Savanette*, STAS), there was intermittent shooting throughout the day and night of September 16 in Mirebalais. Tironé said the military seized Mondesir Duplessy, Paulas Aceus, Camelo Ocessite, Roger Ocessite, Michelaire Mertilus, Mme. Porcelly Casseus, and a man known as Dieuseul. They beat them and forced them to wipe pro-Aristide graffiti from the town walls. Tironé himself escaped an attempted arrest by a group of soldiers led by Section Chief Kebreau Tezan of the Gascogne section, after which he went into hiding in the nearby fields and mountains. On September 18, he was walking to Carrefour Peligre to catch a bus to Port-au-Prince when he encountered two soldiers from the Mirebalais army post who recognized him and began to hit him on the head with the butts of their rifles. They continued to beat him all over his body with a baton, telling him with each blow that they would

<sup>57</sup> In a September 22, 1993, letter to Police Chief Michel François, Mayor Paul asked the police to oust the group of violent individuals occupying his office and "place at the service of the mayor's office, as in the past, a detachment of police, in view toward assisting in reestablishing order and guaranteeing security ..." He also noted in this letter that the city hall annex had been taken over without his permission by FRAPH, which turned it into their headquarters.

kill him before October 30. The soldiers stole US\$160 (2,000 gourdes) and most of his clothes, leaving him in his undershorts.<sup>58</sup>

Deputy Mayor Jean Clotaire Cénoble, 37, elected under the banner of the National Front for Change and Democracy (*Front National pour le Changement et la Démocratie*, FNCD) barely escaped arrest by a squad of soldiers led by the local commander, Lieutenant Placide Joliçoœur, on the morning of September 15. Cénoble stopped by a neighbor's house as soldiers surrounded his home, seeking to arrest him. He fled into the bush and the next day managed to escape to Port-au-Prince. Two days earlier, Section Chief Kebreau Tezan had fired his gun into the air in front of Cénoble's house.<sup>59</sup>

#### Assault on Jean-Claude Bajoux's House

Jean-Claude Bajoux and the Ecumenical Center for Human Rights, which he directs, received threatening phone calls after he publicly denounced the National Museum for its exhibit honoring François Duvalier. (Bajoux lost many members of his immediate family to the Duvalier terror.)

Three gun and machete toting assailants, one of whom appeared to be a teenager, jumped the gate to Bajoux's house in the Desprez neighborhood of Port-au-Prince on the night of October 4. Forcing their way into the house around 9:00 P.M., they demanded to know where Bajoux was. When the two household staff members refused to disclose his whereabouts, the intruders assaulted them. They kicked the watchman Farol down the stairs and beat the cook Jacqueline with the butts of their guns. The thugs tied their wrists and ankles with telephone cord and covered their faces with adhesive tape. When a neighbor passing by heard the noise and yelled, "What's going on in there?" the attackers shot him in the stomach. Before leaving, they stole a suitcase, filling it with Bajoux's personal effects. A French couple who lived upstairs in the house at the time were unharmed.

#### FRAPH Assault at Hotel Christopher

In October, FRAPH called for demonstrations and general strikes to protest both the presence of the International Civilian Mission in Haiti and the mediation of Dante Caputo. On October 5, armed civilians arriving at a FRAPH press conference attacked a group of people leaving a meeting with Mayor Evans Paul and ransacked the parliamentary liaison office of the prime minister. The assault, witnessed by foreign reporters and members of the Mission, occurred on the grounds of the Hotel Christopher in Port-au-Prince, where FRAPH had gathered to announce a general strike.

More than 100 FRAPH supporters surrounded the liaison office where Paul had just concluded a meeting with local school principals. The armed civilians, some firing automatic weapons, broke into the building, ransacked it and illegally arrested forty-one people. Uniformed police who were present, the Mission reported, "made no attempt to control the conduct of the armed civilians and they themselves participated in the illegal arrests."<sup>60</sup> The forty-one detainees, including former Senator Wesner Emmanuel and his son, were forced from the building with their hands over their heads and taken to the Anti-gang Service police station in the same vehicles that had been used to transport supporters to the FRAPH press conference. Police accused the detainees of assault but released them without filing formal charges.

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<sup>58</sup> They told Tironé that they weren't arresting him because they knew that the International Civilian Mission would set him free. According to Tironé and Cénoble, the Mission's practice of undertaking efforts to free people illegally arrested had led to a change in the military authorities' tactics: more frequent beatings without detention. Interview, Port-au-Prince, September 20, 1993.

<sup>59</sup> Interview, Port-au-Prince, September 20, 1993.

<sup>60</sup> UN Secretary-General, *Situation*, November 18, 1993.



FRAPH leaders, in the October 5 press conference, called for a general strike to begin on October 7, stating they would use "any means whatsoever" to grind the country to a halt if the Malval government did not admit Duvalierists into the cabinet. They warned merchants and public transport drivers, in particular, to stay home.

By paralyzing the country with fear, the strike succeeded. A few courageous trade union and popular organization leaders spoke out on the radio in opposition to the strike, yet very few people dared to leave their homes. Many of those who did were met with intimidation and violence.

"On many occasions," the International Civilian Mission reported, "armed men assaulted shopkeepers, stallholders and passersby, and fired shots to spread panic among the population." In Carrefour, Mission observers were forced to withdraw from a site where armed men were inflicting beatings after they were threatened with automatic weapons. In Port-au-Prince, "throughout the day, police patrols were often observed escorting the armed civilians enforcing the strike and sometimes acting in concert with them from the same vehicles." In Jacmel and Gonaïves, "soldiers were seen assisting civilians in enforcing the strike."<sup>61</sup>

At the Petionville market, armed men fired their guns into the air and exploded tear gas to clear the market before noon. In other city markets, such as Poste Marchande, Carrefour Pean, Delmas 32, and Tete Boeuf, there were reports of intimidation. Local Radio Tropic-FM reported that twelve people were brought to the State University of Haiti Hospital with bullet wounds during the day of the strike.

During a later strike on November 4-5, again initiated by FRAPH and another Duvalierist group, *Capois la Mort*, soldiers and armed civilians patrolled the streets of Port-au-Prince, enforcing the strike call. At the Marché Vallieres, vendors were beaten and their produce stalls overturned. In nearby Kenskoff, soldiers and armed civilians forced schools to close and dispersed merchants from the market, beating some of them. In Petionville, soldiers and attachés arrived at the market and ordered shoppers and vendors to leave.

On November 5, the driver of a motorcycle taxi was shot to death by an armed civilian who objected to his working that day. The man had been discussing the price of a fare on Ruelle Nazon when the attaché approached, asking whether he knew about the FRAPH strike. When the driver declared his need to work, the attaché shot him.<sup>62</sup>

#### *USS Harlan County*

FRAPH also organized the "demonstration" at the port in Port-au-Prince on October 11, the day the USS *Harlan County* was scheduled to unload its contingent of U.S. and Canadian military trainers. In a radio broadcast, FRAPH leader Emmanuel Constant urged all "patriotic Haitians" to go down to the waterfront to protest the military mission's arrival. The events at the port that day were reported throughout the world.

The gates to the wharf were kept closed by Port Security, and the *Harlan County* was prevented from docking by the presence of a freighter in the deep water berth. Gun-toting FRAPH demonstrators and attachés yelled insults at the scores of foreign journalists, and then violently assaulted them and the car of the U.S. chargé d'affaires. All this took place, according to International Civilian Mission monitors, "in the presence of a large number of uniformed police who did not intervene."<sup>63</sup>

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<sup>61</sup> Ibid.

<sup>62</sup> *Resistance et Democratie*, Volume 2, Number 20. *Resistance et Democratie* is an anonymously published bulletin, distributed by facsimile, containing information collected from Haitian human rights groups.

<sup>63</sup> UN Secretary-General, *Situation*, November 18, 1993.

### Wave of Arrests in Belle Anse

The military increased attacks against pro-Aristide activists in October in and around Belle Anse, a rural town on the southern coast near the border with the Dominican Republic. On the evening of October 21, 1993, Section Chief Oxilus Remy of Bodary, a section of Grand Gosier, fired his gun at the house of the Grand Gosier Deputy Mayor Leon Calixte, who fled.

The following night in Bodary, Remy and Corporal Dilrick arrested Ramil Joseph, a member of the Bodary section council (*Conseil d'Administration de la Section*, CASEC), accusing him of being pro-Lavalas. Joseph was badly beaten while in custody. Two other men, Benoit Belizaire, a member of the Peasant and Workers Organization of Terre Rouge (*Organisation des Paysans et Travailleurs de Terre Rouge*, OPTT) and Antonio Jocelyn, director of the chapel of Terre Rouge, were also arrested on the same night and taken to the Bodary military post. All of the men were beaten while in custody and forced to pay a bribe for their freedom.

An activist named Simon Medé fled his home when soldiers fired shots in front of his house and then forcibly entered. Soldiers and armed civilians fired on the residence of Gaston Tanis, justice of the peace, during the night of October 22. He and Robert Cassagnol, the substitute justice of the peace, who was accused of being close to President Aristide, fled Thiotte on October 27.<sup>64</sup> Several hundred people are reported to have fled the Belle Anse areas for the Dominican Republic in the wake of the crackdown.<sup>65</sup>

### Attacks in Desarmes, Verrettes

On October 30 in Verrettes in the Artibonite, Section Chief Nevers Jean-Baptiste, together with the section chief of Desarmes, the fourth communal section, and several deputies, organized a demonstration. During the march, the group killed one man, wounded several and damaged and looted six houses, including two houses of members of Women in Action of Desarmes (*Femmes en action de Desarmes*). The man killed, Barthélemy Albert, 47, was the husband of a member of Women in Action of Desarmes. They left a message for the woman stating that Aristide could take the place of her husband when he returns. Maxo, the brother of another member of the group, was blinded in one eye by the assailants. Members of Women in Action were forced to flee the area.<sup>66</sup>

### Terror in Saut d'Eau

Two section chiefs led a campaign of terror and intimidation in Saut d'Eau, near Mirebalais. On the morning of October 30, Section Chiefs Floran Thelice and Emile Exumé gathered eighty armed deputies and other followers, to demonstrate in the Coupe Mardigras hamlet of Saut d'Eau against Aristide and UN mediator Dante Caputo and in favor of FRAPH. The crowd looted and wrecked ten houses belonging to members of the Saut d'Eau Clear View Cooperative Peasant Group Federation (*Federasyon Gwoupman Peyizan Kombit Laveje Sodo*, FGPCLS) and beat and arrested as many as thirty people, according to diverse reports.

Among those assaulted and whose homes were destroyed by the military-directed thugs were Antoine Charles, 60, a health monitor and FGPCLS leader who was badly beaten on the head and midsection; Marie Jeune Cineus, who was beaten and given the *kalot marasa*; and Francine Poleston, 72, an FNCD member of the elected administrative council of the communal section.

Yvette Virgile was arrested, beaten and forced to pay US\$40 (500 gourdes) for her freedom. Luckner Pauleston was tied to a horse, which his assailants ordered to gallop, pulling him for a distance of several meters.

<sup>64</sup> *Resistance et Democratie*, Volume 2, Number 20.

<sup>65</sup> Agence Haïtienne de Presse, 201 Resumé de Nouvelles Nationales, 1-7 Nov, 1993.

<sup>66</sup> *Resistance et Democratie*, Volume 2, Number 16.

Tertulien Georges was tied up and jailed for three days in Section Chief Thelice's house. Others arrested and mistreated included Bote Brunie, Denis Charles, Origène Dorilus, and Crisil Aurèle.<sup>67</sup>

#### Other October 30 Violence

In Port-au-Prince, there was intermittent shooting throughout the days and nights as October 30 drew near. Armed civilians terrorized the residents of poor and working class neighborhoods, and bodies were left in the streets every morning. The remains of four young men were found on Boulevard Harry Truman in downtown Port-au-Prince on October 26. Two young men were assassinated in the St. Thèrese section of Petionville during the last week of October.<sup>68</sup>

On October 30, 1993, the mutilated corpse of Toto Gabriel was found near his home on the Hermann Pape block of 5th Avenue Bolosse, in Port-au-Prince. Gabriel's head and feet had been cut off and scattered. The leader of the local watch committee, Gros Marin, who is also Gabriel's cousin, was shot and wounded around 5:00 P.M. the previous evening when a squad of armed civilians entered the area firing their guns and seeking a man name Roosevelt, who they claimed to be pro-*Lavalas*. Gros Marin organized watch committee members to throw stones at the men, who left, only to return later that night, seizing Gabriel.<sup>69</sup>

Two people were reportedly killed in Saint Marc on October 30 — a bread seller and the husband of a woman sought by the military because of her community activism.<sup>70</sup>

The homes of two parliamentarians sympathetic to Aristide were attacked on October 30. The home of Deputy Samuel Madistin of the Haitian Christian Democratic Party (*Parti Démocrate Chrétien Haïtien*, PDCH) was attacked in Estère, in the Artibonite, on October 30. Madistin's mother was injured by broken glass from a window shattered by bullets.<sup>71</sup> A group of armed civilians led by the section chief fired several rounds at Deputy Jean Mandenave's home in Plaisance in the north.<sup>72</sup>

Reporter Luc François's home in Jacmel was machine gunned on the evening of October 30 by armed civilians. François had worked as Jacmel correspondent for Radio Haïti-Inter until it shut down after the coup; the attack was said to be in retaliation for an article François wrote for the New York-based *Haïti Progrès*.<sup>73</sup>

### VIII. TERROR CONTINUES

The campaign of terror did not end on October 30. During the first two weeks of November, Port-au-Prince was the scene of almost constant gunfire. Much of this was celebratory by FRAPH and other armed civilian groups rejoicing in the failure of the plan to restore President Aristide, but was nonetheless terrifying to the general populace. A large number of assassinations, some clearly political and others with combined criminal and political

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<sup>67</sup> Interview, Port-au-Prince, November 1993; Agence Haïtienne de Presse, "201 Résumé de Nouvelles Nationales, 1-7 Novembre, 1993."

<sup>68</sup> *Resistance et Démocratie*, Volume 2, Number 16.

<sup>69</sup> *Resistance et Démocratie*, Volume 2, Numbers 15 and 16.

<sup>70</sup> *Resistance et Démocratie*, Volume 2, Number 16.

<sup>71</sup> *Resistance et Démocratie*, Volume 2, Number 21.

<sup>72</sup> *Resistance et Démocratie*, Volume 2, Numbers 23-24.

<sup>73</sup> Agence Haïtienne de Presse, 201 Résumé de Nouvelles Nationales, 1-7 Novembre, 1993.

motives, continued to occur in November and December.<sup>74</sup> The two dozen International Civilian Mission monitors who returned to Port-au-Prince in late January reported an alarming number of killings, disappearances and arbitrary arrests during the first months of 1994.

#### **Persecution Intensifies in the Artibonite**

In early November in Perodin, the local section chief tortured and arrested several members of the Assembly of Perodin Peasants (RPP). Members of the RPP have been under severe pressure from Section Chief Edner Odeide since the 1991 coup.

Four members of the RPP, Celor Josaphat, Previlus Eluina, Licalixte Jean Louinat, and Derilus Cleartune, were arrested by Odeide and two armed men in civilian clothes on November 7 as they were walking toward Petite Rivière. They were tied back-to-back in pairs with rope and taken to the section chief's house, where some ten uniformed soldiers disparaged them for being *pro-Lavalas*, saying "You think your papa [Aristide] will come back, but he won't."

Some of the men's relatives followed them to the house where a soldier told them they'd have to pay US\$160 (2,000 gourdes) for their freedom. When they collected the money and handed it over to Odeide, the section chief told them that only the military post in Petite Rivière had the authority to free the men. The four prisoners spent the day tied up on the floor of the section chief's house. Late in the evening, four soldiers got them up and ordered them to walk to Petite Rivière with them. Upon their arrival the next morning, Cleartune was able to escape as the soldiers stopped in the marketplace for a drink. At the army post in Petite Rivière, a corporal ordered the three remaining prisoners to lie down on their stomachs on the floor. Several soldiers kicked the men and beat them with their batons, relieving one another when they became tired. Several hours later, the three men were carried out and dumped on the ground behind the post. Celor Josaphat was left with a broken left arm, badly swollen buttocks, blurred vision and many bruises.

#### **Rape in the St. Marc Prison**

Carmene Dormilus Benjamin was arrested by four men in civilian clothes driving a Peugeot pick-up on November 13, 1993, as she left the Cabaret office of Teleco, the state telephone company, north of Port-au-Prince. They took her to the army post at Arcahaie, then sent her to the prison in the army base in the larger town of St. Marc. At the St. Marc prison, she was placed in a cell holding both women and men, including a pregnant woman who had been badly beaten and an elderly man who appeared on the verge of death. She asked to be moved to another cell, and on November 14, a soldier granted her request, but then threatened to beat her or kill her if she did not submit to his sexual advances. After raping her, he returned her to her former cell in the morning. During her interrogation by the captain in charge of the base, soldiers slapped her three times and kicked her in the stomach, demanding that she reveal the whereabouts of her husband, René Sylveus Benjamin, a church worker. Her family was denied permission to visit her at the prison until she was freed on November 16, after paying US\$120 (1500 gourdes).<sup>75</sup>

#### **Soldiers Sweep Gonaïves Shantytown**

Soldiers seeking Amio "Cubain" Metayer, a leader of the Raboteau community in Gonaïves, arrested the following youths from Raboteau in Port-au-Prince on November 20, 1993: Balaguer Metayer ("Chatte"), 17; Joseph Cius ("Djobit"); Bertrand Dorismond; Pierre-Paul Dorismond; Dieujuste; "Abdale;" "Fritó;" "Ti Claude." The following day, Jean Claude Teophin, also of Gonaïves, was arrested right after leaving the U.S. refugee processing locale. Three others, including "Cubain," escaped capture. The detained youths had traveled to Port-au-Prince intending to apply for political asylum. All were taken to Gonaïves and jailed.

<sup>74</sup> Radio stations reported the killings of at least twenty-two people on November 12 and 13 in Port-au-Prince, including five money changers on the Rue Pavée on November 13, twelve people in the Poste Marchand section, and five in Cité Soleil.

<sup>75</sup> *Resistance et Démocratie*, Volume 2, Numbers 23-24.

On November 21, several others were arrested separately in Gonaïves, including Sergot Metayer, Rosny Toussaint, "Pinikrit," (arrested at his mother's wake), Augustin Charitable, Senatus, Michel Fermilus, and Alourdes Metayer.

Some, if not all, of the detainees were beaten badly. "Chatte" was beaten on his head, back and buttocks. Augustin Charitable was reportedly beaten in the *djak* position. Alourdes Metayer was beaten so badly in the abdomen that she miscarried her baby. She was released on December 17 along with most of the others.

Jean Claude Teophin, also badly beaten, was not released until January 24, 1994. Seventeen-year-old "Chatte" remains in prison at the time of publication. His family has been unable to see him for fear of reprisal. They learned in a message he managed to smuggle out of the prison that his hands had been kept tied together for twenty-two days and that he was suffering from chronic head and stomach pains.<sup>76</sup>

A group of uniformed soldiers and attachés made a return sweep of the Raboteau neighborhood seeking Amio Metayer on December 19. In one courtyard (a cluster of houses) fifteen adults and fourteen minors, ages four to fifteen were beaten.<sup>77</sup> Victims of the assault reported that they were made to lie face down on the dirt floor for hours while soldiers beat them. The soldiers then carried out a house-to-house search during which they beat and mistreated residents, mostly women and children, and demanded information regarding the whereabouts of Metayer, firing their guns randomly in the neighborhood.

People seeking to escape from the assailants fled into the sea while the soldiers and armed civilians shot at them. Evallière Borneus reportedly drowned trying to escape the shooting, and Louisiana Jean, an elderly woman, died of shock during the raid. Many residents immediately left the neighborhood and have not returned since. A seamstress, interviewed by HRW/Americas and NCHR, was too afraid to return and recover her sewing machine so that she could work. Residents identified one of their assailants as a former neighborhood activist who is now a FRAPH leader.

#### Torture and Arbitrary Arrest in Les Cayes

Christian Joseph, 25, was illegally arrested on December 1, 1993, and tortured in a house outside the southern city of Les Cayes. The Aristide supporter and member of a local organization called Open Eyes (*Lave Je*), went into hiding following the 1991 coup, returning to his home in December 1992. On February 12, 1993, Section Chief Leder Registre ordered two attachés to arrest Joseph. They beat him twenty-two times with a baton before freeing him when a family friend paid US\$12 (150 gourdes). The section chief, who accused Joseph of being responsible for distributing leaflets reading "Down with Leder Registre," told him to get out of town.

Joseph followed his advice, and did not return home until October 1993. On December 1 around 10:00 A.M., he was stopped while riding a bicycle to Les Cayes by a Toyota pickup carrying a uniformed soldier, Registre, and two men in civilian clothes. The soldier forced him into the vehicle, blindfolded him, and drove him to a house where he saw two other prisoners, both Lavalas supporters, who had been there for two days.

On the morning of December 2, one of his captors blindfolded him once more and took him out of the room. He kicked Joseph in the midsection, causing him to fall, and then stood on his back. Turning him over, the man then walked on Joseph's stomach. Joseph described the torture:

The next morning, the same man came into the room. He tied on the blindfold, forced me to lie down and tied my hands together. Several people beat me, walked on my stomach, kicked me

<sup>76</sup> Interviews, Gonaïves, February 12, 1994.

<sup>77</sup> HRW/Americas and NCHR were also shown photographs of the injuries sustained by residents of this courtyard. Some victims interviewed still had visible signs of the beatings at the time of the interview. Interview, Gonaïves, February 12, 1994.

in the neck, forced me to crawl on my stomach, forced me to stand up to give me the *kalot marasa*. I received two blows to the jaw with the butt of a gun and lost a tooth.<sup>78</sup>

Joseph was taken from the prison on the evening of December 6, blindfolded and put onto a vehicle. The blindfold was removed after they passed Les Cayes and he later managed to escape when the car broke down.

#### FRAPH Arson in Cité Soleil Kills at Least 36

A devastating fire swept the shantytown of Cité Soleil on December 27, 1993. The deliberate setting of fires by armed men, who later prevented many residents from leaving the burning site, appeared to be in retaliation for the violent death of leading FRAPH member Issa Paul. Paul, the local FRAPH treasurer, proprietor of a funeral parlor, and Carnival band leader, was killed in the early hours of December 27 in unclear circumstances. FRAPH leader Emmanuel Constant, blaming Aristide supporters, told reporters that a mob had hacked off Paul's arms and set him on fire. This account has been questioned by many Haitians, who believe Paul may have been killed as part of a quarrel within FRAPH.

The attack on Cité Soleil was conducted by a large number of armed men. Carrying guns, grenades, and machetes, they entered the neighborhood, looked for specific persons and shot them on sight, doused the precarious one-room shacks with gasoline, set them alight, and fired their weapons into the air as the flames spread.

Although FRAPH leaders have denied responsibility for the massacre, victims interviewed reported that FRAPH members shot and killed some residents, while others perished in the fire, prevented from escaping by the arsonists, with the tacit support of uniformed police. During the fire, known FRAPH members beat and arrested several people under the eyes of the military. Police did not intervene to stop the carnage, nor did the fire department, which is under military control, make any effort to douse the flames. The Justice and Peace Commission reported that firefighters were turned back by armed men, who said "they didn't have any need for them yet."<sup>79</sup>

Devastated residents of this shantytown, where most houses are built of scraps of wood, corrugated metal and cardboard, lost everything in the fire. All that was left standing in some places were sections of roof and metal bed frames.<sup>80</sup>

Initial reports coming from the Center for Development and Health (*Centre de Développement et de Santé*, CDS), a USAID-funded agency in Cité Soleil, said that no more than four people were killed and 250 families left homeless. A later health ministry report said that 860 homes were destroyed, leaving at least 5,000 without shelter. The Justice and Peace Commission reported the identities of 36 people killed during the incident, as well as 25 people disappeared or unaccounted for, and four injured. Investigations into the massacre are continuing, and another credible estimate put the number of people dead as high as 102.<sup>81</sup>

Those reported killed were: Vélius Joachim, 36, originally from Baradères; Estève Jean, 60, from Baradères; Natasha Café, 6, from Jacmel; André Louis, 28, from Baradères; Katia Isnadère, 2; Jean-Robert Dagrín, 4; Francilia François, 43, from Jérémie; Macule Pierre, 22, from Jérémie; Lessage Trazil, 35, from Thomazeau; Yves Jean, 46, from Port-au-Prince; Léma Alsey, 21, from Moron; Woodyly Jean, 1, from Anse-à-Pitre; Yves

<sup>78</sup> Interview, Port-au-Prince, February 7, 1994.

<sup>79</sup> Commission Archidiocésane Justice et Paix de Port-au-Prince, "27 Décembre 1993 à Cité Soleil: L'Horreur Portée à son Comble! Bilan Provisoire des Cas de Disparitions, de Morts et de Blessés," January 1994. Translated by NCHR.

<sup>80</sup> David Beard, "Stricken Slum has been site of 'civil war' since Aristide's ouster," Associated Press, December 28, 1993.

<sup>81</sup> Interview with residents, Port-au-Prince, February 11, 1994.

Fils, 36, from Jacmel; Venia Massé, 3, from Petite Rivière de l'Artibonite; Elina Joseph, 28, from Mirebalais; Darlène Jean-Baptiste, 8, from Thiotte; Manouchka Jean-Baptiste, 5, from Thiotte; Rodrigue Madichon, 41, from Lascahobas; Séjène Mardi, 72, from Foret des Pins; Apollon Alexandre, 30, from Anse d'Hainault; Jean Edmond, 40, from Anse-a-Pitre; Rosema Mondesir, 10, Adancia Constant, 80, of Jacmel; Mercini Velis, 23, from Les Cayes and his children James Velis, 1, and Mernize Velis, 3 months; Ena Raymond, 43, from Les Cayes, and her daughter, Claudie Raymond, 4; Justine Jean, 35, from Anse-a-Pitre, and her children Maniela Nelson, 4, and Barnave Neson, 2 1/2 months; Simon François, 15 months; Miliana Colon, an adult from Thiotte; Gabriel Rabel, 25, from Anse-a-Pitre and his daughter Daniela Rabel, 2 months; and Darlene Claude, 3. (Almost all of the victims lived in the Soleil 15 or Soleil 17 sections of Cité Soleil.)

Vélius Joachim was shot to death by FRAPH members during the fire. According to his wife, Joachim was taken away blindfolded and shot dead as she was helping their four children escape the fire, which destroyed their house and all their possessions. The family had moved to Cité Soleil from another Port-au-Prince neighborhood, where they had been harassed by armed men. The harassment continued in Cité Soleil. Prior to the fire, armed men had come to their home in Cité Soleil five different times looking for Joachim.<sup>82</sup>

Estéve Jean and his daughter Natasha Café, age 6, perished in the fire when armed men prevented them from escaping. Jean's widow told HRW/Americas-NCHR investigators that armed men in civilian dress and military uniforms encircled the area hours prior to the attack. They nailed doors shut, imprisoning people in their homes, threw gasoline and grenades to start the fire, and beat people back to prevent their escape. When asked why they did this she replied, "because they knew he was a *Lavalas*. In 1991 they shot him in the leg for having an Aristide poster. After that he couldn't work. We used to live in Bolosse, but after my husband was persecuted we moved to Cité Soleil."<sup>83</sup>

Ghislaine, a mother of five children, lost her house and belongings in the fire. Her husband had been in hiding for over a year, persecuted because of his work on the 1990 presidential elections. On May 21, 1992, six men in civilian dress armed with rifles came to the house looking for him. They forced the door open and beat her in the face with their guns. (She is still partially blind in one eye.) With this latest attack, she has been left homeless, with her five children dispersed among different relatives. When asked why she thought this had happened, she responded that it was in retaliation for the killing of Issa Paul, which had been attributed to Aristide supporters. "They said that first it would be the turn of the boys and men, and the turn of the girls and women was coming soon. They said that every day someone in Cité Soleil will be killed. And it has been that way."<sup>84</sup>

The Justice and Peace Commission also reported widespread corruption in the provision of emergency assistance to the victims, which was coordinated by the CDS, with support from USAID. Cards identifying victims eligible for assistance were being sold for US\$35-40 (400-500 gourdes). FRAPH offices in the stricken area, particularly Soleil 17, were preventing many real victims from registering with the CDS. Others, they reported, were afraid to approach the CDS for fear of being caught by FRAPH members in the area. Arson victims interviewed by HRW/Americas and the National Coalition for Haitian Refugees (NCHR) corroborated these reports.

#### Assassinations in Sarthe

Heavily armed soldiers assassinated a group of young men in the early hours of February 3, 1994, in Sarthe near Carrefour Vincent, just north of Port-au-Prince. Uniformed troops and armed men in civilian dress projected tear gas into the house where the young men were meeting, forcing all inside to flee. As they exited the building,

<sup>82</sup> Interview, Port-au-Prince, February 11, 1994.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

the soldiers opened fire, killing them. Six bodies were found inside the house, and forensic examination suggested they had been killed after surrender, when lying on the floor. The depression crater from a grenade detonated in the attack was noticeable inside the house and four pools of blood were discovered just outside. The six bodies found at the house and additional casualties of the attack encountered in neighboring streets, combined for a final death toll as high as fifteen.

The youths reportedly belonged to the Unity Organization to Combat the Misery of the Haitian People (*Oganisasyon Tet Ansanm pou Kombat Mize Pep Ayisyen*, OTAKAMPA) based in Cité Soleil. They had left Cité Soleil to escape the repression there, which intensified following the December 1993 fire.

Police from the Delmas 33 station told the International Civilian Mission, which denounced the attack, that the youths were part of a "terrorist and subversive organization" and that they had an argument among themselves over money.<sup>85</sup>

#### Killings Continue in Cité Soleil

The president of a Cité Soleil political movement (*Alliance des Democratres Patriotes Revolutionnaires Haitiens*) reported the killing of five young men around 10:00 P.M. on February 9, 1994, in Cité Soleil 17 and 19. A large number of soldiers and armed civilians he identified as local FRAPH members, came to the neighborhood in vehicles. They hacked with machetes and shot three of the young men in front of a neighboring house, then pursued the other two as they attempted to flee, killing them also. The three bodies found at the house were identified as Ti Nes Jean, Paul Daniel, and Philippe Antoine. All of the victims were members of the Lintheau Youth Group (*Kombit Jèn Linto*). After the killings, the witness helped cover the bodies, but no one removed them because the perpetrators kept circling the area. Pigs began to eat the bodies of the two that had tried to run away. The next evening, unidentified men arrived and removed the bodies.<sup>86</sup>

By mid-March, more than seventy cases of extrajudicial killings and suspicious deaths had been reported to the UN/OAS International Civilian Mission, following the return of a small contingent of observers to Port-au-Prince on January 31. In the first two weeks of March alone, the Mission was investigating twenty-one cases of extrajudicial killings and suspicious deaths in the capital; sixteen of these occurred in Cité Soleil.

## IX. INTERNATIONAL ACTORS

### U.S. Policy

"We're hemorrhaging credibility."

— Unnamed U.S. official following USS *Harlan County* withdrawal.

Instead of insisting that the protection of human rights of Haitians be a fundamental component of any political solution in Haiti, the Clinton administration deliberately ignored the issue of human rights throughout the Governors Island negotiations and after. In a demonstration of its willingness to set aside human rights in the hopes of achieving a quick political settlement, the Administration sacrificed accountability for those who committed human rights violations following the September 1991 coup, and supported an indiscriminate and inhumane policy of forcibly repatriating Haitians fleeing well-documented persecution. While the Administration took some actions against the *de facto* leaders following the collapse of the Governors Island Accord, those actions were undermined by its record of granting innumerable concessions to the human rights abusers in power in Port-au-Prince who chose to ignore the Accord's provisions. Now, with its credibility seriously undermined, the Administration is left with few options to facilitate the restoration of democracy in Haiti.

<sup>85</sup> Communiqué de Presse, International Civilian Mission in Haiti, OAS/UN, February, 9, 1994.

<sup>86</sup> Interview, Port-au-Prince, February 11, 1994.



### *Governors Island Accord and Accountability*

The ill-fated Governors Island Accord was signed on July 3. It called for the resignation of General Cédras shortly before the return of President Aristide to Haiti on October 30, the lifting of UN and OAS sanctions, and the provision of more than \$1 billion in international assistance. After the conditions of the Accord were met, Haiti was also set to receive technical and military assistance to promote development and administrative, judicial and military reform, including the separation of the police from the army.

Perhaps the most controversial requirement of the Accord called for Aristide to issue an amnesty in accordance with the Haitian Constitution, which allows the president to accord amnesty for political crimes (crimes against the state), but not for common crimes (crimes against individuals). Aristide was under consistent pressure from UN Special Envoy Dante Caputo and Ambassador Lawrence Pezzullo, Special Envoy for President Clinton, to make concessions on the Haitian army's accountability for its crimes. Aristide acquiesced, but insisted correctly that the amnesty should cover only the crimes relating to overturning the constitutional order, not murders, disappearances and torture that had taken place since the coup.

As could be predicted, the amnesty proved to be a serious point of contention between Aristide and the *de facto* leaders. But, instead of siding with Aristide in a public, unequivocal way, the Administration consistently refused to state publicly its position on which crimes should be included in the amnesty or whether an amnesty law needed to be passed by the Haitian parliament. Privately, the Administration argued that a broad amnesty was necessary to satisfy the demands of the *de facto* rulers. In fact, during August and September, U.S. officials now acknowledge that they presented the Justice Minister and Prime Minister Malval with drafts of amnesty laws similar to those passed in other countries, some of which covered not just crimes against the state, but also serious human rights abuses against Haitians.

Although U.S. officials said that Justice Minister Guy Malary was working on an amnesty law when he was killed<sup>87</sup>, in an interview one day before his death, Malary discussed the amnesty question with NCHR and Washington Office on Latin America representatives, saying he considered Aristide's decree to be all that was necessary under the Haitian constitution. Although the parliamentary opposition might submit an amnesty law, the government had no intention of doing so.<sup>88</sup>

After the USS *Harlan County* was turned away and General Cédras began actively pressing Parliament to vote a broader amnesty that would include human rights violations, the Administration refused to support the notion of accountability. Several Administration officials maintained that it was up to Haitians to decide whether to hold human rights violators accountable — even while those same abusive elements remained in control. By the time Haitian citizens would be in a position to support accountability, the broad amnesty under consideration would have been law and those responsible for abuses protected from prosecution. In the end, the only clear signal sent by the U.S.'s public silence and private support for a broader amnesty was that the *de facto* leaders would not be held accountable for the violations they had committed against Haitian citizens.

### *U.S. Military Assistance*

In its eagerness to persuade the Haitian security forces to adhere to their promises under the Accord, the U.S. proposed a premature military assistance package including \$1.25 million under the International Military Education and Training Program (IMET), nearly \$1.2 million in Foreign Military Financing (FMF) for military professionalization; and \$4 million in Economic Support Funds for police professionalization through the International Criminal Investigations Training Assistance Program (ICITAP). Congress conditioned U.S. aid by prohibiting military assistance or training in which there would be participation by any member of the Haitian military involved in drug trafficking or human rights abuses. Even though U.S. Ambassador William Swing promised that trainees in the IMET program would be screened, at the time of the breakdown in the

<sup>87</sup> Interview, U.S. Embassy, Port-au-Prince, February 11, 1994.

<sup>88</sup> Interview with Justice Minister Malary, October 13, 1993.

implementation of the Accord, the Administration had failed to put forward a realistic plan to ensure that this assistance would not end up in the hands of human rights abusers.

The Pentagon's commitment to screening out human rights abusers and its assurances that leaders of the coup would not receive U.S. training recently has been called into question following the release of Pentagon documents showing that at least ten Haitian army officers continued to receive IMET training in the U.S. after the overthrow of Aristide on September 30, 1991. The internal Pentagon documents contradict statements made by the Defense Department denying that training continued after the coup. According to reports, some of the trainees began their programs after the coup took place, while others were allowed to complete their training that had begun before the coup. The disclosure of the information led Rep. Joseph Kennedy (D-MA) to assert, "The United States should never condemn the abuse of democracy and human rights and then turn around and train the abusers on our own soil."<sup>89</sup>

In September, the UN Security Council approved a U.S.-sponsored resolution to send 567 UN police monitors and 700 military personnel to Haiti, including some sixty military trainers. These forces were to include about 500 U.S. troops. After concerns were raised about the lack of adequate human rights screening procedures for trainees, Ambassador Swing announced that the U.S. would no longer be training an interim police force. Instead, UN police monitors and trainers (not including U.S. participants) would conduct the training and, with the Malval government, would be responsible for screening out human rights abusers. The training plan was scrapped once the Accord collapsed, yet as recently as mid-December, there were reports that the "four friends" (the United States, France, Canada and Venezuela) would attempt to convince the Haitian armed forces to allow American and other military personnel to establish a training mission in Haiti.<sup>90</sup> The four friends reportedly also were pursuing the reintroduction of police trainers from Canada, France and other French-speaking countries. In addition, U.S. personnel with the ICITAP program will soon return to Haiti for consultations with members of the Aristide government.<sup>91</sup>

#### *Breakdown of the Governors Island Accord*

From the outset, the U.S. and the international community discounted the mounting evidence that the military would not honor its obligations under the agreement. UN observers and human rights activists warned US officials that violence by the military had escalated dramatically, yet those voicing caution were disregarded because they had not grasped the "big picture."<sup>92</sup> Instead, in order to reward the *de facto* leaders for their anticipated cooperation, the UN embargo was lifted in August, assets were unfrozen and visas reinstated.

As the Clinton administration was finalizing plans for the deployment of U.S. military trainers and observers to Haiti, a debate over U.S. involvement in humanitarian interventions was unfolding after American troops suffered fatalities in Somalia. Vocal Republicans were highly critical of the Administration's plan for protecting the U.S. trainers destined for Haiti, as was Defense Secretary Les Aspin. Despite a climate of uncertainty about the mission as planned, the White House resolved or overruled the Defense Department's objections, and the military trainers were sent to Port-au-Prince.

Implementation of the Governors Island Accord came to an abrupt end on October 11, when a gang of armed paramilitary "attachés" and FRAPH members assisted by Haitian security forces, initiated a noisy protest at the Port-au-Prince dock as the USS *Harlan County* approached, preventing the ship carrying U.S. and Canadian

<sup>89</sup> Paul Quinn-Judge, "Haitians Trained after Coup," *The Boston Globe*, December 6, 1993.

<sup>90</sup> John Goshko, "Four Countries to Press Plan for Training Mission in Haiti," *The Washington Post*, December 17, 1993.

<sup>91</sup> Interview with U.S. officials, Port-au-Prince, February 11, 1994.

<sup>92</sup> George Black and Robert O. Weiner, "A 'Process' Blind to the Cost in Blood," *Los Angeles Times*, October 19, 1993.

military trainers and observers from docking. Confronted by the loud mob, the Administration quickly ordered the withdrawal of the ship, without consulting with other nations' diplomats or heeding the advice of some observers who favored immediate pressure on the Haitian leaders to allow the *Harlan County* to dock, rather than a total retreat. The ship's withdrawal prompted the Special UN Envoy Dante Caputo to complain that, "The excuse for the pullout was that demonstration, and that is the right word, excuse....There were 200 people screaming at the port. Early this year, we were confronted with 3,000 people when we first came here, many of them armed, but we went ahead anyway."<sup>93</sup>

In any case, the *Harlan County's* withdrawal precipitated a total withdrawal of international observers and resulted in an enormous victory for the Haitian military. The first to announce their departure were the Canadians, who began evacuating their troops on October 14.<sup>94</sup> As described elsewhere, UN/OAS International Civilian Mission (MICIVH) personnel were recalled from rural areas to Port-au-Prince out of fear for their safety following an escalation in attacks. The day after the Canadians began their withdrawal, the UN decided to begin evacuation of the MICIVH staff to the Dominican Republic, leaving Haitians who had cooperated with the mission in increased danger. Most importantly, the *Harlan County's* retreat emboldened the *de facto* leaders, who let deadlines agreed to in the accord pass without action and who demanded new concessions from Aristide.

In the weeks leading up to the planned arrival of the *Harlan County*, and even after the ship was turned away, U.S. officials repeatedly stated their firm belief that the Haitian military would uphold its part of the accord. During his visit to Port-au-Prince in late September, Assistant Secretary of State for Inter-American Affairs Alexander Watson had told reporters that the army leaders would carry out the requirements of the accord "to the letter" and that the military leaders "are committed to meeting those responsibilities."<sup>95</sup> Two days after the *Harlan County* was turned away, Col. James G. Pulley, the U.S. Army officer who was commander of the small UN military contingent already in Haiti at the time of the *Harlan County* pullback, declared, "I have confidence in the armed forces of Haiti."<sup>96</sup> This comment prompted an unnamed diplomat to state, "For weeks the United States wanted no mention of the violence here....Now the Haitian Army and police block an American ship from docking...and all they can come up with is a statement of confidence in Haiti's officers."<sup>97</sup> The U.S.' unwarranted trust in the Haitian armed forces' good intentions, and its belief that the military would serve as a guarantor of stability, resulted in predictable failure.

The Administration's response to the Haitian *de facto* leaders' refusal to live up to the Accord was again disappointing. The Administration immediately pushed for the UN to reimpose an oil and arms embargo against Haiti and it reinstated a block on the financial assets of the *de facto* authorities.<sup>98</sup> At the same time, the Administration began to pressure Aristide to broaden his cabinet to include conservatives and to enact a blanket amnesty, thereby repeating its failed strategy of additional concessions to the *de facto* leaders. Although the Administration strenuously denied reports that they were pushing for the inclusion of "anti-democratic" forces in the cabinet, the symbolism of the pressure on Aristide to compromise after the military's many acts of defiance was not lost on the *de facto* leaders. By December, Special Envoy Pezzullo had declared that there needed to be

<sup>93</sup> Howard French, "U.S. Advisor Meets Haitian But Sees No Breakthrough," *The New York Times*, October 16, 1994.

<sup>94</sup> The same day, Justice Minister Guy Malary was assassinated.

<sup>95</sup> "U.S. Insists Plan to Restore Aristide Remains on Track," *The Miami Herald*, September 22, 1993.

<sup>96</sup> Howard W. French, "U.S. Move Angers Diplomats in Haiti," *The New York Times*, October 14, 1993.

<sup>97</sup> *Ibid.*

<sup>98</sup> The list of individuals originally targeted was limited, but has since been expanded to include approximately 564 individuals, most of them officers. The expanded list has not been made public.

a national dialogue "with major forces in the political realm, the labor unions, the military, the private sector...."<sup>99</sup> Pezzullo also stated that officers who had not engaged in repression should be consulted on forming a new coalition government, thereby continuing the Administration's search for "moderates" within the Haitian military who could be cultivated as U.S. allies.

#### *Refugee Policy*

Even though political violence in Haiti had escalated enough to prevent U.S. and Canadian military trainers from landing at the Port-au-Prince dock and to force the withdrawal of UN/OAS human rights monitors, the U.S. continued to repatriate all refugees attempting to flee Haiti, without prior screening for asylum-seekers with legitimate claims. The Administration, which remained fearful of a surge of Haitian boat people landing in Florida, announced that it would continue to rely upon its in-country processing (ICP) program in Haiti to consider Haitians' applications for political asylum in the U.S. The ICP program has been criticized by Human Rights Watch/Americas, the National Coalition for Haitian Refugees, and others as seriously flawed and inappropriately applied in Haiti. In no other instance is ICP seen as a viable substitute for the internationally recognized right to flee one's country and seek refuge. The program is incapable of protecting applicants and securing the information supplied by them in support of their asylum claims. Numerous cases of persecution of applicants to the program have been documented.<sup>100</sup> Moreover, case adjudication is biased against applicants and the State Department's consistently inaccurate assessment of the human rights situation is infused into the program at all levels, resulting in unwarranted denials.

In addition to violating international law regarding the prohibition of *refoulement*,<sup>101</sup> as well as numerous other principles of refugee protection, the U.S. policy of forcibly repatriating Haitian refugees undermines the Administration's ability to condemn human rights violations committed by the military and its supporters because it must justify its repatriation policy by contending that those fleeing are not suffering from systematic persecution. The violators, therefore, avoid forceful condemnation by the U.S. The result is a tacit agreement between the U.S. and the *de facto* leaders, that the refugees do not warrant attention or protection as long as each side benefits by ignoring their plight.

On February 8, President Aristide rightly ended his year-long silence on the Clinton administration's forcible repatriation policy, describing its implementation as a "floating Berlin Wall." He announced that he was reconsidering a 1981 refugee agreement between Haiti (then ruled by Jean-Claude Duvalier) and the U.S. that permits U.S. officials to board vessels from Haiti to search for illegal immigrants, but also specifically provides that the U.S. will not return individuals who might have legitimate claims of political persecution to Haiti. The U.S. reacted to Aristide's statements by criticizing Aristide for raising the issue. The State Department spokesman remarked that, "...threatening to abrogate that agreement amounts in effect to encouraging people to leave Haiti in a way that could only result in deaths at sea, which is presumably something that President Aristide would wish to avoid. So we find his remarks quite mystifying."<sup>102</sup> The spokesman explained, incorrectly, that the U.S.'s

<sup>99</sup> "Clinton Advisor Urges Sharing Power with Some in Haitian Military," *The Miami Herald*, December 8, 1993.

<sup>100</sup> For example, Pierre Michel Guillaume, an active Aristide supporter from Les Cayes, was abducted on September 27 in Port-au-Prince. He was seized by men in a white pick-up without license plates as he left the U.S. refugee processing office, according to the International Civilian Mission. Guillaume later reappeared and is currently in exile in the U.S., according to U.S. embassy officials.

<sup>101</sup> Article 33 of the 1951 Convention on the Status of Refugees provides:

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 U.S. is not a party to the 1951 Convention, but has signed and ratified its 1967 Protocol. In any event, the Convention's non-*refoulement* clause is declaratory of customary international law and therefore binding on the U.S., and for that reason it has been incorporated into U.S. domestic law, including the Refugee Act of 1980.

<sup>102</sup> As transcribed by Federal News Service, February 9, 1994.

forcible repatriation policy is not a violation of international law because of the 1981 agreement, and commented that those who believe that it is a violation of international law have a "peculiar view."<sup>103</sup> In fact, as stated above, with or without the bilateral agreement, the U.S.'s policy of forcibly returning refugees violates customary international law prohibiting *refoulement*.

The Administration struggled to defend its repatriation policy. At a December 8 briefing by Assistant Secretary of State for Human Rights and Humanitarian Affairs John Shattuck, he replied to a reporter's question about the refugee policy by stating, "In the future when that restoration of democracy occurs, the policy of interdiction and the grave difficulties that I think that poses for issues of asylum, will no longer be the applicable policy."<sup>104</sup> Two days later, Shattuck was asked whether the U.S. policy conformed with either the spirit or letter of the International Covenant on Civil and Political Rights, to which he responded, "The U.S. is committed to considering the asylum applications of all who make them in Haiti, and it — to the extent that that commitment is fulfilled, and I believe it is, then the United States is acting consistent with the covenant in question. But this is not an easy issue and it is not an issue that will be resolved until democracy returns to Haiti."<sup>105</sup>

Just days later, following a trip to Haiti, Shattuck stated, "I'm going back with a view that a policy review is necessary."<sup>106</sup> The following day, the State Department spokesman declared there was no plan to change the policy. Shattuck himself was reportedly reprimanded by Peter Tarnoff, Under Secretary of State for Political Affairs. One State Department official stated that Shattuck's comments were, "completely wrong and outrageous....It was a completely rogue statement."<sup>107</sup> Yet Shattuck's sentiments are shared by other Administration officials who have told human rights activists that they are uncomfortable with the policy or do not support it.

In congressional testimony on February 1, Shattuck returned to the Administration's publicly stated policy by reporting that the in-country processing program had been reviewed and improved, particularly in rural areas. Shattuck concluded that "there is a significant effort of outreach that's being made by the United States to assure that all those who have a claim to refugee status in country can be — can get that claim met."<sup>108</sup>

During a fact-finding trip to Haiti in mid-February, however, HRW/Americas and NCHR found that the ICP program was even more restrictive and unresponsive to the severity of the refugee crisis. Moreover, forced repatriations to the Port-au-Prince pier have become increasingly dangerous. Since the *Harlan County's* October retreat, human rights monitors and journalists have been barred from the dock. In addition, repatriates identified as "high priority" for expedited asylum interviews by U.S. Embassy personnel prior to disembarkation have been arrested at the pier and detained for several days.

#### *Role of the Central Intelligence Agency*

The role of the Central Intelligence Agency (CIA) in Haiti received a great deal of attention during the last few months of 1993. A CIA analyst's congressional briefing, which was highly-critical of Aristide, and the revelation that the CIA-created Haitian National Intelligence Service (*Service d'Intelligence Nationale*, SIN), was

<sup>103</sup> *Ibid.*

<sup>104</sup> As transcribed by Federal News Service, December 8, 1993.

<sup>105</sup> As transcribed by Federal News Service, December 10, 1993.

<sup>106</sup> "U.S. Aide to Seek New Policy on Fleeing Haitians," *The New York Times*, December 15, 1993.

<sup>107</sup> Steven A. Holmes, "Rebuking Aide, U.S. Says Haiti Policy Stands," *The New York Times*, December 16, 1993.

<sup>108</sup> Assistant Secretary John Shattuck's testimony before the Subcommittee on International Security, International Organizations, and Human Rights of the House Foreign Affairs Committee, on February 1, 1994, as transcribed by Federal News Service.

engaged in political terrorism and drug trafficking, raised serious questions about the quality of information provided by the CIA to policy-makers, as well as the complicity of the U.S. agency in human rights abuses in Haiti.

A week after the USS *Harlan County* was turned away from the Port-au-Prince dock, Sen. Jesse Helms (R-NC) requested and received a briefing by the CIA's chief Latin American analyst Brian Latell about Aristide's background. At the briefing, which was reportedly attended by a dozen Senators, Latell stated that Aristide had been hospitalized with psychological problems, had been implicated in the murder of political opponents, and had incited mob violence.

While Human Rights Watch/Americas and NCHR have criticized Aristide for two speeches he made that seemed to justify "popular justice" or mob violence, we found no evidence that he had incited actual acts of violence. We have found allegations that Aristide ordered the murders of political opponents to be unfounded. We have also noted that during his brief tenure as president, human rights observance in Haiti improved considerably. Even though the human rights record of Aristide should be discussed, abuses that may be attributed to him pale in comparison to his successors now controlling Haiti, yet those records were not a subject of a CIA briefing during this volatile period. More than a month later, the *Miami Herald* reported that the allegations of Aristide's hospitalization were false.<sup>109</sup> Even though much of Latell's information was false or disputable, there was no official rebuke, such as the one Assistant Secretary Shattuck reportedly received for stating his opinion on the refugee issue.

When questioned about whether, in light of the CIA reports about Aristide, the Administration believed Aristide was capable of governing, the State Department spokesman replied that it was up to Haitians to make "those types of judgments." He went on to state that the U.S. evaluates foreign leaders differently at different times, "and that's stuff we keep confidential."<sup>110</sup> In this case, however, the CIA's evaluation was not kept secret, and it has been argued that the Haitian military was aware of growing apprehension in the U.S. about Aristide, and that those doubts strengthened its resolve to hold on to power. At the very least, the congressional debate over Aristide's human rights record — a debate that should have taken place long before, but certainly not during, this period of rising tensions both in Port-au-Prince and Washington — and discussions about his mental health resulted in a lengthy diversion from the human rights crisis that was unfolding in Haiti.

In November, information about the activities of the CIA-created intelligence unit, SIN, which reportedly operated until just after the September 1991 coup, began to surface. The SIN reportedly spent millions of dollars provided by the U.S. for training and equipment, yet provided little narcotics intelligence, which was its intended purpose. Instead, senior members of the SIN reportedly interrogated and tortured political activists, raising serious questions about U.S. complicity in human rights violations. U.S. funding for some of the individuals committing those abuses, while Washington was ostensibly condemning violations, sent yet another mixed signal to Haitian leaders about U.S. dedication to human rights. Three SIN leaders — Col. Ernst Prudhomme, Col. Diderot Sylvain and Col. Leopold Clerjeune — were included on the U.S. Treasury Department's list of targeted frozen assets beginning on November 1.<sup>111</sup>

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<sup>109</sup> Christopher Marquis, "CIA Report on Aristide was False," *The Miami Herald*, December 2, 1993.

<sup>110</sup> As transcribed by Federal News Service, November 3, 1993.

<sup>111</sup> "C.I.A. Formed Haitian Unit Later Tied to Narcotics Trade," *The New York Times*, November 14, 1993.

*State Department's Country Reports on Human Rights Practices*

In a recent indication that the Clinton administration is unable or unwilling to grasp fully the scope of the human rights problem in Haiti, the State Department's Country Reports on Human Rights Practices, published on February 1, 1994, was characterized by serious omissions and errors. Among the report's shortcomings:<sup>112</sup>

- ◆ Political violence increased dramatically beginning in September, yet even though those statistics were available to the State Department, they chose not to include them. The report's omission of statistics describing the most violent period of the year, from September through November, resulted in an incomplete factual basis upon which to base any analysis of trends in political violence for the last four months of the year. The State Department uses the UN/OAS International Civilian Mission's (MICIVH) figures for political killings in July and August, yet misinterprets the mission's findings by underreporting the total number of documented political killings;
- ◆ The report fails to mention the Front for the Advancement and Progress of Haiti (FRAPH) at all, even though the quasi-political organization has been nurtured by the military since its emergence in September and has been implicated in numerous serious human rights violations, including the burning/massacre in Cité Soleil;
- ◆ The report describes an incident during which pro-Aristide demonstrators threw rocks at vehicles of the mission, yet the mission has stated that this incident never occurred. They have reported that mission personnel and the Haitians who cooperated with them were regularly harassed by the security forces and their supporters, but these acts of intimidation are downplayed in the State Department's report, which labels the attacks as "perceived";
- ◆ The report fails to mention the Haitian military's failure to honor the terms of reference for the mission's access to detainees;
- ◆ The report claims that one person was killed during the attack by attachés during the September 8 ceremony at the Port-au-Prince City Hall, yet the mission verified at least three killings. Further, the State Department's report failed to mention that police were present during the attack, yet did nothing to protect the victims;
- ◆ Military section chiefs are identified as paramilitary without adequately describing their direct relationship to the Army and, therefore, the Army's responsibility for the abuses committed by the section chiefs;
- ◆ The report contains a cursory description of the murder of prominent Aristide supporter Antoine Izméry, without mentioning the mission's detailed report containing evidence of the complicity, if not direct participation, of the Haitian armed forces in the assassination;
- ◆ The report includes a similarly brief description of the murder of Justice Minister Guy Malary, one of the most important leaders of the constitutional government. The report fails to mention that when the mission investigators approached the scene of the murder, they saw the commander of the Anti-Gang Service of the police ordering witnesses to be taken away;
- ◆ The report understates frequent attacks on the media, and fails to mention even the most prominent cases, such as the torture of Radio Tropic FM reporter Colson Dormé;
- ◆ The report states that there were no credible claims of retribution against repatriated refugees not involved in organizing voyages, yet it is well-known that individuals who are arrested after being returned by the U.S. Coast Guard are charged with crimes relating to organizing "clandestine voyages" as a method of intimidation and blackmail. In fact, individuals who have been returned to Haiti by the U.S. Coast Guard and classified

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<sup>112</sup> The critique is based, in part, on a February 3, 1994 letter from Ian Martin, former Director of Human Rights of the International Civilian Mission to Assistant Secretary of State for Human Rights and Humanitarian Affairs John Shattuck.

as "high priority" cases (meaning that U.S. Embassy officials believe their claims of persecution were serious enough to warrant immediate consideration) have been arrested.

As the State Department's reference book on human rights around the world, it is important that the information and analysis contained in the report accurately reflect the situation in the countries monitored. Unfortunately, the Haiti chapter of this year's report does not do justice to the abysmal human rights situation now prevailing in Haiti.

#### *Current Impasse*

At the time of this writing, the Clinton administration was reportedly reevaluating its efforts to pressure President Aristide to make further concessions to the Haitian army. After the U.S.-initiated proposal<sup>113</sup> to restart the Governors Island process failed to gain support by either the Haitian military or President Aristide — and was roundly criticized by Members of Congress and human rights groups, the Clinton administration announced a new plan.<sup>114</sup> The new plan calls for three steps to take place on the same date: General Cédras would step down, the Parliament would confirm the new Prime Minister named by President Aristide, and a law granting amnesty to the military leaders who led the coup would be enacted. If the military fails to support the new plan, the U.S. would press the UN Security Council to approve a tougher, mandatory embargo.<sup>115</sup>

Although details of the plan have not yet been made public, there are several problems with the proposal, as announced. The names of the military leaders expected to step down has not been made public, nor is it clear what role they will be allowed to play in Haitian politics. The plan fails to describe the limits of the anticipated amnesty and, by including the amnesty law (drafts of which reportedly exonerate members of the armed forces accused of serious human rights violations) as one of the required steps to restore democracy, the U.S. is supporting impunity for human rights abusers.

#### **The United Nations**

##### *The Role of UN/OAS Special Envoy Dante Caputo*

With President Clinton's election as a catalyst, the OAS and the UN selected Dante Caputo as a new mediator for the Haitian crisis in late 1992. Caputo was a veteran diplomat and intellectual who served as foreign minister under President Raúl Alfonsín from 1983 to 1989, in Argentina's first civilian government after six years of military rule. The Alfonsín government prosecuted top military leaders for their role in the killing and disappearance of thousands of people in the so-called "dirty war" of the late 1970s.

Caputo's enterprise and stamina during successive visits to Haiti were evident in the first part of the year. The international community, led by the United States, had gained a new determination to wrest power from Haiti's generals. But Haiti's military and economic elite, still prospering after a year-and-a-half of the unenforced OAS embargo, was defiant. They sponsored noisy and sometimes violent protests against Caputo, blocking his movement and interfering with his negotiations. Despite the protests, Caputo obtained the de facto government's agreement to allow the International Civilian Mission to monitor human rights in early February. But further movement eluded the mediator, with the military maintaining its interest in a solution but avoiding commitment.

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<sup>113</sup> The U.S. actively promoted the plan, which was presented misleadingly as a proposal initiated by a U.S.-sponsored delegation of Haitian parliamentarians visiting Washington, D.C. The plan lacked any guarantees to ensure accountability for past human rights violations or respect for human rights in the future. The proposal also lacked an established date for President Aristide's return.

<sup>114</sup> Steven Greenhouse, "U.S. Again Shifts its Policy on Haiti," *The New York Times*, March 27, 1994.

<sup>115</sup> The U.S. is also reportedly urging other countries to cancel or reject requests for visas of more than 500 military officers, with visa cancellations extended to officers' families if the military refuses to yield.



A proposed settlement developed by Caputo in March and April and backed by Washington called for Cédras' resignation, the forming of a new government named by Aristide and an amnesty for the military. While news reports spoke of an amnesty, supported by Caputo, that would cover serious human rights abuses as well as political crimes, Aristide was extremely reluctant to agree to such a blanket amnesty. Caputo reportedly holds the view that such an amnesty is a requirement of any negotiated settlement.<sup>116</sup>

Caputo's efforts appeared to collapse in late May when Cédras rejected an accord including an amnesty and the proposed multinational police force. This end to months of negotiations finally persuaded the international community, its credibility in Haiti very low, to pressure the *de facto* leaders. After several weeks' of deliberation, the Security Council voted on June 16 to impose an international fuel and arms embargo on Haiti. It would be enforced by warships from the United States, France, Canada and Argentina.

Almost before the sanctions went into effect, the military did an about-face and offered to talk. The Governors Island agreement that followed saw an extremely reluctant Aristide forced to agree to terms for an amnesty that left open the possibility for broad absolution for even grave crimes in the hands of the Haitian Parliament, and which called for lifting the embargo prior to Aristide's actual return.

#### *The UN Embargo*

The Security Council-mandated embargo reimposed on Haiti after the assassination of Justice Minister Guy Malary has prevented large scale deliveries of oil by sea but has been less successful at obtaining Dominican cooperation to seal its long land border with Haiti.<sup>117</sup> Although U.S. Embassy officials said that Ambassador Swing has held five meetings with Dominican President Balaguer and that they were satisfied that the Dominican Republic was cooperating with the embargo, in February 1994 gasoline and diesel fuel were easily available in Port-au-Prince to anyone able to pay \$8-10 per gallon. The cross-border trade is controlled by the Haitian military, which is profiting handsomely.

Although economic sanctions have failed so far to force the military to accept Aristide's return, they have exacted a high price from the Haitian people.<sup>118</sup> Not all of Haiti's recent economic woes can be attributed to the embargo, however; they also result from the breakdown in the constitutional order, the dislocation caused by extensive and pervasive persecution, the ensuing disruption of services and spiraling corruption, and the cut-off of most foreign assistance. The mass phenomenon of internal displacement, which keeps tens of thousands of bread-winners from cultivating their crops or appearing for work, has also contributed to the precarious economic situation of Haitian workers.

## X. RECOMMENDATIONS

### Recommendations to the United States

- ◆ End the summary repatriation of Haitian boat people. Forcibly repatriating fleeing Haitians, without regard to their legitimate claims for asylum, violates internationally recognized principles of refugee protection. The

<sup>116</sup> Howard French, "Haiti Talks Stall Over Amnesty for Coup Leaders," April 7, 1993.

<sup>117</sup> The voluntary or unenforced OAS embargo, in place since October 1991, bans most trade with exemptions only for vital foodstuffs, cooking gas, and medicine. The U.S. has imposed its own unilateral embargo with the same exemptions as the OAS's. An additional exemption for U.S. manufacturing industries operating in Haiti was incorporated by the Bush administration after successful lobbying by those industries, assisted by former Assistant Secretary of State Elliott Abrams.

<sup>118</sup> Reports from different parts of Haiti indicate that malnutrition is growing among some groups of children, but it has proved difficult to generalize about the country as a whole. The U.S. relief agency CARE had been feeding as many as 580,000 people a day in 1993 but was forced to cut back food deliveries by late January to 117,000 because of problems with fuel.

in-country refugee processing program is chronically deficient and under no circumstances should serve as the only alternative for asylum seekers.

- ◆ End the current policy of downplaying the human rights crisis in Haiti by immediately and publicly denouncing serious human rights abuses as they occur. In order to demonstrate renewed support for human rights principles, the Clinton administration should publish a new report on the current human rights situation in Haiti, which would serve as a useful supplement to the inadequate submission in the February 1 *Department of State Country Reports on Human Rights Practices*.
- ◆ Appoint a new special envoy to Haiti in order to signify a change of policy. By promoting a flawed U.S. policy that downplays human rights concerns, Ambassador Pezzullo has lost credibility and should be replaced by an individual with a proven commitment to human rights. Review the entire U.S. strategy for restoring democracy to Haiti by starting anew with a commitment to emphasize human rights protections and accountability for abusers.
- ◆ Make clear that the restoration of democracy in Haiti necessitates the return of Rev. Jean-Bertrand Aristide to the presidency, under conditions that allow him to exercise the full powers of the office to which he was duly elected. U.S. negotiators must be mindful of the time remaining in President Aristide's term, and must not allow efforts to resolve the crisis to be delayed until his return becomes impractical.
- ◆ Call for the return of a significantly enlarged UN/OAS International Civilian Mission to monitor human rights throughout Haiti and to collect information about abuses that could be used to purge the armed forces of abusive members and to prevent the hiring of the armed civilians now engaging in widespread human rights abuses.
- ◆ Oppose publicly and explicitly any broad amnesty that would absolve members of the Haitian armed forces and their supporters for serious human rights abuses committed since the September 1991 coup. U.S. support for a blanket amnesty undermines the very goals the U.S. claims to advocate — support for human rights and the rule of law. Any quick political advantage gained by supporting a broad amnesty will be short-lived since democracy cannot be built on a foundation of impunity for murder and torture.
- ◆ Insist on the creation of a separate police force, answerable to the Ministry of Justice, as an essential component in restoring democracy and bringing the Haitian police under the rule of law.
- ◆ Target sanctions more carefully to exert pressure on those who have in their hands the key to change in Haiti. The list of approximately 564 Haitians whose assets will be frozen and who will be denied visas by the U.S. is not enough. Much of its impact is lost by the fact that the complete list is not public. Also, the great majority of those included are military officers and their immediate relatives; only a few are civilians. An effort must be made to include civilians whose support for the de facto regime warrant personalized sanctions. The Clinton administration should propose to the UN and OAS that all other countries join in similar targeted sanctions and make public the list of those individuals whose actions against democracy and human rights in Haiti deserve international stigmatization.
- ◆ Provide information on alleged CIA funding of the Haitian National Intelligence Service (SIN), which reportedly engaged in the torture of political activists and committed other abuses. Initiate a public inquiry into CIA activities in Haiti and implement effective guidelines that will prevent the CIA from funding or in any way supporting human rights abuses by agencies in Haiti. Further, the Clinton Administration should publicly disavow inaccurate and biased information provided by its analysts, which do not represent, and effectively contradict, official U.S. policy.
- ◆ Rescind Executive Order 12324 of September 1981, under which Haitian vessels found in international waters and bound for the U.S. are interdicted and returned to Haiti after on-board screening for asylum seekers. The

U.S. should also rescind Executive Order 12807 of May 1992 which stipulates that all Haitian boats be interdicted and their passengers returned to Port-au-Prince with no prior screening for asylum seekers.

- ◆ Promote a multilateral, regionally-based response to the refugee crisis, including the establishment of one or more safe havens. Any safe haven should employ the good offices of the United Nations High Commissioner for Refugees to ensure observance of basic principles of refugee protection.
- ◆ Make available U.S. assistance and training for members of the armed forces only after the High Command is replaced and thorough human rights screening to exclude human rights abusers in the armed forces is completed. The U.S. must ensure that abusive members of the armed forces do not receive any U.S. training or assistance. The U.S. should also make public the list of the members of the new police or armed forces who receive U.S. assistance.

#### Recommendations to the UN, OAS, and their Special Envoy

- ◆ Redeploy a significantly enlarged UN/OAS International Civilian Mission to Haiti to monitor and denounce human rights abuses. The Mission's mandate should be expanded to include the systematized collection of information on abuses that could be used to purge the armed forces of abusive members and to prevent the hiring of the armed civilians now engaging in widespread human rights abuses.
- ◆ Review the entire UN/OAS strategy for restoring democracy to Haiti by starting anew with a commitment to emphasize human rights protections, accountability for abusers, and by making the return of President Aristide — by a set date — non-negotiable.
- ◆ State publicly and clearly, through the UN/OAS Special Envoy Dante Caputo, opposition to a blanket amnesty that would absolve members of the Haitian armed forces and their supporters for serious human rights abuses committed since the September 1991 coup.
- ◆ Support the creation of a Truth Commission and other mechanisms similar to those established in El Salvador to bring to light abuses committed since the coup and to begin the process of ridding the armed forces of human rights abusers.
- ◆ Impose worldwide targeted sanctions against Haitian military officers, FRAPH members, and civilians whose support for the *de facto* regime warrant personalized sanctions. The list of individuals targeted should be made public.
- ◆ Monitor the effects of the UN embargo and be prepared to counter undesired damage to the health and well-being of Haitians by increasing and expanding humanitarian relief efforts.
- ◆ Promote the creation of regional safe havens for fleeing refugees, based on the concept of burden-sharing. Any safe haven should employ the good offices of the United Nations High Commissioner for Refugees to ensure observance of basic principles of refugee protection.
- ◆ Make available UN assistance and training for members of the armed forces only after the High Command is replaced and thorough human rights screening for abusive members of the armed forces is completed. The UN must ensure that abusive members of the armed forces do not receive any UN training or assistance. The UN should also make public the list of the members of the new police or armed forces who receive UN assistance.

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#### *Human Rights Watch/Americas (formerly Americas Watch)*

*Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East, and among the signatories of the Helsinki accords. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; and Susan Osnos is the communications director. Robert L. Bernstein is the chair of the executive committee and Adrian W. DeWind is vice chair. Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. Cynthia Arnsion and Anne Manuel are the acting directors; Sebastian Brett, Robin Kirk, Ben Penglase and Gretta Tovar Siebenritt are research associates; Stephen Crandall and Vanessa Jiménez are associates. Peter D. Bell is the chair of the advisory committee and Stephen L. Kass and Marina Pinto Kaufman are vice chairs.*

*National Coalition for Haitian Refugees, established in 1982, is composed of forty-seven legal, human rights, civil rights, church, labor, and Haitian community organizations working together to seek justice for Haitian refugees in the United States and to monitor and promote human rights in Haiti. Its executive director is Jocelyn McCalla and its associate director is Anne Fuller. In addition to periodic reports on human rights in Haiti, the NCHR publishes a monthly bulletin on human rights and refugee affairs which is available upon request.*

**AMERICAS WATCH A Division of Human Rights Watch**

485 Fifth Avenue, New York 10017 (212) 972-8400, fax (212) 972-0905  
 1522 K Street N.W. Washington D.C. 20005 (202) 371-6592, fax (202) 371-0124

**NATIONAL COALITION FOR HAITIAN REFUGEES**

16 East 42nd Street, New York 10017 (212) 867-0020, fax (212) 867-1668

**JESUIT REFUGEE SERVICE/USA**

1424 Sixteenth Street N.W., Washington D.C. 20036 (202) 462-0400, fax (202) 328-9212

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**No Port in a Storm**

**The Misguided Use of In-Country  
 Refugee Processing in Haiti**

**Contents**

Summary of Findings .....	2
I. Introduction .....	4
II. History of U.S. Policy Toward Haitian Refugees .....	6
III. In-Country Processing in Haiti .....	8
A. Background .....	8
B. Operational Structure .....	9
C. Recent Expansion .....	10
D. Current Functioning .....	10
IV. A Critical Assessment of the ICP Program .....	15
A. The Central Role and Biased View of the State Department .....	15
B. Political Isolation Weakens the Program .....	17
C. No Safe Haven Component is Available .....	18
D. Operational Deficiencies .....	20
E. Inconsistency in Adjudication .....	22
F. Representative Cases .....	26
G. Some Asylum Seekers Will Not Risk Applying .....	30
V. Interdiction, Forced Return and In-Country Processing .....	31
VI. Conclusions .....	33
VII. Recommendations .....	35
Acknowledgments .....	36

## SUMMARY OF FINDINGS

When the September 30, 1991 military *coup d'état* exiled Haiti's democratically elected president and unleashed some of the most brutal repression in Haitian history, the U.S. government went to new extremes in curtailing the rights of Haitian asylum seekers. The damage done by this misguided and discriminatory refugee policy will persist long after a political settlement is achieved in Haiti.

For many years, the United States government has been interdicting Haitians on the high seas and returning them to Haiti with only minimal efforts at screening for refugee status. This policy, coupled with discriminatory treatment of Haitian asylum seekers in the U.S., has been the focus of longstanding criticism and a stream of legal challenges.

The Bush Administration's response to the September 1991 political crisis was feeble and to the refugee crisis, reprehensible. The United States joined other nations in the western hemisphere in condemning the coup, refusing to recognize the new military-backed government and imposing sanctions. However, after an initial hesitation, and in spite of widespread human rights violations and generalized violence, the interdiction policy continued. The exception was a short interlude when Haitians picked up at sea were taken to Guantánamo Bay to be screened for asylum seekers after a Florida federal district judge imposed a temporary restraining order halting forced repatriations. In February 1992, the Bush Administration established an in-country processing (ICP) program through the U.S. Embassy in Port-au-Prince. That same month, the Supreme Court lifted the ban on the involuntary return (*refoulement*) of Haitian refugees.

The parameters of debate shifted dramatically, however, when on May 24, 1992, then-President Bush ordered all Haitians to be interdicted on the high seas and summarily returned to Haiti, with no prior screening for refugees fearing persecution. ICP, which had historically been conceived as an additional avenue of protection for refugees in selected countries, became the only option for victims of Haiti's repressive military regime.

U.S. foreign policy and refugee policy have been historically inseparable and interdependent. The case of Haiti, and Haitians, is no exception. Newly elected President Clinton, who had made campaign promises to rectify the illegal and irresponsible refugee policy, opted instead to continue it. His administration justified this reversal by raising the spectre of a huge, uncontrollable invasion of economic refugees and by arguing that the policy saved lives.

The Clinton Administration has undeniably contributed to progress made thus far in the reinstatement of constitutional government. Nevertheless, the pre-inauguration announcement that the policy of forcibly returning refugees would continue, with the support of President Aristide, was inconsistent with the Administration's stated commitment to seeking justice in Haiti. Increased efforts on the political front became the excuse for forfeiting the rights of the refugees.

In January, the incoming and outgoing administrations agreed to blockade the island with U.S. Coast Guard cutters, Navy ships and helicopters in order to prevent refugee flight. Clinton's administration went so far as to defend the policy of forced return, successfully, before the Supreme Court, leaving the heretofore globally recognized principle of *non-refoulement* in a shambles. It further proposed to expand and improve ICP, thereby attaining what has since been touted as "complete coverage" for Haitian asylum seekers. Thus, in an ironic twist, *non-refoulement* is considered irrelevant to a major refugee crisis, and ICP, for the first time in its history, is considered an appropriate sole remedy.

In March 1993, The Inter-American Commission on Human Rights of the Organization of American States issued an interim resolution in response to a petition pending before it challenging the U.S. government's Haitian

interdiction program. The resolution found that the interdiction policy is in violation of international law and should be suspended immediately.

In spite of observable improvements made this year in the program, ICP in Haiti, while certainly able to help some people, cannot be considered an adequate sole remedy for asylum seekers. It is both a product and a victim of the flawed and politicized view of the Haitian refugee crisis held by the U.S. government, and as such, is isolated from and distrusted by international and local refugee experts and human rights organizations, not to mention the very people it is meant to assist.

The State Department runs the program and is responsible for every aspect of it. The Immigration and Naturalization Service (INS) handles the actual case adjudication, which is heavily influenced by the faulty premise behind the program and overly reliant on the State Department including for information on country conditions and Haitian culture. Human rights analysis from the State Department is contradictory and at times appears tailored to fit the refugee policy. The fact that the U.S. government considers ICP an adequate response in the Haitian context is testimony to its biased perspective on human rights.

The most obvious shortcomings in ICP, as applied in Haiti, are the following:

1. There is no protection component. A number of cases have been documented of Haitians who have been persecuted at different stages of the process, including while awaiting a decision, after conditional approval and after being denied asylum. Risks are exacerbated by inordinately long delays in processing all but the most exceptional cases.
2. There are built-in characteristics, stemming from the U.S. government's incorrect assessment of the refugee crisis, which lead to limited access to the reasonably expedited treatment an asylum seeker logically needs and deserves. All applicants who are not "high-profile" or deemed to be in imminent danger will not even have an initial interview until six or more months after approaching the program. This includes people who would be able to meet the burden of proof for asylum. Priority (vetting) determinations based solely on the contents of a written questionnaire do not constitute a fair hearing under the circumstances.
3. There is evidence of inconsistency in adjudication, unfair application of the standard for asylum and questionable credibility determinations. Cases reviewed showed that past persecution is nearly always a prerequisite for approval. In several cases reviewed, a denial of asylum was only overturned when the applicant was brutalized in the interim. Even among cases where persecution has already occurred, asylum has been denied.
4. Those potential asylum seekers who do not feel that they can safely avail themselves of the program are left with no option. Haitian human rights groups and NGOs feel that this is the case for a significant number of victims of persecution.
5. Haitians interdicted on the high seas and returned are subject to detention under a 1980 decree prohibiting the organization of illegal departures from the country. The existence of this law blurs the distinction between illegal departure and refugee flight. The presence of ICP does not alter the fact that forcibly returning Haitians interdicted on the high seas, puts them at serious risk of both prosecution and persecution.

The Clinton Administration's efforts toward achieving a political solution in Haiti can be favorably contrasted to his predecessor's inaction. Nevertheless, this progress is diminished by the continuation and promotion of a refugee policy that is inhumane and illegal and ultimately calls into question the U.S. government's commitment to human rights and a democratic regime in Haiti. It would be a mistake to assume that progress in the restoration

of constitutional government signals an end to repression, and hence to the needs of asylum seekers. It is imperative that this policy be replaced with an approach to Haitian refugees which incorporates basic refugee protections.

ICP has been unfairly used as an excuse for forcibly repatriating Haitians. A broader solution to the Haitian refugee crisis which respects the basic principles of non-refoulement and temporary refuge is called for. ICP could appropriately serve as part of such a response.

Finally, the treatment meted out to Haitians has furthered a global trend toward curtailing the rights of asylum seekers and closing borders in the face of victims of persecution. The Haitian experience flags some of the dangers inherent to attempts to address refugee migration through abbreviated procedures and summary return.

## I. INTRODUCTION

The September 30, 1991 military coup that exiled President Jean-Bertrand Aristide after only eight months in office, submerged Haiti under a tidal wave of repression and despair. The military fury unleashed against the broad popular sectors that brought Aristide to power has left hundreds, perhaps thousands, dead and made many thousands more the targets of various forms of brutal persecution.<sup>1</sup> A direct result of this widespread destruction of Haitian society has been forced migration on a massive scale. Human rights groups estimate that the number of people internally displaced or in hiding since the coup is in the hundreds of thousands.<sup>2</sup> Tens of thousands more took to the high seas, thereby exercising their internationally recognized right to leave their country and seek asylum.<sup>3</sup>

In the wake of the coup, the Bush Administration was faced with two closely interrelated problems: what to do about the political explosion in Haiti, and what to do about its human fallout. President Bush's response defied all logic. He reacted in a lukewarm manner to the critical fact of President Aristide's ouster while exerting considerable effort to keep the refugees off U.S. shores.

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<sup>1</sup> The Inter-American Commission on Human Rights reported in an August 27, 1993 press release, that 1,500 people had been killed since the coup and 300,000 driven into hiding. Haitian human rights groups estimates are even higher. See generally Americas Watch and National Coalition for Haitian Refugees, *Silencing a People* (New York, AW and NCHR, 1993.) See also, Department of State *Country Reports on Human Rights Practices for 1992* (Government Printing Office, Washington, D.C., 1993), Haiti discussion at pp. 421-425, and reports and press releases of the UN/OAS International Civilian Mission, March - August, 1993.

<sup>2</sup> The term "in hiding" (*marronage*), commonly used in post-coup Haiti, refers to a range of survival measures taken by individuals who have been persecuted or fear persecution. Being in hiding often involves constant movement, prolonged displacement and inability to work or to be united with family members. Its many manifestations include not sleeping at home at night, leaving town entirely, frequent moving from place to place or remaining confined indoors at a location deemed safe by friends or other helpers. It is often a progressive or fluid state and the causal fear and insecurity are compounded by economic hardship and personal isolation.

<sup>3</sup> Article 13.2 of the Universal Declaration of Human Rights states, "Everyone has the right to leave any country, including his own, and to return to his country." Article 14, 1 states, "Everyone has the right to seek and to enjoy in other countries asylum from persecution." Article 12.2 of the International Covenant on Civil and Political Rights states, "Everyone shall be free to leave any country including his own." Article 22 of the American Convention on Human Rights guarantees the right to leave any country and further guarantees the right to "seek and be granted asylum in a foreign territory..." (ppgh. 6) and the right of non-refoulement (Ppgh. 8). Article 33 of the 1951 Convention Relating to the Status of Refugees 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."



A longstanding U.S. policy of discrimination against Haitian refugees is the platform upon which the management of this extraordinary human crisis is based. So it comes as no surprise that precisely when military repression reached a new high, tolerated and even promoted by the *de facto* government, the quality of U.S. treatment of Haitian refugees reached a new low. Indeed, both the Bush and Clinton administrations have gone to great lengths to turn the meaning and intent of international and U.S. refugee law upside down in order to restrict to the fullest extent possible the entrance of Haitian refugees.

During his campaign, President Clinton promised to do what his predecessor had not: contribute to the return of democratic government in Haiti and discontinue what he denounced to be an illegal and dangerous policy of forced repatriation. Even prior to his inauguration, President Clinton began to take more forceful steps toward achieving the reinstatement of the constitutional government of Haiti. In July of this year an accord was signed by President Aristide and General Raoul Cédras creating the framework for a political settlement.<sup>4</sup>

Meanwhile, on the refugee question, President Clinton not only continued the policy of forced return, he strengthened it by surrounding the island with some twenty U.S. Coast Guard cutters and Navy vessels ordered to interdict and return any Haitian leaving the island for the United States. Shortly after his election, his administration appeared before the Supreme Court to argue, in *Sales v. Haitian Centers Council*, that the principle of non-refoulement did not apply to Haitian refugees on the high seas, thereby sacrificing the most fundamental principle of refugee protection in order to salvage that same policy.<sup>5</sup> The decision in *Sales v. HCC* was a serious blow to the internationally recognized rule of non-refoulement and formally strips the U.S. of the moral authority it once exercised in the defense of asylum seekers the world over.

Responding to the Supreme Court decision, the United Nations High Commissioner for Refugees (UNHCR) stated that, "This decision is contrary to the views of UNHCR's Executive Committee that refugees should not be refused entry to a country where they are seeking asylum, and that asylum seekers rescued at sea should always be admitted, at least on a temporary basis....[The] UNHCR considers the Court's decision a setback to modern international refugee law which has been developing for more than forty years....It renders the work of the Office of the High Commissioner in its global refugee protection role more difficult and sets a very unfortunate example."<sup>6</sup>

In March 1993, the Inter-American Commission on Human Rights of the Organization of American States (OAS) issued an interim resolution in response to a petition pending before it challenging the U.S. government's Haitian interdiction program. The resolution found the program to be in violation of international law and called for its immediate suspension.

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<sup>4</sup> The Governors Island Accord was signed on July 3, 1993 and provides a general framework for reinstatement of constitutional government. It requires President Aristide to name a Prime Minister who will be confirmed by a reconstituted Parliament. Steps are then to be taken for lifting of international sanctions, the retirement of army commander General Raoul Cédras, creation of an independent civilian police force and the October 30 return of the President. Robert Malval, the Prime Minister-designate named since by President Aristide, has been approved by the reconstituted Haitian Parliament. The U.N. Security Council suspended the sanctions against Haiti on August 28.

<sup>5</sup> The 1951 Convention Relating to the Status of Refugees, Article 33, prohibits States from returning refugees to countries where they may face persecution. In a June 21, 1993 decision in *Sales v. Haitian Centers Council*, the Supreme Court found that the letter of neither domestic nor international law prohibited the United States from returning Haitian refugees picked up on the high seas, even though, as Judge Stevens wrote in the majority opinion, "such actions may even violate the spirit" of international treaty law.

<sup>6</sup> "Office of the High Commissioner concerned by Supreme Court Haitian Decision," June 22, 1993 press release.

**Interdiction of Haitian refugees:**

1981 - Sept. 1991:	22,803
Sept. 1991 - July 1993:	30,932
(May 24, 1992 - July 1993:	<u>5,826</u> )
 Total since 1981:	 53,735

### III. IN-COUNTRY PROCESSING IN HAITI

#### A. Background

The United States set up an in-country processing program (ICP) in Port-au-Prince in February 1992 to afford Haitians the option of seeking asylum without first taking to the high seas. At this time refugee screening was still taking place at Guantánamo. Since the May 1992 U.S. presidential order, ICP has been the only recourse for Haitian asylum seekers and has become a palliative for critics of U.S. policy. When he announced the temporary continuation of the Bush interdiction policy, President Clinton added that ICP would be expanded and improved, thereby better justifying forced repatriation.

This novel application of ICP is a first worldwide. In-country processing is part of a broader set of procedures contained in the 1980 Refugee Act and was not intended as a sole means of protection.<sup>14</sup> Similar programs in Vietnam, Cuba and the former Soviet Union were designed to facilitate the processing of chosen groups of refugees the U.S. was already predisposed to accept based on a concept of "presumptive eligibility."<sup>15</sup> In Haiti, on the other hand, the program is designed to cut off a mass influx of people the U.S. is predisposed to reject. What's more, it is the first case where ICP has been imposed on asylum seekers as a substitute for the ability to escape and seek safe haven before articulating individual claims.<sup>16</sup> In the case of Vietnam, the U.S. played a forceful role in encouraging countries of first asylum to accept boat people temporarily until they could be resettled.<sup>17</sup>

<sup>14</sup> As noted in the *amicus curie* brief filed in *Soles v. Haitian Centers Council*, Joshua R. Floum (Attorney of Record) *et al.* on behalf of Senator Edward Kennedy and former Representative Elizabeth Holtzman and other Members of Congress (hereinafter Members of Congress Amicus), "(T)he language, structure and legislative history of the Act, as well as years of executive application of the Act, demonstrate that Congress intended that the Act's three separate but concurrent forms of refugee protection comprise a comprehensive scheme." (p. 5)

<sup>15</sup> For example, Inzunza writes, "Although the statutory definition of refugee changed in 1980, until August 1988, all Soviet and some Indochinese refugee resettlement applications...were being found eligible for refugee status under what amounted to a presumption of eligibility...." (Inzunza, "The Refugee Act of 1980....," p. 418.)

<sup>16</sup> See, for example, Members of Congress Amicus p. 10: "The government's conduct in forcing Haitians back to Haiti and funneling them through section 207 overseas refugee processing violates the purpose of the Act to make these protections comprehensive and to reaffirm the principle of *non-refoulement*."

<sup>17</sup> "[A] similar in-country procedure for processing refugees was created at the height of the Vietnamese boat exodus. However, those who decided to flee by boat were never turned back because such a program existed. And the United States was vigilant in seeing that other governments would not summarily push back the boat people, demanding that they be given temporary asylum in the region. Bill Frelick, "Clinton's Haitian Policy: Same Old Story," *St. Louis Post-Dispatch*, January 19, 1993. (Reprinted by U.S. Committee for Refugees.)

Furthermore, in other countries where ICP became part of a U.S. strategy for resettling refugees, the period of acute political upheaval was over, human rights problems were chronic and predictable and government policies were solidified. In this context, agreements were reached with the respective governments to facilitate the orderly processing of selected groups of people. In Haiti, political turmoil is at its height and more complicated yet, the U.S. does not even recognize the de facto government, much less enter into agreements with it. These factors effectively remove the safeguards which define the logic and efficiency of ICP in other countries. The driving force behind this plan seems to be the historically unshakable U.S. decision not to become a country of first asylum for Haitian refugees.

## B. Operational Structure

By definition, overseas refugee processing depends heavily upon executive discretion, and foreign policy considerations are part of the decision on what groups are considered of special humanitarian interest to the U.S.<sup>18</sup> In Haiti the State Department is the principal policy-making bureau behind ICP and directly manages it. It has been responsible for setting up the program, providing services to INS officers and contracting with the International Organization for Migration (IOM) and more recently with two non-governmental organizations.<sup>19</sup> A Refugee Coordinator manages the program under the auspices of the U.S. Consulate.

Operationally, the State Department's role encompasses all activities except for specific case adjudication. It is responsible for initial "vetting" or grading applications into priority categories for consideration by INS. It has contracted the IOM in Port-au-Prince to receive applicants, prepare asylum claims for adjudication and handle all out-processing. More recently, two non-governmental organizations (called Joint Voluntary Agencies, or JVAs), World Relief (WR) and the United States Catholic Conference (USCC), have been contracted to run the newly opened regional centers in Les Cayes and Cap Haitien respectively.<sup>20</sup> The U.S. Embassy also serves as the main resource on country conditions, social and political organization and human rights data for the program, providing briefing materials and expert opinions.

The IOM staff of forty includes five caseworkers: three Haitian-Americans and two U.S. citizens of non-Haitian background. Caseworkers must be fluent in English, Creole and French and have a university degree. The other staff are form-fillers to assist with completion of standard INS forms, interpreters and administrative staff.

The INS has assigned an Officer in Charge (OIC) and an Assistant Officer in Charge (AOIC), both with one-year contracts. The eight interviewing officers responsible for adjudication are drawn from a pool of primarily examiners and inspectors who have received a three-week asylum training course and are on sixty-day rotations. A quality assurance team comprising an asylum corps officer and a legal advisor from the INS General Counsel's office are assigned on a thirty-day rotation and are responsible for case review of all decisions. The rest of the staff is administrative.

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<sup>18</sup> Section 207 of the Immigration and Nationality Act "enumerates several factors that may be considered during the consultative process, including the impact on the "foreign policy interests of the United States." The statute, however, does not identify numerical limits, special humanitarian concern or a foreign policy impact for consideration in section 208 (a) asylum or section 243 (h) withholding decisions..." as cited in Members of Congress Amicus, p. 16.

<sup>19</sup> The International Organization for Migration is an intergovernmental organization that implements various programs worldwide for migrants and refugees.

<sup>20</sup> In other examples of overseas refugee processing, JVAs work closely with the State Department and the INS to facilitate the orderly resettlement of refugees.

### C. Recent Expansion

A technical team including representatives from the State Department, the INS and the Congress traveled to Haiti last January to make recommendations for improving and expanding the program. These included measures to increase capacity and efficiency and the opening of two regional centers.

After a separate review of the program, the INS installed the quality assurance team described above. Another INS change was to draw on a pool of officers who had been through a three-week asylum law training course. According to the State Department and the INS, all of the recommendations were approved and have been implemented.<sup>21</sup>

### D. Current Functioning

The following is a brief outline of the process itself.

1. The applicant picks up a preliminary questionnaire from IOM, which is filled out and returned. (Questionnaires can also be obtained by requesting one by telephone or mail or by sending a friend.) If an applicant is illiterate or otherwise needs assistance, an IOM employee can help fill out the form. Unfortunately, this happens in a public and quite crowded reception area in full hearing of others present. Some people hire strangers to fill out the forms for them, while others seek help from family members. The first page of the questionnaire is biographical information. The second page requests information on organizational and political affiliations, government posts held and any arrests or problems with the authorities.

2. The application is vetted (prioritized) into an A, B or C category for adjudication by the Refugee Coordinator's staff.<sup>22</sup> Vetting is carried out based solely on the contents of the questionnaire. A vetting supervisor, who has been with the program since the beginning, reviews all vetting decisions.

"A" cases are described as high-profile, often involving an official of the Aristide government, a member of a targeted profession such as journalists, or a grassroots organization leader. The case is considered extremely urgent, and most involve past persecution.<sup>23</sup> These make up about five percent of the total vetted applications. "C" cases, about ten to fifteen percent of the total, are those in which (according to the questionnaire) the applicant has made no claim to asylum. The vast majority, over eighty percent of all cases, are "Bs". In many cases, the applicant has articulated some fear of persecution but the case may need to be developed or is not considered top priority.<sup>24</sup>

All "A" cases are reviewed by the Refugee Coordinator, who will follow particularly sensitive ones. He will also occasionally glance through "B" and "C" cases. "A" cases are scheduled for an IOM and an INS interview the same day or the following day. Currently, "B" cases are receiving interview dates for between January and March, 1994. "C" cases are not scheduled for interviews.

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<sup>21</sup> Unfortunately, the technical team's report and the follow-up report on the implementation of the recommendations have been classified.

<sup>22</sup> The vetting staff is generally composed of part-time contract employees, often relatives of U.S. Embassy personnel.

<sup>23</sup> Interview with Refugee Coordinator Luis Moreno, Port-au-Prince, June 14, 1993.

<sup>24</sup> The approval rate is thirty-three percent for A cases and five percent for B cases. This means that B cases account for a higher number of actual cases approvals.

3. At the time of the IOM appointment, the necessary forms are filled out and the applicant is interviewed. The purpose of the interview is to review the questionnaire with the applicant and elicit further information relevant to the application. The caseworker writes up the interview and prepares the file for INS.

4. The same day or the following day, the INS reviews the file, interviews the applicant through an interpreter, and makes a provisional decision. This decision is based upon whether the applicant has met the burden of proof and whether the applicant is considered credible.<sup>25</sup> The INS interviewer's notes are incorporated into the file along with the recommended decision. Cases are reviewed by the Assistant Officer in Charge and by the quality assurance team, which assesses whether the facts provided are consistent with the decision, whether a credibility judgement is adequately supported and whether legal issues raised by the case have been correctly resolved. A U.S. Embassy political officer and an ethnic affairs expert on the IOM staff are on site and serve as the principal resources on local conditions. The INS Resource Information Center (RIC) provides country condition information from a variety of governmental and non-governmental sources, including church, refugee and human rights groups.<sup>26</sup>

5. Out-processing: All approvals are considered conditional until out-processing has been completed. This includes a medical examination, obtainment of a passport (passports are required by the Haitian authorities in order to leave the country) and securing sponsorship by an individual or organization in the United States. For the passports, fingerprints must be obtained at the police station. Obtaining passports for all individuals included on an application may require getting a birth or marriage certificate for the first time.<sup>27</sup>

6. Motions to reconsider: If a case is denied, the IOM (or the JVA) receives a form letter indicating the category of the reason for denial. These letters are not case-specific. The applicant is then notified. The denial includes notice of the right to file a motion to reconsider. To file the motion the applicant writes a letter to the District Director of INS in Mexico explaining the reasons why the case should be reexamined. These letters can be translated by the IOM (or the JVA in the regional centers). More recently, a notice that the letter must be in English has been included on the denial letter. In general, the letter must present new information; few cases are

<sup>25</sup> The standard for asylum under the Refugee Act of 1980 is a "well founded fear of persecution...on account of race, religion, nationality, membership in a particular social group or political opinion." This includes, but is not limited to, past persecution. The adoption of this definition brought the U.S. into compliance with the international definition of refugee.

Regarding credibility, the INS "Basic Law Manual: Asylum" (from the Asylum Branch of the Office of the General Counsel, March 1991) states: "[A]n alien's own testimony may be sufficient, without corroborative evidence, to prove an asylum claim if that testimony is believable, consistent and sufficiently detailed to provide a plausible and coherent account of the basis of the claim." According to the UNHCR, "The applicant's statement must be coherent and plausible and not run counter to generally known facts." *Handbook on Procedures and Criteria for Determining Refugee Status*, January 1988, p. 48.

<sup>26</sup> A U.S. Embassy political officer in charge of refugee and migration affairs (and deputy refugee coordinator) has travelled extensively in Haiti following up on repatriates. To date, over 4,000 have been interviewed. See also, News From Americas Watch and National Coalition for Haitian Refugees, "Half the Story: The Skewed U.S. Monitoring of Repatriated Haitian Refugees," June 30, 1992. The human rights liaison, born in Haiti, is an IOM employee who works closely with the Refugee Coordinator and the INS. He is responsible for contacts with local organizations and handles off-site interviews. He is often consulted on sensitive cases as the resident expert on Haitian matters. He also informs ICP personnel through translation and summary of local press.

<sup>27</sup> Marriage certificates cost about fifty gourde or US\$4.17. The birth certificates vary between fifteen and sixty gourde or \$1.25 to 5.00. The required photographs cost seventy-five gourde or \$6.25 a set. The minimum and standard wage for a factory worker wage is fifteen G/day or \$1.25. (Based on an exchange rate of twelve gourde = U.S. \$1.00.) IOM, if asked, will defray some of the cost. World Relief said they would help pay if asked, but do not tell applicants about this service.

overturned based on the premise that the original decision was faulty.<sup>28</sup> Approximately twenty motions to reconsider are received daily. The decisions are made in Haiti and signed by the INS Officer in Charge on behalf of the District Director. There is a delay of several months in most cases.

7. Regional centers: A regional ICP center opened in Les Cayes on April 26, 1993. It is run by World Relief under contract to the State Department.<sup>29</sup> Like IOM in Port-au-Prince, World Relief's mandate is to prepare cases for INS adjudication. Their expatriate staff is composed of a director and a deputy director. Four form-fillers, an accountant, a receptionist and four security guards have been hired locally. The centers are set up to prepare forty cases per week for INS adjudication. As currently designed, a team of two INS officers will spend two weeks per month in each regional center. An unfortunate feature of the Les Cayes center is its location just one block from the army garrison, where potential applicants are often held and beaten.

There are certain variations to the procedure in the regional offices. For example, an applicant in Les Cayes has the questionnaire vetted and forms filled out on the same day. Vetting is done by the JVA director. As of late June, "B" cases were being scheduled for interviews for sometime in July. "Cs" were not being scheduled. The director of World Relief told AW and NCHR that mechanisms were in place to transport an urgent case to Port-au-Prince, although no such case had yet occurred.

Two INS officers are scheduled to visit each regional center every two weeks. During those visits they hold interviews for up to 140 applicants. These files are taken back to Port-au-Prince for quality assurance and final adjudication. A decision is communicated to Les Cayes, at which time out-processing is begun for those approved. Medical examinations are completed locally. Fingerprinting, passport obtainment and sponsorship are handled through IOM in Port-au-Prince. Most often the approved applicant waits in Les Cayes for all of this to be completed. Few can afford to stay in Port-au-Prince for that length of time. World Relief says that they pay expenses if asked but do not volunteer such assistance.

In other countries where ICP is used, non-governmental organizations with experience in refugee processing and resettlement have worked closely with the State Department and the INS to prepare and process refugee claims. World Relief and USCC have only recently become involved in ICP in Haiti, taking charge of the two regional centers opened in April and May of this year. According to a USCC official, JVAs are experts on refugee issues and can use that knowledge to help people through the process.<sup>30</sup> However, a State Department official said that the JVA role is to provide "a service to the State Department, not to act as advocates."<sup>31</sup>

Both World Relief and USCC say that as long as ICP is a reality in Haiti, their participation can have a positive effect in the efficient and fair processing of Haitian refugees. However, they share the broader NGO perspective that not even a new and improved ICP is a substitute for the right to seek safe haven. Fr. Rick Ryscavage, Executive Director of the Catholic Bishops' Office of Migration and Refugee Services, recently stated

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<sup>28</sup> This has occurred, however, particularly when an NGO has gotten involved.

<sup>29</sup> The center in Cap Haitien opened in May and is run by the United States Catholic Conference.

<sup>30</sup> Interview with Shep Lowman, Washington D.C., June 9, 1993.

<sup>31</sup> Interview with Ken Foster, Refugee Program, State Department, Washington D.C., June 9, 1993.

that "[T]he processing center is no substitute for justice either within Haiti, or in the treatment of refugees who try to flee Haiti."<sup>32</sup>

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<sup>32</sup> U.S. Catholic Conference, "Church Agency Disappointed at Supreme Court Ruling Upholding Administration's Decision to Return Haitian Refugees," press release, June 22, 1993.

Available Data on ICP Caseload  
June 1, 1992 - July 30, 1993

Dates	Cases vetted (#)	Cases adjudicated (#)	Cases approved (#)	Approval rate (%) <sup>*</sup> (%) <sup>**</sup>	Cases entered US (#)
Jun 1 -Jul 1, 1992	1337	109	12	11 0.9	2
Jul 1 -Aug 3, 1992	898	394	26	6.6 2.9	7
Aug 3 -Sep 1, 1992	727	575	39	6.7 5.3	1
Sep 1 -Oct 2, 1992	666	557	27	4.8 4.0	11
Oct 2 -Oct 30, 1992	423	331	7	2.1 1.7	0
Oct 30-Nov 27, 1992	436	216	12	5.5 2.8	20
Nov 27 -Jan 1, 1993	318	223	26	11.6 8.2	12
Jan 1 -Jan 31, 1993	320	166	16	9.6 5.0	16
Jan 31-Mar 28, 1993 (2 months)	4210	650	99	15.2 2.4	n/a
Mar 28-Apr 30, 1993	4315	1173	26	2.2 0.6	111
Apr 30-May 27, 1993	1318	596	39	6.5 3.0	50
May 27-Jul 2, 1993	2168	855	91	10.6 4.2	61
Jul 2 -Jul 30, 1993	2259	850	35	4.1 1.5	69
Total # cases	19,395	6,695	455	6.8 2.3	368
Total # persons	34,171	7,947	1,243	15.7 3.7	937

\* Figure represents percentage of adjudicated cases.

\*\*Figure represents percentage of vetted cases.

Source: Compiled from cumulative figures from the State Department. The methodology employed, as well as all findings, should be transparent and open.



#### IV. A CRITICAL ASSESSMENT OF THE ICP PROGRAM

Since its inception, ICP in Haiti has come under severe criticism from human rights groups and refugee advocates. In prior reports on Haiti, AW and NCHR have pointed out many inadequacies of the policy in general and of the ICP program specifically.<sup>33</sup> Nevertheless, it is of particular concern that the recent expansion and streamlining of the program under the Clinton Administration has led U.S. officials to tout it as providing "complete coverage" and to see it as a measure which mitigates and justifies the policy of forced return.<sup>34</sup>

The authors recognize the serious efforts made in recent months by individuals involved in the program to make it more efficient and "user-friendly." It does appear that the program has improved in several areas since the technical team visit in January. These include:

1. Expedited processing of Priority A cases: Exceptionally urgent cases can now be turned around in approximately two weeks including the out-processing.
2. Quality assurance: By using quality assurance officers, including some with prior experience in Guantánamo, adjudication decisions are being reviewed systematically by a General Counsel's office attorney and a trained asylum officer.
3. Use of interviewing officers who have attended a three-week asylum training program.
4. Training of IOM staff: Attempts have been made to address the complicated problem of staff/applicant interaction and assure quality and standardization of interview write-ups.
5. The recent opening of two regional centers and the use of JVs to run those centers.

Nevertheless, these improvements have done little to ameliorate a number of basic shortcomings. These are primarily a result of conceptual inconsistencies, which stem from substituting ICP for traditional self-help remedies such as the ability to flee.

##### A. The Central Role and Biased View of the State Department

The ICP program is based on the State Department's premise that the number of genuine asylum seekers is actually quite small. A State Department official involved in setting up the program voiced what seems to be the common belief that "most Haitians are economic migrants; it diminishes our program worldwide if we accept economic migrants."<sup>35</sup> Furthermore, as stated above, the reason that ICP became the antidote for the Haitian refugee problem in the first place was a desire to keep the numbers admitted to the U.S. to a minimum.

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<sup>33</sup> See generally, *Motion for Leave to File Brief Amicus Curiae and Brief of Human Right Watch, Amicus Curiae*, in Support of Respondents, *McNary v. Haitian Centers Council* (later changed to *Sales v. Haitian Centers Council*), October term, 1992 and AW and NCHR, "Half the Story," New York, June 30, 1992.

<sup>34</sup> Interview with Ken Foster. Assistant Attorney General Webster Hubbell is quoted saying, "Interdicted boat migrants who fear political persecution will be afforded meaningful opportunity for refugee processing in Haiti." (Editorial, "Gone Under a Second Time," *Miami Herald*, June 22, 1993.)

<sup>35</sup> Interview with Ken Foster.

Ceiling determinations are limits on refugee admittance, made by the Executive branch. They are often made independently of specific country conditions and do not lend themselves to responding to crises. The ceiling for Latin America for fiscal year 1993 was 3,500, of which 500 were allocated to Haiti. This decision was made in August 1992, in the midst of widespread human rights abuses and three months after the Kennebunkport Order made ICP the only option available for Haitians.<sup>36</sup>

Furthermore, refugees outside the United States in general have far fewer due-process rights than asylum seekers who have made it to U.S. shores, and admission is much more discretionary. Although U.S. refugee law, in contrast to international refugee law, does include the concept of a refugee still in his or her own country, there is an increased sense that any approvals are tantamount to altruism. In refugee processing the officer makes a final decision, there is no judicial or administrative review and the applicant bears a greater burden of proof.

U.S. Embassy personnel or IOM contract employees are the principal resources for IOM and INS interviewers.<sup>37</sup> The State Department official interviewed warned that one should not "take people's statements at face value. Past reports such as those put out by the American Immigration Lawyers Association, the Lawyers Committee for Human Rights, Amnesty International etc. contain lots of hearsay. We investigate the cases."<sup>38</sup> The fact that this view is being conveyed within the program, certainly undermines the value of having non-governmental human rights material made available to ICP staff. For example, an asylum officer recently assigned to the quality assurance team told AW and NCHR in Haiti that at least some INS personnel consider reports from human rights NGOs and the United Nations/Organization of American States International Civilian Mission (UN/OAS Mission) totally unreliable.<sup>39</sup>

Furthermore, the State Department view of the human rights situation in Haiti seems to vary depending on who is asking. The most recent State Department report on country conditions in Haiti stated:

Haitians suffered frequent human rights abuses throughout 1992 including extrajudicial killings by security forces, disappearances, beatings and other mistreatment of detainees and prisoners, arbitrary arrest and detention, and executive interference with the judicial process....<sup>40</sup>

However, a May 7, 1993 State Department advisory opinion in the case of a Haitian popular-movement activist applying for asylum in the U.S. gave quite a different analysis of the situation:

During 1992, the level of political violence has been considerably reduced....Despite Haiti's violent reputation, it is possible for many people to find safe residence in another part of the country....We do not believe the fact that an ordinary citizen is known to support or to have supported President Aristide by itself puts that person at particular risk of mistreatment or abuse.

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<sup>36</sup> There is no ceiling for asylum seekers in the U.S. The ceiling for overseas refugee admissions from Haiti for fiscal year 1993 was 500. Although that number has been surpassed and 1,000 unallocated slots were assigned to Haiti, the fact remains that a ceiling is in place affecting the number of Haitians who will eventually be admitted.

<sup>37</sup> A review of asylum claims in the U.S. by Harvard University's National Asylum Study Project shows a heavy reliance by INS asylum officers on State Department resources, according to the Study Coordinator.

<sup>38</sup> Interview with Ken Foster.

<sup>39</sup> The officer, T.J. Mills, was later suspended from the program.

<sup>40</sup> Department of State, *Country Reports* (for 1992), p. 421.

Under the heading "False and Exaggerated Claims by Previous Returnees," the opinion goes on to say:

...[I]nvestigations made by U.S. Embassy officers there indicate that many of the reports made by asylum applicants of arrests, killings and intimidation are exaggerated, unconfirmable or false....<sup>41</sup>

This view suggests a bias against Haitian asylum seekers by implying that if some have lied, then many probably lie.

In contrast, the June 3, 1993 report by the UN/OAS Mission stated as follows:

The most serious and numerous human rights violations...involved arbitrary detentions, systematic beatings and torture perpetrated by members of the armed forces or persons operating at their instigation or with their tolerance. The Mission has also been informed of cases of arbitrary executions and deaths following torture inflicted while in detention.

As indicated below, these violations of the right to life and integrity and security of person are intended primarily to restrict or prohibit the exercise of the freedoms of opinion and expression, assembly and peaceful association. Unfortunately [the report] provides only a partial picture of the extent to which human rights violations in Haiti are widespread and systematic.<sup>42</sup>

More recently, in an August 11, 1993 press release, the UN/OAS Mission

expresses its grave preoccupation at the numerous violations of human rights in Haiti. In particular, the Mission condemns the arbitrary executions and suspicious deaths which have reached alarming levels in the area of Port-au-Prince, where 36 cases have been identified since July 1st.

The targets of these grave human rights violations are members of popular organizations and neighborhood associations, but also simple citizens who had the misfortune to find themselves in the path of the killers.

....Attacks on freedom of association and expression continue, as well as violations against personal security and physical integrity.<sup>43</sup>

The U.S. Embassy's political officer in charge of human rights was reluctant to talk on the record to AW and NCHR about human rights issues. However, she painted a picture of random, undirected violence and general lawlessness merely tolerated from above, as opposed to the targeted, patterned and strategic repression, which includes a sense of chaos and lawlessness, that is reported by both local and international human rights groups.<sup>44</sup>

## B. Political Isolation Weakens the Program

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<sup>41</sup> According to the Harvard National Asylum Study Project, this kind of opinion is typical of Haitian cases.

<sup>42</sup> As of May 1993, the UN/OAS Mission had 141 international staff members of which eighty-six were deployed in regional teams around the country and twenty were in training.

<sup>43</sup> As translated by the Washington Office on Latin America.

<sup>44</sup> Interview with Ellen Cosgrove, U.S. Embassy, Port-au-Prince, June 16, 1993.

The ICP program is isolated from organizations that could strengthen it by serving as resources. The U.S. policy of forcibly returning Haitian refugees is widely considered to be discriminatory and ultimately in violation of principles of international law. As a centerpiece of this policy, the program has had little contact with the UN/OAS Mission, the UNHCR or local human rights groups which are the real experts on local conditions. A UN/OAS Mission official said, "The Embassy had, until recently, not sought out contact with the Mission. Contact has been minimal."<sup>45</sup> While some private human rights groups assist individuals applying to the program on an *ad hoc* basis, they do not encourage it. Furthermore, they distrust the program's motives and are quick to point out its inadequacies.

### C. No Safe Haven Component is Available

The most obvious weakness of the ICP program is that there is no safe haven component for asylum seekers. This means that they do not enjoy even the temporary protections and security to which asylum seekers are entitled under international law.<sup>46</sup> The State Department official interviewed told the authors, "We don't provide safe haven....So far it hasn't been an issue because people can call, send letters, access a church group."<sup>47</sup> Nevertheless, ICP applicants have been persecuted while awaiting final resolution of their cases. The Refugee Coordinator stated, "No cases tie in harassment, beatings or killings to the refugee program."<sup>48</sup> However, that distinction is quickly blurred, since applicants with genuine claims apply to the program precisely because they are at risk.

The authors were able to document several cases of persecution during early June 1993, involving ICP applicants.<sup>49</sup>

One case reported confidentially occurred some time during the first two weeks of June. It involved a young man who had filled out a preliminary questionnaire to apply for asylum, but never made it back to his interview. When he left the ICP locale he was arrested and taken to a Port-au-Prince police station. He was kicked and beaten. Someone who knew him helped him get released after at least one day and night in prison.<sup>50</sup>

In Les Cayes, the problem is magnified by the small-town, everyone-knows-everyone atmosphere: "Claude" is an Aristide supporter and activist. He was president of an election bureau during the 1990 presidential elections, and he collaborates with grass-roots organizations. He volunteers with the local Institute for Social Welfare and Research doing AIDS education. He has a long history of problems with

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<sup>45</sup> Interview, Port-au-Prince, July 1993.

<sup>46</sup> For example, the UNHCR states that in cases of mass influx, temporary refuge should always be provided. See "Conclusions of the International Protection of Refugees" adopted by the Executive Committee of the UNHCR Programme, Office of the UNHCR (Geneva: 1980), p. 49.

<sup>47</sup> Interview with Ken Foster.

<sup>48</sup> Interview with Louis Moreno, Port-au-Prince, June 14, 1993.

<sup>49</sup> Real names are not used in the following testimonies except where stipulated, in order to protect the sensitive situations of our informants. In some cases, specific dates and places have been eliminated for the same reason. All interviews were carried out in Port-au-Prince during the week of June 13-20, 1993.

<sup>50</sup> Interview with a Haitian source close to the ICP program on the condition of confidentiality, Port-au-Prince, June 17, 1993. Hereinafter referred to as a confidential Haitian source.

the local authorities, particularly with one government delegate, which he says began due to his work during the 1990 elections. He was first arrested in August 1992 and briefly detained. On November 27, 1992, he was harassed, threatened and chased by the same delegate and two armed men in civilian clothes. A few days later, on December 1, he was detained again and jailed for six days for being Lavalas.<sup>51</sup> On December 31, the delegate threatened him with arrest in the street. When passersby protested, he was left alone. On January 6, 1993, the delegate arrested him, and he was taken to the police station. He was threatened with death, accused of being Lavalas, anti-army and a thief. On January 7 his captors decided to make a formal complaint on charges of theft, criminality and morally assaulting the authorities. He was imprisoned at the Les Cayes military headquarters. The public prosecutor ordered him released after six days under "provisional liberty" status. He stopped living in town and lived hiding from then on. On April 27 the delegate saw him again and said "It's you; you're under arrest." He jumped in a taxi and went to the office of the UN/OAS Mission. The World Relief office for ICP had opened that same day in Les Cayes. He went there to apply and was given a questionnaire. He was interviewed on May 4 and received notice of conditional approval on May 21. On June 1 he was arrested by the military at the request of the same government delegate, who said he was going to have him shot. He was released on June 4 after U.S. Embassy intervention. As of June 20, he was still in Les Cayes waiting for out-processing to be completed. He asked the AW and NCHR to intervene to expedite his case. He said he was afraid and living in hiding.<sup>52</sup>

"Jean" is a thirty-eight-year-old carpenter and furniture maker from Les Cayes. He has been a member of a number of local popular organizations, among them the Assemblée Populaire Nationale and the Union for Change. Prior to the coup he had been arrested and tortured in 1988 under General Henri Namphy's regime. He has been tracked and harassed by the army since the coup because he was a known activist and because he filed a complaint against the official responsible for his torture in 1988. His most recent problems have been with a local government delegate. On several occasions in December 1992 and January 1993 he was threatened and harassed by the delegate. Beginning in January, police and soldiers began arriving at his house. At that time, he moved to another neighborhood, only visiting his home in the daytime. He knows that military auxiliaries known as *attachés* frequently come to his house at night. After receiving encouragement from a friend, he decided to apply for political asylum. He was hesitant to go since the office was located just up the street from the military headquarters, but his friend explained how to check out the area and then go in. He applied on May 20, was interviewed by World Relief on June 3 and was scheduled for an INS interview on July 1. Two weeks before that interview, at about 7:30 p.m. on June 18, two soldiers in civilian dress came to his house just as he was arriving. He went inside, and they told him to come out and talk to them. He responded that he was in his own house. They yelled that he was Lavalas and he responded, "Yes I am, and I have a right to be." They told him that they were going to find a way to finish him off. Among other things, they said that when his "Papa Aristide" came back they were going to leave a lot of people "on the ground." They left saying they were coming back with the police. He immediately called the UN/OAS Mission, and two representatives went to his house. The men did not come back, but his wife reported that the same two men had been to the house on two occasions earlier that day and seemed to be waiting for him to show up. The next day, he told AW and NCHR that his wife was packing up the house, now too afraid to continue living there herself.<sup>53</sup>

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<sup>51</sup> *Lavalas* is the Creole word meaning "landslide"; as used colloquially, it refers to the broad-based popular movement that elected President Aristide.

<sup>52</sup> Interview, Les Cayes, June 19, 1993. Americas Watch and NCHR expressed concern about this case to the Refugee Coordinator and World Relief. The delay was due to the fact that the required passport had not yet been issued.

<sup>53</sup> Interview, Les Cayes, June 19, 1993.

If a conditionally approved individual is found to be HIV-positive, the question of protection becomes even more serious. These applicants must file a waiver which is granted at the discretion of the Attorney General, in order to be allowed admission into the United States.<sup>54</sup> The added aggravation with ICP is that the person must wait, like a sitting duck, in Haiti, even though he or she has been officially recognized as having a well-founded fear of persecution (or indeed of having suffered persecution). According to IOM, several waivers had been filed in 1993 but were still pending as of June. However, in September, the INS office in Washington reported being unaware of any waivers pending.

AW and NCHR are greatly concerned about one particular case. The applicant was kidnapped at gunpoint and detained for several days at an unknown site, tortured and found dumped on the street days later. His application for political asylum was conditionally approved rapidly, given the gravity of his situation. He was then found to be HIV-positive. In April, he applied for a waiver through the ICP program. Five months later, in September, it was discovered that his application had never left Port-au-Prince due to an administrative delay over a form. AW and NCHR brought the case to the attention of the ICP staff. Meanwhile, the conditionally-approved applicant and his family remain in Haiti at serious personal risk.

#### D. Operational Deficiencies

By nature and by design, the number and type of people receiving the reasonably expedited processing that asylum seekers require are drastically reduced, and the fair and consistent adjudication of claims is sabotaged. There are examples of this at every stage of the process.

The system is overloaded. This is perhaps unavoidable, given the desperate need of so many Haitians and the fact that all avenues of non-immigrant entry to the U.S. are closed to most people. Those who wish and need to leave for a variety of reasons try the program. This "magnet effect" can impede genuine asylum seekers from receiving a fair hearing and many might be getting lost in the crowd. One international refugee expert said, "It becomes seen as an immigration office, which limits refugee access."<sup>55</sup> Large numbers of economically motivated applicants may also contribute to the perception, held by some U.S. officials, that most Haitians are economic migrants. The opinion of the Haitian source close to the program was that "INS's first impression of people is that they are garbage, beggars. They are seen as economic refugees from the start."<sup>56</sup> The quality assurance officer recently expelled from the program reported that a prevalent view among INS personnel is that most applicants are lying.

The use of local Haitian staff is problematic. Early criticism of the program focused on the use of Haitian staff in all stages of processing. All of the IOM reception, interpreter and form-filling staff are Haitian. (Three caseworkers are Haitian-Americans.) Problems such as disrespectful treatment of applicants from a different social class and political perspective have been reported. The confidential Haitian source told AW and NCHR of an

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<sup>54</sup> According to experts at the Centers for Disease Control, all refugee applicants are screened for HIV and other diseases such as tuberculosis. HIV-positive approved asylum applicants must obtain a waiver, and these can delay an inordinately long time. An applicant must show, among other things, that his or her medical expenses will be covered at no cost to the government.

<sup>55</sup> Interview, Port-au-Prince, June 15, 1993. The official spoke on the condition that he not be identified.

<sup>56</sup> Confidential Haitian source, interview in Port-au-Prince, June 17, 1993 (See note 49).

applicant who apparently recognized one interpreter as having been involved in killings in his home town. "Haitians have learned not to trust Haitians," said this source, "and Haitians have learned not to talk politics."<sup>57</sup>

The State Department and IOM recognize and have made efforts to overcome this problem through training, including a recent weekend seminar which provided pointers on how to interview an applicant and sensitivity training. Nevertheless, this dynamic continues to make it difficult to create an atmosphere of trust necessary to ensure fairness in access and adjudication of claims.<sup>58</sup>

**The vetting process is inadequate.** Screening based solely on a written questionnaire, without guidance about the process and without the opportunity to see or speak with a U.S. official, is blatantly unfair given the nature of the information involved and the characteristics of Haitian culture.<sup>59</sup> A State Department official interviewed felt that "Haitians are very open people." On the contrary, the confidential Haitian source interviewed said, "You really have to dig to get information from a Haitian. The burden of proof is heavily on the applicant." If an applicant needs help in filling out the application, an IOM staff person may assist. However, the NCHR observed this taking place in the waiting area, with no privacy, and conversations can be easily overheard. Some applicants pay someone to fill out the form for them. In those cases they may not even know what has ended up on the application. Thus, some asylum seekers may be unable or unwilling to articulate their case adequately, before being vetted into a B category that will mean an impossibly long wait or the C category which is tantamount to being ineligible to continue the process.

The B category itself is used as a catch-all between cases which are urgent or high-profile and cases where no claim to asylum is apparent from the questionnaire. Logically, the well-founded fear standard also falls between those two extremes, since the A category requirements are much higher than the asylum standard.<sup>60</sup> For example, according to the Refugee Coordinator, "Most A cases are past persecution."<sup>61</sup> While it is reasonable to assign priority to urgent or high-profile cases for expedited treatment, a large number of others with potentially solid, albeit less dramatic, claims end up being deferred for an inordinately long time. Assuming that these applicants can wait for six months before they even see a U.S. official makes a mockery of their situation. The fact that delays are common to the program in other countries, far from a justification, is further proof of ICP's inadequacy in the context of Haiti.<sup>62</sup> The following case is illustrative:

Rodrigue Normil is a thirty-three-year-old artist and activist who was arrested on January 20, 1992 in Grande Goave, his hometown. He believes that the reason for arrest was his brother's involvement in an organization accused by the army of involvement in the September 30, 1991 burning of an army post there. His brother was in hiding, and Normil was arrested in his place. He was severely beaten during his time in prison. He was released after twenty-two days without any legal process having taken place. He went into hiding.

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<sup>57</sup> Ibid.

<sup>58</sup> JVA's are concerned that in the regional centers this problem may be even more acute because of the small-town dynamics. For example, USCC wanted to use expatriate staff but found the cost prohibitive.

<sup>59</sup> For example, Burmese refugee applications are vetted only after an interview carried out by a JVA.

<sup>60</sup> This is also the case with the lower, credible-fear standard which was used in Guantánamo to "screen in" Haitian refugees to the U.S. to pursue their asylum claims.

<sup>61</sup> Interview with Luis Moreno.

<sup>62</sup> In general, see Inzunza, "Refugee Act of 1980."

eventually moving to Port-au-Prince. On May 6, 1993 he approached IOM to apply for political asylum. He was given an initial interview date of December 3, 1993, a typical time lapse for a B case. On June 4, 1993 he decided to try to return to Grand Goave. He arrived there and was on his way to his house when three men in civilian dress stopped him and told him to hand over his weapon. He said he didn't carry a weapon. Two of the men were armed. They took the letter from IOM and said they were going to send it to Port-au-Prince police chief Michel François so that he would know that Roland was trying to leave the country after having burned down the military post. He was forced into their pickup, blindfolded and beaten, then taken to a cell where he spent three days. On the third day he was taken somewhere else, where he was held for eight days, constantly blindfolded. He was given a piece of bread with sugar on it once a day. Once he was brought a drink which turned out to be urine. After eight days he was taken out and abandoned, still blindfolded. He still has health problems including pain in his ears and the chest where he was beaten many times.<sup>63</sup>

It must also be noted that both IOM and INS staff processing a particular applicant know the vetting category from the start, as it is prominently featured in the file. Furthermore, in C cases the State Department is, in practice, making a final decision, based on a written questionnaire. Consequently, a considerable amount of screening is taking place before a face-to-face interview of any sort and before an INS official steps into the picture.

### E. Inconsistency in Adjudication

The two key elements of asylum adjudication are the correct application of the standard and a credibility determination. The creation in 1990 of a special INS asylum corps responsible for adjudication is tribute to the difficulty involved in the fair and equitable processing of claims. The difficult question in the Haitian context becomes, What is the sieve through which you sift thousands of people with potentially worthy claims?

**Applying the standard for asylum and determining credibility.** The human rights director for the UN/OAS Civil Mission said, "Obviously there is a huge number of people in fear of persecution--people are living in hiding at different levels."<sup>64</sup> An INS quality assurance official interviewed said, "Everyone has a well-founded fear -- maybe not on account of [the reasons stipulated in the asylum regulations]. It is very troublesome to get at people who fit; there are many people at risk. If a person is just scared but nothing has happened to them, that's the first cut. We look for persistence in the persecution, someone who has had a problem over time." The confidential Haitian source interviewed said, "There is a category of people who use ICP as a way out, but I think real cases are being bypassed. If you don't have proof, you most likely will be denied. It sometimes seems set up to make even good cases have a hard time getting asylum."

In Haiti, this challenge is magnified considerably by the following factors:

1. Interviewing officers are not drawn from the specially trained asylum corps and often have no prior experience with interviewing techniques, asylum law and case adjudication.
2. Interviewing officers are on sixty-day rotations, during which time they are under strong pressure to complete at least eight cases per day including interviews with interpreters and case writeups, among other tasks.
3. The above serve to limit officers' ability to familiarize themselves with country conditions and Haitian culture and to research individual cases.

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<sup>63</sup> Interview with NCHR, June 22, 1993, summarized from interview in French.

<sup>64</sup> Interview with Ian Martin, Port-au-Prince, June 15, 1993.



In a study of adjudication of asylum claims in the U.S., the Harvard Law School National Asylum Project found a high degree of variance from officer to officer. Furthermore, in half of the asylum decisions reviewed, errors in law or analysis were detected. This is among a well-trained asylum corps whose sole task is asylum adjudication. In Haiti, where no asylum corps officers are directly involved in adjudication, inconsistency is a logical result.<sup>65</sup>

An important concern voiced by several sources close to the program was the difficulty of making a credibility determination under the current circumstances. One INS official estimated that a negative credibility assessment could account for perhaps up to thirty to thirty-five percent of denials.<sup>66</sup> A government official close to the program said, "Credibility is so much harder than principles. My biggest concern is that someone will tell a true story and will be found to lack credibility. How much you know the system in Haiti is key to a credibility determination."<sup>67</sup> The confidential Haitian source interviewed, as well as others close to the program, generally felt that it was difficult for INS officers to acquire the local expertise necessary to assess credibility and apply the standards fairly.

**Quality assurance mechanisms.** Quality assurance officers (a legal advisor from the General Counsel's office and an asylum corps officer) are on only thirty-day tours of duty, and their role is primarily limited to case review. They do not play a role in training, nor do they routinely participate in interviews. In addition, quality assurance personnel report that they have not been well received by the core INS staff in Haiti.<sup>68</sup>

In an internal INS memorandum to the District Director in Mexico City dated April 20, 1993, obtained by AW and NCHR, the Officer in Charge in Port-au-Prince requested that the legal advisor and asylum officer of the quality assurance team be removed. "The presence of a 'legal advisor' here reporting to the General Counsel independent of operations reporting undermines my authority and disrupts the traditional chain of command." He added, "We do not at this time need the quality control officer....since my Assistant OIC...is now here and performing quality control....[R]eplacing [the previous officer] was entirely unnecessary and never discussed with either you or me."

The following excerpt from the memorandum raises serious concerns regarding the emphasis on production over quality and the attitude of INS officers toward Haitian applicants:

The on-site presence of a legal advisor places a hardship upon the interviewing officers in that they see the legal advisor as reviewing their work, looking for completeness, thoroughness, and in-depth questioning, while the Officer-in-Charge is pressing for production. Traditionally, refugee processing teams work hard all day and let off steam after work by gathering for a beer and laughing and joking about cases interviewed during the day. I might add that this is also good training. The seriousness of the asylum training, coupled with the watchdog style of

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<sup>65</sup> Telephone interview with Sarah Ignatius, Study Coordinator, National Asylum Project, September 16, 1993. According to Ignatius, asylum corps officers in the U.S. have a goal of adjudicating twelve cases per week, spending an average of three hours on each case. In Haiti, in addition to eight cases daily, INS officers must handle motions to reconsider, unscheduled cases such as "walk-ins," as well as other administrative tasks.

<sup>66</sup> The authors were unable to obtain data on specifics of the Haitian caseload from either INS or the State Department.

<sup>67</sup> Interview with a U.S. government official on condition of confidentiality, Washington D.C., June 8, 1993.

<sup>68</sup> Several U.S. officials privately confirmed the existence of strong tensions between quality assurance personnel and the INS adjudicating staff. The continuation of quality assurance is currently under evaluation by the INS.

certain Headquarters personnel, coupled with the on-site (even after hours) presence of a General Counsel representative has combined to hold such activity to a minimum.

In the same memo, the Officer in Charge emphasized the importance of the production requirement in refugee processing and indicated that the asylum training course required for all interviewing officers was good, but "focused too heavily on asylum and for the most part ignored refugee processing." The officers "have the perception that (1) the cases are so difficult and the quality requirements so strong that more than five cases per day per officer is impossible; (2) that every question, answer, hesitation, and body gesture must be thoroughly documented in a written decision; and (3) that failure to sufficiently document a written decision in accordance with the quality requirements would subject the interviewing officer to dire consequences of one kind or another."

More recently, T.J. Mills, a political asylum officer assigned to the quality assurance team in August, was suspended from the program after less than a week. He told AW and NCHR in Haiti that the reason for his suspension was that he questioned how case decisions were being made. Mills was very concerned about the basis upon which credibility determinations were being taken and believes that people truly fearing persecution were being denied. In a telling case he reviewed, a negative credibility determination was based on an applicant's use of the term *Ton Ton Macoutes*, since this paramilitary structure had been previously abolished. Mills said that he reviewed 120 cases during his short stay in Haiti, of which only two had been recommended for approval. He discussed several cases with an INS supervisory officer who, in his view, was uniformly hostile to his questions regarding some decisions. According to the INS Refugee Asylum and Parole Division, Mills's tour of duty was curtailed because it was discovered he lacked prior experience in case review at Guantánamo. The INS is investigating the matter.

There is a prevalent sense that the standard actually being applied is closer to the A category vetting requirements than the "well-founded fear" standard. Human rights groups reported that most applications eventually approved are either high-profile cases or victims of past persecution that is documented and often has been publicized. A staff person of the Centre Oecuménique des Droits Humains, a Haitian human rights group that provides assistance to victims of repression, said that sometimes people are persecuted but can't prove it. "This person would be arrested again or go into hiding. We can't help them because ICP won't accept them anyway."<sup>69</sup> A spokesperson of the Plateforme Haitienne des Droits Humains, a national coalition of nine human rights groups, expressed similar concerns. "Many people with real problems of persecution have been refused. We wonder if the real objective is to accept refugees. It seems they are accepting only those most close to the Aristide government or most vocal in denouncing the violence."<sup>70</sup>

Motions to reconsider do not constitute adequate administrative review of claims. They are lengthy letters written by the applicant, outlining the entire case. Letters of denial of asylum include notice that the applicant may file such a letter. However, according to the text, "The request to have a case reconsidered or a file reopened must be written (*doit être écrit*) in English or accompanied by an English translation." This is a patently unreasonable expectation in Haiti. The NCHR has received numerous requests to help translate letters, most of which they cannot accept.

The following two cases provide a stark illustration of the concerns outlined herein. They involve local popular organization leaders, both musicians, who fought to get political asylum. The first was successful after his

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<sup>69</sup> Interview in Port-au-Prince, June 16, 1993.

<sup>70</sup> Interview, Port-au-Prince, June 17, 1993. The Human Rights Platform researches and documents human rights abuses and disseminates reports nationally and internationally.

case was widely publicized, and is now in the U.S. The other was not so lucky, and was killed weeks after his latest attempt to receive political asylum through ICP.

Fréleau Nordé, a twenty-seven-year-old musician and activist from the southern town of Dame-Marie, applied for political asylum in November 1992 when he fled his home after being arrested and tortured. His case was still pending in February 1993 when a story about him appeared in *The New York Times*. A short time later, his case was denied. It took a second article in *The New York Times* in March, as well as the intervention of organizations including the NCHR, before his motion to reconsider was finally granted.<sup>71</sup>

André Fortune was a twenty-nine-year-old local popular movement leader in Lascahobas. Like other activists, he had a history of harassment and problems, particularly because he was very outspoken at a time when freedom of expression is routinely punished. According to testimony he gave to the UN/OAS Mission prior to his death, he was arrested in May 1992 in Port-au-Prince with a companion, Roland David. Both were beaten, and the latter later died of his injuries. Since then, Fortune had lived in different levels of hiding. He applied for political asylum in Port-au-Prince in June 1992, one month after his detention. He was denied in July. In August he filed a motion to reconsider, which was also denied. In June 1993, three local activists were briefly arrested following an incident where the bridge to Lascahobas had been closed off and tires burned by demonstrators. Others, including Fortune, went into hiding. Fortune's mother feared he was on an army list to be arrested, and contacted the UN/OAS Mission, whose staff interviewed him at that time. In July, Fortune re-applied for political asylum. Soon after, his case was denied for the third time. The refugee coordinator for ICP told AW and NCHR that Fortune's asylum claims had been denied based on a negative credibility determination due to false statements he had reportedly made in his applications. Weeks later, on August 16, 1993, several Haitian soldiers went to his home and one of them shot Fortune in the back, killing him. Since then, his colleagues have gone into deeper hiding, and several have fled the area. The UN/OAS Mission considers the case a clear example of a politically motivated killing, and issued a press communiqué condemning this violation of the right to life, demanding a thorough investigation by the authorities.<sup>72</sup>

The difficulty in determining how cases are adjudicated and decisions are made is due in part to an unwillingness to open the process to evaluation. For example, neither the INS nor the State Department was able to make available specific data on applicants which would be helpful in evaluating the process. Information requested included demographic and geographical information on applicants as well as detailed monthly case statistics for each vetting category, reasons for denial, etc.<sup>73</sup>

Experienced non-governmental organizations find the program in Haiti less accessible than similar programs they are familiar with elsewhere. For example, they say that access to denied cases is important in order effectively to assist Haitians in applying through the program. According to several NGOs involved in refugee processing elsewhere, such access is (informally) standard procedure in Southeast Asia. An official at World Relief reported that they had requested, and were denied, permission to observe INS interviews, a privilege they had exercised

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<sup>71</sup> Howard French, "In Hiding in Haiti, Dissident Despairs of U.S. Help," *The New York Times*, February 1, 1993 and French, "Haitian Dissident Loses Plea for U.S. Refugee Visa," *The New York Times*, March 4, 1993.

<sup>72</sup> UN/OAS Civilian Mission, Communiqué de Presse, Ref./CP/93/30.

<sup>73</sup> It is not even clear exactly what information on applicants is being kept. However, it seems logical that a detailed data base would serve as an excellent source of information on patterns of repression in Haiti.

while processing refugees from the former Soviet Union in Rome.<sup>74</sup> While such access seems to depend on the discretion of the INS Officer in Charge, the NGO view is that, given the difficulty and sensitivity of refugee processing in Haiti, they should have at least as much access as they enjoy elsewhere. So far this has not been the case.

Out-processing creates delays and risks. Out-processing of approved applicants prior to departure can involve delays as long as several months. According to the IOM director in Port-au-Prince, exceptionally urgent cases take one week to adjudicate and one week for out-processing. The majority of approved cases, however, are delayed four or more weeks, and AW and NCHR know of cases that have delayed months. The departure of "Claude," whose case is described above, had been delayed nearly a month when he was interviewed in Les Cayes in June, even though in the interim he had been arrested, threatened with death, and released. According to World Relief, he was still waiting for his passport.

The fact that approved applicants must be fingerprinted and obtain a passport from the de facto authorities in order to leave the country is of great concern. At the very least, obtaining a passport can delay out-processing considerably. It is tantamount to requiring permission from your persecutor in order to flee the country. Two sources familiar with the program reported that since January, when a Haitian army deserter who had been approved for asylum was arrested at the airport by the de facto authorities, the U.S. Embassy has been "clearing" at least some cases with the authorities prior to departure. AW and NCHR were unable to get official confirmation of this. But the January incident raises important concerns related to ICP in the Haitian context.

According to testimony given to NCHR, Coracélin Williams deserted the Haitian armed forces and went into hiding in December, 1991 after helping two people escape instead of arresting them as ordered. He fled the country on May 24, 1992 and was returned by the United States. The second time, he made it to Cuba but voluntarily repatriated in January, 1993. He then applied for refugee status through ICP and was approved. On the day of his departure, he was arrested at the airport and held for three days. He was released after the U.S. government intervened in his behalf, and is currently residing in the U.S.

In a March 15, 1993 press release regarding the case, the Haitian Armed Forces claimed that Williams had been court-martialed *in absentia* for desertion.

No coordination has been made with the Haitian authorities, who were totally ignored. After the unfortunate and lamentable incident, the Immigration and Naturalization Service representative in Haiti, Mr. Sam Martin, visited General Headquarters, at which time he was informed of the potential implications....The Armed Forces of Haiti reaffirm to the American administration their will to cooperate within the parameters set down by our constitution, the laws of Haiti. The Armed Forces of Haiti hope representatives of the INS in Haiti will be more vigilant in their handling certain files in the future.<sup>75</sup>

#### F. Representative Cases

During the course of the present research, AW and NCHR interviewed a number of people whose cases indicate chronic deficiencies in asylum claims adjudication as described herein, including an improper emphasis on past persecution. In some cases, an initial denial was overturned later, when the applicants' worst (well-founded) fears became a reality.

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<sup>74</sup> This is ironic given that the filling-out of the initial questionnaire, which includes sensitive questions, is done in a crowded room.

<sup>75</sup> Press Release (in English), Grand Quartier Général, Forces Armées d'Haiti, Port-au-Prince, Haiti, March 15, 1993.

In one case assisted by the NCHR, a denied applicant filed a motion to reconsider in August. The applicant was a member of a popular organization and had suffered a series of arrests and beatings since the September 1991 coup. The following is a summary of information submitted in the applicant's motion:

In October 1991 his house was shot at and his father and brother were savagely beaten and imprisoned by the army. The next day the applicant was arrested with two friends. He was badly beaten and imprisoned for nine days. He has lived in hiding in the mountains since January 1992. In April 1992 he was arrested again with other activists and forced to paint over slogans and graffiti throughout the town. He tried to leave Haiti in a small fishing boat in May, and was forced to return because of rough seas. Since he could not safely go home, he went to Port-au-Prince. He applied for asylum in June 1992. Less than two weeks later, one of his brothers was arrested and imprisoned for one day. In August, the applicant's request for asylum was denied. He tried to return home but left soon after when he found out the army was looking for him. He was arrested in September in a small town where he was staying. He was again brutally beaten, tied, threatened with death. He was held for eighteen days and upon his release immediately left for Port-au-Prince. In October he wrote a letter of reconsideration to the ICP program. In April 1993 he received a refusal letter.

In addition to the four-page letter in his second, August motion to reconsider, the applicant submitted a newspaper article and a letter from the Ministry of Justice attesting to one of his arrests. This motion is still pending.

"Pierre" is a twenty-three-year-old student from Port-au-Prince. He is a member of a student organization known as the Zafe Elev Lekol (ZEL). He was forced to leave his family home, stop attending school, live in hiding in another town since December 1992. On November 27, 1992, at 2:00 a.m., agents of the Service de Investigation et Antigang (known as Antigang -- a division of the Haitian militarized police) came to his home. He was there with his friend, "René," the latter's cousin, and other family members. Twenty men, some in uniform and others in civilian dress, surrounded the house and knocked on the door. They called Pierre by name, and he responded that he didn't have any reason to talk to the police. He finally went outside with the two friends, at which time the police started to beat him. They asked about René, not knowing that he was one of the two there with him. They asked him about other ZEL members while beating him. They searched every room in the house, finding photographs of Aristide and spray paint for graffiti. They tied his hands behind his back and did the same with his two friends and took them to the Antigang headquarters. During his incarceration, Pierre was beaten, taken to a known dumping ground to scare him, threatened with death and interrogated about ZEL activities organizing student demonstrations and so forth. Both Pierre and René spent a total of twenty-five days in prison, including seventeen in the Antigang headquarters and eight days in the National Penitentiary. They were released December 22 based on a December 18 court order. The charges, according to Pierre, were disturbing the peace, being Lavalas fanatics and criminal association. Both young men applied for asylum.<sup>76</sup> Pierre applied on March 2, 1993 and received a letter of denial on March 25. Point 10 on his denial letter was checked off, stipulating that "your testimony concerning the facts, actions and circumstances is inconsistent on important points and is deemed to be inadmissible." René's application was approved. Pierre was amazed because he said they had mistreated him even more than his friend. He wondered if it could have been because of the interpreter. In April, he wrote a letter asking for his case to be reconsidered. As of late June, no response had been received.

Hilton Etienne (his real name) is a thirty-eight-year-old man from Hinche, the capital of the Centre Department. He is a leader of the Ti Legliz or Christian base community, and a member of the Catholic Church's Justice and Peace Commission, a neighborhood committee and a literacy program. He first fled

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<sup>76</sup> "Pierre" showed the authors a certificate of his ZEL membership and two newspaper articles attesting to the arrest and imprisonment of both young men.

his home on October 6, 1991 when the military came to his house. They were looking for local organizers of a September 30 street demonstration. One entered and warned him that he was going to be arrested. He fled on foot and by bus to Port-au-Prince. In the ensuing months he tried to return to Hinche on two occasions. Both times he was forced to return to Port-au-Prince by continued army harassment. In April 1992, soldiers came to his house, forced the door and pointed a gun at his wife's head and stomach, asking where her husband was. They searched the house, stealing some money and a VCR. They returned later and arrested her. A neighbor was sent to tell him, and he left immediately. His wife spent one day in prison, at one point fainting from the stress. In early May 1992, he went to the U.S. Consulate to apply for asylum after hearing about ICP on the radio. He had several interviews during June and was denied asylum in early July. Between October and December he tried to go back to Hinche twice. Both times, the army came around his house looking for him, the second time searching his house and removing literacy materials. In February 1993, his house was searched by the military again. In March, he asked his wife and mother to talk to the UN/OAS Mission about his case. He then returned to Hinche but never slept at home. On April 28 at 2:00 a.m. soldiers forced the door of his house and arrested him. They hit him in the face, and he lost two teeth. He was tied up with a rope and hit around the head and eyes. His ears were boxed. He was taken to the army headquarters where the Djak was performed on him, and he was beaten 200 times with a stick.<sup>77</sup> En route to another location, he was beaten in the street, his left arm was broken and he was made to count as he was hit another hundred times. He briefly lost consciousness and was dragged by his captors before being locked up for one night. He was released on April 29, and went back to Port-au-Prince to a hospital. A priest from Hinche came and warned him to go to a private hospital because they were looking for him. His wife joined him and they lived in hiding in Port-au-Prince. (His case was publicized in several periodicals and on radio; consequently he cannot walk in the streets because he fears he would be recognized.) The NCHR assisted him in writing a letter of reconsideration which was approved in June. Two weeks later he was still waiting for the results of his medical examination and for his passport. His wife must stay behind to care for grandparents and children but she wants to move to Port-au-Prince.<sup>78</sup>

Célor Josephat (his real name), thirty-seven, is from Perodin, Petite Rivière de l'Artibonite. He has a wife and four children. He is a farmer by profession and a member of the Rassemblement Paysan Perodin (RPP), a local farmer organization. He is currently living in hiding in Port-au-Prince. On November 12, 1991 at about 3:00 p.m. soldiers came to his house to arrest him. They burned his house down. They told him it was because he was a member of the RPP and Lavalas. They asked him how many people he had burned, if [President] Aristide was going to come back and about the activities of Lavalas. Fifteen other members of his organization were arrested at the same time. He was not beaten in prison because his family paid money to the army so he wouldn't be mistreated. They paid 360 Haitian gourdes (about US\$30.00) so he wouldn't be beaten and another 360 Haitian gourdes for his release. (Those that didn't have money to give were beaten and didn't get released as quickly.) Upon his release he went to live in his mother's house. On January 16, 1992, he was on his farm when his wife warned him that the army had gone to his mother's house looking for him. He left the area immediately. He found out later that the local section chief (a local rural military authority) had asked the military to arrest all members of his organization. On March 14 he went to Port-au-Prince. He slept in front of St. Joseph's Church and finally worked out room and board with someone in exchange for work. In October he tried to return to his home and was arrested en route. He was beaten, and his ears were boxed. The soldiers walked on him, and he

<sup>77</sup> The "Djak" is a common form of torture involving tying the victim's arms behind the knees and beating the victim repeatedly. It is also common to make the victim count the blows; a miscount results in more beating.

<sup>78</sup> See also, Harold Maass, "Some repatriated Haitian refugees subjected to arbitrary arrest, torture," *The Miami Herald*, June 18, 1993.

fainted. (He has a medical certificate dated October 27, 1992 which certifies that he was the victim of police brutality.) He went back to Port-au-Prince at the end of November, to a local NGO, the Centre Ocuménique des Droits Humains, and they provided medical referral and financial assistance. He went to NCHR for assistance and then applied for asylum through ICP. After five visits over a three-day period, he received a denial letter. He returned to the NCHR office with the letter. The staff assisted him in writing a motion to reconsider. As of July he was still waiting for a response.

According to Josephat, eleven other members of the RPP have also asked for asylum. One was approved and has left Haiti. Other applications are still pending. Some who were arrested after him and filed later were given January 1994 appointments. Americas Watch and NCHR know of at least one other RPP member who has received asylum after having similar problems and is due to leave Haiti soon.

Fritzion Orius (his real name), is a thirty-year-old journalist from Petite Rivière de l'Artibonite. He is married and has one child. He was a radio correspondent with Radio Haiti-Inter in his area and in Port-au-Prince. He was also a member of the local elections bureau during the September 1991 elections that brought President Aristide to power. After the coup, journalists like himself were seen as "outlaws." When a group of armed thugs went to his house and threatened him, he left town. Since then he has been moving around, living in hiding. While staying with a friend in a town south of the capital he applied for asylum at the U.S. Consulate in May 1992. He was given an appointment for the first week of June. He had several interviews, including form-filling sessions, during eight hours spent there. In a week he had heard nothing and called, only to be told to go pick up his denial letter dated June 15, 1992. He continued to live in hiding. He tried to go back to his home in February but didn't sleep at his own house. A group of police and attachés, two of whom were in uniform, went to his house looking for him. They found and savagely beat his twenty-year-old brother with machetes, sticks and clubs. (His brother had worked with the Information Ministry under the Aristide government.) He went back into hiding, living from town to town, unable to work. During this time, several of his fellow journalists had also had problems. Three had been arrested, severely beaten and spent a month in prison.<sup>79</sup> Friends warned him to leave, believing him to be in danger. He made several more attempts to go home and to visit his family, and each time he was threatened and harassed. After an incident where attachés attempted to detain him during one such visit, he contacted the Committee to Protect Journalists and decided to reapply for asylum. He filed a letter of reconsideration on Thursday June, 17, 1993 with the help of the NCHR.

He asked Americas Watch and NCHR to intervene in his case with the ICP program, and both organizations expressed their concern about his case directly to the Refugee Coordinator. Orius's motion to reconsider was refused in August.

On Monday, June 28, 1993 Mr. Vesnel Jean-François (his real name), a literacy worker and coordinator of a coalition of community organizations of Cité Soleil, was arrested and tortured by the Haitian military after they broke up a demonstration of about one hundred supporters of President Aristide. He was hospitalized in military custody, and released on July 1. Jean-Francois had applied for political asylum through ICP in Port-au-Prince in October 1992. His claim was denied. In March, he sought help from the NCHR to have his claim reconsidered and was again denied. He was finally accepted in August 1993.<sup>80</sup>

<sup>79</sup> Journalists have been particularly singled out for repression since the coup. It is one of the professions considered by the State Department to be "at risk" for purposes of placing an applicant in the "A" vetting category.

<sup>80</sup> See Pam Constable, "...and the beatings continue," *The Boston Globe*, July 6, 1993.

In the case of motions to reconsider, past persecution also seems key, as opposed to a "well-founded fear." The following cases are examples:

"Louis," a thirty-four-year-old member of a community association in a Port-au-Prince neighborhood, applied for asylum and was denied in June 1992. In October he filed a motion to reconsider which was rejected on January 12, 1993. On November 25, 1992, during the time his motion was pending, armed men in civilian dress went to his house. He was not home, and they searched the house saying they were looking for weapons. Then on January 31, 1993, little more than two weeks after his motion to reconsider was denied, soldiers from the Cité Soleil army post arrested him for being "pro-Aristide." He spent six days in prison. He filed yet another motion to reconsider on February 7, 1993 and is still waiting for a response.

The *Miami Herald* reported as follows:

Seraphin and his brother Caceus tried to flee by boat seven months after the coup, but were sent back. They then applied for refugee status through the U.S. Consulate in Port-au-Prince, as do about 20% of the refugees returned home. They were rejected. Caceus was badly beaten during his most recent arrest -- his third -- and grimaced in pain as he lay in his bed after his release. Shortly before his arrest in May, he went to the U.S. refugee application office in Port-au-Prince to ask that his case be reconsidered. Overloaded with applications, employees gave him an appointment. In October.<sup>41</sup>

#### G. Some Asylum Seekers Will Not Risk Applying

By definition, no matter how well structured and managed, ICP cannot meet the needs of a significant group of asylum seekers who distrust the program or believe that they would put themselves or their loved ones in danger by approaching it in the current political climate. These may not be the highest-profile people, who by definition live more in the public eye. According to the international refugee expert interviewed, "The program lacks credibility, it is seen with suspicion, it is linked with the U.S. government position in general." Staff of local human rights groups claim the program is viewed with great skepticism by their clientele and the relentlessly targeted popular movement organizations. "People are discouraged and reluctant," according to staff of the Catholic Church's Justice and Peace Commission. "They know they are taking a chance. They see it as a waste of time."<sup>42</sup>

An INS asylum officer interviewed in Port-au-Prince said, "I wonder whether we're seeing the people with the best claims. We don't see [those in] deepest hiding. They are so afraid they won't come out. We don't know how bad things are." However, the State Department official interviewed told AW and NCHR that he and his colleagues "believe ICP is safer for real refugees.... We think we're getting the most vulnerable."<sup>43</sup> The confidential Haitian source interviewed personally knew people in hiding who are "afraid to go there, afraid that what they say will haunt them."

<sup>41</sup> Maass, "Some repatriated Haitian refugees subjected to arbitrary arrest, torture."

<sup>42</sup> Interview, Port-au-Prince, June 17, 1993.

<sup>43</sup> According to Inzunza, "[U]nfortunately, in most cases, those most in need of this legal remedy -- those most vulnerable to abuses and with least access to any viable alternatives -- are least likely to be able to take advantage of it. Recognizing the need for this kind of processing, we must also realize its inherent limitations." ("Refugee Act of 1980," p. 421.)



The IOM and INS are willing to do off-site interviews in Port-au-Prince for those afraid to approach the program. But according to local human rights groups, this can draw dangerous attention to the applicant as well. The Justice and Peace Commission, an NGO in daily contact with people in hiding and victims of persecution, reported that in May, an IOM official went to Cité Soleil with a Haitian guide to conduct an off-site interview that their office had helped arrange. That night, *Zenglendos* (armed thugs) arrived at the house where the interview had taken place, frightening the entire household into hiding. The Justice and Peace staff knew of other individuals in hiding who would not apply.

Similarly, staff of the Centre Oecuménique des Droits Humains say that in their experience, there are many people who will not contact the program. They know of cases of people who "self-vet," even though they have been persecuted, because they know they don't have enough proof. One staff person told the story of two friends in hiding. "They are afraid to go to IOM, they are afraid of the process," he said. "They are two young people from Miragoane who think they must leave. They are members of the Organization to Defend the Interests of Nippé, a local popular organization. They have colleagues who have been arrested and others who have been killed. People in the area see them as 'Aristide fanatics.' They have been living in hiding since attachés broke up a meeting they were attending in a school and threatened them. They fear they will be arrested if caught."

## V. INTERDICTION, FORCED RETURN AND IN-COUNTRY PROCESSING

New procedures have been implemented to assure that asylum seekers forcibly returned by U.S. Coast Guard cutters are smoothly incorporated into the ICP program. U.S. Embassy personnel continue to meet the cutters at the dock to monitor the return. Currently, an INS interpreter, explanatory audio cassettes and preliminary questionnaires are available on board the cutter. The questionnaires are vetted by State Department personnel before disembarkation, and asylum seekers are given an interview date.

On July 17, AW and NCHR observed the forced return of eighty-seven refugees by the *U.S.C.G.C. Tahoma*. It was anything but smooth. Present at the dock were the Haitian Red Cross, the U.S. Embassy, the UN/OAS Mission and the press. Haitian police and immigration officials swarmed the area.<sup>64</sup> U.S. Embassy officials initiated on-board vetting of the questionnaires. One official later told AW and NCHR that the cases were "mostly Bs, no As."

After disembarking, the returnees, including eleven children, were hustled into line by police officials. The Embassy had arranged for a woman in labor to be taken directly to a waiting Haitian Red Cross ambulance instead of having to go through the immigration process. She was questioned by police and immigration officials while waiting in the ambulance. Everyone else was taken to an immigration/police post at the pier for processing. Several of the returnees had their heads covered and hid their faces as journalists snapped pictures. A journalist from the government television station and other national and foreign press interviewed a number of the returnees.

Immigration processing included questioning, fingerprinting the adult males and a meticulous search of all of their possessions. The Haitian officials were brusque and insulting. One official held up a bag of diapers and box of feminine napkins and displayed them laughingly to the spectators before tossing them back in the plastic bag. The whole process was, as one foreign official commented, "intimidation par excellence." The Red Cross handed out yellow cards for food aid at their destinations and provided cash for bus fare.

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<sup>64</sup> A police officer harassed a Haitian NCHR colleague on several occasions, threatening to have him removed. The officer said that they didn't recognize his organization and that such organizations were "crushing the country, always telling lies about the situation." Similar harassment obliged AW's Haitian interpreter to leave the dock area.

The following case of a young man forcibly returned from the interdicted boat is an alarming example of individuals who are potentially at risk being forcibly returned to Haiti:

"Jacques," a first-year university student with a current identification card from the Faculty of Applied Sciences in Port-au-Prince, had been living in hiding for months when he decided to try to leave Haiti. On December 6, 1992 he had been threatened by a gang of armed thugs who said they were after students from his and other universities. He left his house and moved to Léogâne, south of Port-au-Prince, but was subjected to continued harassment so that by early June he was too afraid to return to school. He lived in hiding and through friends heard that a boat trip was being organized. Once on the U.S. cutter he filled out a questionnaire. He claims he was told only to complete the first page of biographical information. He did not tell anyone on board about his situation. He showed AW and NCHR a card he was given with a March 1, 1994 appointment date with the IOM.

By the end of the process, twenty-two men had been led away for police questioning. Of these, six were arrested and taken by a uniformed police officer and two individuals in civilian dress in a private pickup to the Immigration and Identification Service, housed in the same building as the infamous Antigang headquarters. Those arrested were Lionel Brice, Micot Brice, Jean Arnold Morice, Wisner Julme, Letoine Joseph and Roland Bernard. The U.S. Embassy was informed that they were under arrest as the alleged trip organizers. Three were released after several hours and the others the following day. None was charged.

On July 5, 1993, the U.S. Coast Guard cutter *Baranhof* repatriated twenty-six people who were aboard a boat intercepted about thirty-five miles southwest of Griffes du Sud. They were afforded the same treatment described above. Eleven were taken for questioning, and five of these were arrested on charges of "illegal departure" and "organization of a clandestine voyage." They spent two nights imprisoned at the Antigang headquarters before being freed on July 7 by a public prosecutor. They later told the UN/OAS Mission observers that they had not been mistreated but had been interrogated about the trip organizer and the owner of the boat.

As this report was being completed, on September 11, 1993, a Haitian boat carrying forty-six people was interdicted. As the passengers were being transferred to the U.S.C.G.C. *Mohawk* rough seas caused the Haitian boat to capsize, and nine Haitians drowned. The rest were summarily returned to Port-au-Prince on September 13.

Among the passengers, who departed from the northern city of Cap-Haïtien, were ten members of a local organization, Komite Katye Lavalas. On September 3, 1993, eighteen people, including these ten, had been arrested. "Sean", twenty-three, and two other victims, told NCHR that they were beaten and incarcerated before escaping at night through a prison window. Ten of those who escaped boarded a boat departing the next morning after the boat owner agreed to help them flee. Six of that group were among the drowned, including Sean's wife.

Prior to disembarking at the Port-au-Prince dock, the returnees filled out ICP preliminary questionnaires. Sean and another returnee were given appointments for the following morning. Six other passengers were arrested and briefly detained, including a fourteen-year-old girl and the sympathetic boat owner who had assisted the ten in their escape.

A 1980 Haitian decree regarding "irregular voyages" stipulates (Art. 3) that:

Any organizer of an irregular voyage destined for abroad, any attempt to make a person undertake a voyage abroad from the national territory without the corresponding legal procedures will be punished by

a sentence of six months to three years as dictated by the competent correctional court. In case of a repeat offense, the guilty party will receive the maximum sentence and will be fined 10,000 to 50,000 gourdes.<sup>45</sup>

On January 16, 1993, 107 Haitians who were preparing to leave by boat were arrested by soldiers on a beach near Gonaïves. The soldiers fired their guns into the air, tied the men together by their wrists and the women by their dresses. They were taken to the Toussaint L'Ouverture military base, where they were detained. According to the military commander interviewed by NCHR, the refugees were held for violating the 1980 decree. Officials in Gonaïves interpreted the decree as including all those who pay for passage on a boat. Approximately forty-five detainees, mostly women and children, were held for five days and released on January 21. The rest were released on January 22.

The existence of this law makes forcible return of Haitian boat people even more unconscionable under the present circumstances, since it is being enforced by the same regime responsible for innumerable abuses against citizens. Unauthorized departure is a recognized trademark of refugee flight worldwide. In Haiti it is also considered a crime. The U.S. policy of summary return of all Haitians blurs the fundamental distinction between a refugee and a criminal, returning Haitians to face detention and possible prosecution. Not only are Haitians denied the possibility of arriving at a safe port; they are returned to a country where the very fact of their exit puts them in danger. According to officials, the U.S. Embassy has taken great pains to follow up on these cases, even for months, until they are resolved. However, the Embassy has no control over who is detained and why, or how they are treated, physically and legally. Picking up Haitians packed into rickety boats may be termed "rescue at sea." Returning them to Haiti, under these circumstances, clearly cannot.

## VI. CONCLUSIONS

The Clinton Administration has contributed to the achievement of an accord which may lead to a settlement of the Haitian political crisis. This is an example of what can be achieved when the U.S. government works cooperatively with the international community. It is a positive initiative that is marred by the blatant mishandling of the refugee crisis.

A fundamental question is whether Haitian refugees are a U.S. "problem" or a regional or international "problem". Logically, many Haitians choose the U.S. as their country of first asylum.<sup>46</sup> While this does not, of course, oblige the U.S. to receive them as asylees, there is an international obligation to respect the principle of non-refoulement and provide at least temporary refuge.<sup>47</sup> By taking the lead in curtailing the legal options of Haitian asylum seekers, by interdicting and forcibly returning them, the U.S. government has not only made the refugee crisis its problem but has, at the same time, sabotaged the possibility for international participation and support. By continuing the blockade, President Clinton effectively eliminated the possibility of a regional approach

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<sup>45</sup> Decree dated November 17, 1980. By contrast, Article 41-1 of the 1987 Haitian Constitution states that, "No Haitian needs a visa to leave the country or return." The Constitution also states (Art. 19) that, "The State has the binding obligation to guarantee all citizens the right to life, to health and respect for the human person without distinction, in conformity with the Universal Declaration of Human Rights." Translations from the French by Americas Watch. Article 14 of the Universal Declaration expressly provides for the right to leave a country and seek asylum.

<sup>46</sup> Thousands of Haitians have also sought refuge in the Dominican Republic, with mixed results.

<sup>47</sup> See generally UNHCR, *Conclusions on the International Protection of Refugees Adopted by the Executive Committee of the UNHCR Programme* (United Nations: New York), regarding large-scale influx and temporary, refuge. (For example, 30th Session, 1979; 31st Session, 1980.)

to the crisis, isolating the U.S. from the very entities, nationally and internationally, that could have contributed to a reasonable regional response. The ICP program is both a product and a victim of this isolation.

Using ICP as the justification for refoulement and the only alternative for asylum seekers is ludicrous and severely abridges the rights of Haitians. Policies should fit and uphold laws. By pretending that ICP is an appropriate response to the Haitian crisis, and that the principle of non-refoulement is not applicable, the U.S. has succeeded in turning the intent of international and domestic refugee law upside down to make it fit a discriminatory policy. The results are easily observable in the practice. Contrary to the assertions of administration officials, Haitians worthy of asylum are indeed "slipping through the cracks."

While the ICP program has improved in recent months, it continues to suffer from the inconsistencies stemming from the flawed rationale behind it and the problems inherent in carrying out such a program in the political context of Haiti. Asylum seekers, above all, need protection and the ability to state their claims in a climate of trust, safety and fairness. As the present research indicates, many have not found these basic needs met by ICP. Furthermore, Haitians are punished for doing what anyone would instinctively do when faced with danger - flee.

Some Haitians who have availed themselves of ICP have been unfairly and indefinitely put on hold. Some have been rejected until their well-founded fears are borne out. Still others have suffered persecution at different stages of the process. Those who reasonably infer that ICP is not a safe option are left with no option. Furthermore, there are indications that the State Department is taking steps toward winding down the program in anticipation of a political settlement.

INS Commissioner-nominee Doris Meissner recently wrote, "Receiving countries must be attentive to pre-refugee, pre-migration circumstances in sending countries.... Thus, migration prevention must become a legitimate objective of international diplomacy and national policy." However, "migration prevention" does not mean establishing blockades and beefing up border patrols to protect U.S. borders from a so-called onslaught of undesirable aliens. It does mean actively engaging in the establishment of lasting solutions to the political crises in countries like Haiti. Contributing to an environment in which citizens are able freely to exercise their rights, including the right to stay, should be a centerpiece of this solution. The U.N. High Commissioner for Refugees, Sadako Ogata, has repeatedly warned that while the right to stay is important, the right to flee must not be forgotten. "[P]revention is not ... a substitute for asylum; the right to seek and enjoy asylum, therefore, must continue to be upheld."<sup>88</sup>

U.S. policy toward Haitians is a case study in the growing tendency worldwide to close the doors on refugees. The harsh consequences of restrictive ICP procedures for some Haitian asylum seekers, suggest that what we can expect if proposed U.S. legislation is passed to curtail the asylum process even further. U.S. policymakers have played on the public's fears of increased immigration and are taking the lead in a worldwide trend toward closing borders and denying asylum to bona fide refugees. Having done that, the U.S. forfeits its ability to encourage other countries to do what's right when faced with large numbers of people fleeing persecution.

The NGO community was prepared to work with the incoming Clinton Administration to establish a fair response to the Haitian refugee crisis. Proposals backed by AW and NCHR and many others were quite conservative and pragmatic. The Administration was asked to do the bare minimum required by law and human decency to respond to Haitian asylum seekers: respect the principle of non-refoulement and give them a fair hearing. Instead, the Clinton Administration opted to continue violating the most basic rights of Haitians and to invest

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<sup>88</sup> As cited in the *World Refugee Survey*, U.S. Committee for Refugees (Washington, D.C.:1993), p. 7.

considerable resources and energy into further damaging both domestic and international refugee law, affecting asylum seekers the world over.

As stated in the introduction, progress in the political arena, while cause for hope, does not lessen the need for an adequate policy to address the needs of Haitian refugees, now and in the future. The precedents set by the management of the Haitian refugee crisis have ominous consequences for future refugees fleeing massive human rights violations, in Haiti or elsewhere. The blatant manipulation of U.S. and international law, by two administrations, to further this policy leaves open the question of how the U.S. will handle the next refugee emergency.

Haitians have a right to flee persecution and seek safe haven. The U.S. government has played a central role in the refugee crisis, going out of its way, on the high seas, to actively deny safe haven -- and has called it "rescue." It has further established an in-country processing program that cannot, in and of itself, serve as an adequate response to the needs of Haitian asylum seekers, and has called it "complete coverage."

## VII. RECOMMENDATIONS

**1. End refoulement policy:** On January 14, President-elect Clinton announced the temporary continuation of forcibly returning Haitian refugees, saying, "The practice of returning those who flee Haiti by boat will continue, for the time being, after I become President." This "temporary" measure should be ended, Supreme Court decision notwithstanding, and new procedures should be established, in conjunction with the Aristide administration, for handling asylum seekers outside Haiti.

**2. Help to develop alternatives:** The U.S. should work closely with the UN, UNHCR, the NGO community and OAS member states to devise an acceptable and safe international response to Haitian asylum seekers in which the U.S. would necessarily play a leading role. In December 1992, a broad-based coalition of NGOs supported a series of measures for protection and processing that, consistent with international law and standards, could immediately be implemented. These included:

- ending automatic repatriation;
- expanding in-country processing;
- increasing the number of refugee slots allocated for Haitians;
- opening up a safe-haven enclave in the Caribbean basin;
- settling pending litigation; and
- providing temporary status to Haitians currently in the United States.

The UNHCR has advocated a broad strategy which includes facilitating a regional response consistent with traditional principles of burden sharing so that no one country shoulders the responsibility. The UNHCR has also promoted a comprehensive plan for rescue at sea, screening and non-refoulement, and full and fair procedures for eligibility determinations.

**3. Conduct an independent review of the ICP program:** Given the inconsistencies in asylum claims management and adjudication cited in this report, an independent review of the ICP program including the roles of both the State Department, and the INS is called for.

- The U.S. Congress should request an investigation by the General Accounting Office with the objectives of investigating the State Department's approach to and management of the program as well as detecting

irregularities in adjudication to ascertain whether Haitian asylum seekers receive a fair and timely hearing through the program.

- The Attorney General should appoint an impartial panel of experts to carry out a thorough review of case decisions for the Justice Department. The methodology employed, as well as all findings, should be transparent and open to public participation and scrutiny. Haitian asylum seekers who believe they have received an unfair decision, or their representatives, should be included in the review process.

4. Use ICP as part of broader plan: ICP should be continued as an important additional avenue of protection Haitian asylum seekers. As part of a broader plan of action for Haitian refugees, ICP could be strengthened and supported by a more collegial relationship with various local and international NGOs and international institutions such as the UNHCR. Only in this context could specific recommendations regarding ICP operations in Haiti contribute to improving the program.

#### Acknowledgments

This report was written by Gretta Tovar Siebentritt of Americas Watch (AW) based on research by her and Anne Fuller and Pierre Esperance, both of the National Coalition for Haitian Refugees (NCHR) in Haiti. Mary Pack and Rob McChesney of Jesuit Refugee Service/USA (JRS) contributed to the research in Washington D.C. The report was edited by Cynthia Brown in conjunction with the staffs of AW, NCHR and JRS.

The authors would like to thank the numerous institutions whose staff contributed information for this report, including the State Department and the Immigration and Naturalization Service (INS) in Washington D.C., and the U.S. Embassy, the INS and the International Organization for Migration (IOM) in Port-au-Prince. We are also grateful to many individuals and institutions both in Washington, D.C. and in Haiti, who generously shared their experiences. These include the United Nations High Commissioner for Refugees, United Nations/Organization of American States International Civilian Mission, U.S. Catholic Conference, World Relief, U.S. Committee for Refugees, Centre Oecuménique des Droits Humains, Plateforme Haitienne des Droits Humains, the Centre de Recherche et de Formation Economique et Sociale pour le Developpement (CRESFED), the Catholic Church Justice and Peace Commission, Franz Guillite and several individuals who spoke with us confidentially. We particularly thank the Haitian asylum seekers named and unnamed in this report, who agreed to speak with us in Port-au-Prince and Les Cayes. Finally, we thank Mews Joseph and C. for greatly facilitating our research in Haiti.

*Americas Watch was established in 1981 to monitor and promote the observance of internationally recognized human rights. Americas Watch is one of five regional divisions of Human Rights Watch. The Chair of Americas Watch is Peter D. Bell; Vice Chairs, Stephen L. Kass and Marina Pinto Kaufman; Executive Director, Juan E. Méndez.*

*Human Rights Watch is composed of five regional divisions - Africa Watch, Americas Watch, Asia Watch, Helsinki Watch and Middle East Watch - and the Fund for Free Expression. Its Chair is Robert L. Bernstein; Vice Chair, Adrian W. DeWind; Acting Executive Director, Kenneth Roth; Washington Director, Holly J. Burkhalter; California Director, Ellen Lutz; Press Director, Susan Oznos; Counsel, Jemera Rone.*

*National Coalition for Haitian Refugees, established in 1982, is composed of forty-seven legal, human rights, civil rights, church, labor and Haitian community organizations working together to seek justice for Haitian refugees in the United States and to monitor and promote human rights in Haiti. Its Executive Director is Jocelyn McCalla; Associate Director, Anne Fuller; Research Associate, Ellen Zeisler. In addition to periodic reports on human rights in Haiti, the NCHR publishes a monthly bulletin on human rights and refugee affairs. It is available upon request.*

*Jesuit Refugee Service/USA, located in Washington, D.C., is the central coordinating office in the United States of the international Jesuit Refugee Service. JRS was founded in Rome in 1961 under the auspices of the Society of Jesus. Regionally organized, JRS operates programs for refugees and internally displaced persons in over twenty-five countries in Asia, Africa, Central and North America, Europe and Australia. Major program foci include pastoral care, legal assistance, research, health education and accompaniment. The Director of JRS/USA is Robert W. McChesney, S.J.; Associate Director, Mary Pack.*





reasoned determinations.

We contrast this plan for Haitian processing with the refugee processing operations in the former Soviet Union and Southeast Asia, where many categories of people need only assert a "fear" and a "credible basis for concern" about the possibility of persecution to be granted refugee status. The application of the relaxed "Lautenberg" standard in these locations results in an 88%-95% approval rate in the pre-defined categories. We find the disparity between these programs and the plan for Haitian refugees shocking.

We remain convinced that the indiscriminate violence in Haiti requires a temporary regional safe haven to protect those who are truly in danger. If refugee processing is to be conducted on board ships, or even on land, those who cannot meet the full burden of proof, but who present a "credible fear", should not be repatriated until democracy is restored in Haiti.

We remain ready to assist the Administration's efforts to provide genuine protection for Haitian refugees. We believe, however, that genuine protection requires:

- pro bono legal representation of interdicted refugee applicants
- the application of a relaxed standard, such as the Lautenberg standard, to all Haitian refugee determinations
- adjudications by fully trained INS asylum officers
- independent on-site review of adverse decisions
- land-based processing at a secure site
- temporary regional safe haven for all those who fail to meet the high burden of full refugee determination, but who present a credible fear of harm in Haiti

If Haitians are granted access to legal counsel, AILA remains committed to working with other advocacy organizations to recruit pro bono attorneys to assist those seeking protection. We urge the U.S. Congress to ensure that a fair refugee determination process is implemented without further delay.

Sincerely,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION



  
 Hope M. Frye    Warren R. Leiden    Jeanne A. Butterfield  
 Executive Director    Executive Director    Senior Policy Analyst

28DP4026

**APPENDIX 13.—LETTER FROM THE AMERICAN BAR ASSOCIATION TO  
HON. ROMANO L. MAZZOLI, CHAIRMAN, SUBCOMMITTEE ON INTER-  
NATIONAL LAW, IMMIGRATION, AND REFUGEES, DATED JUNE 13,  
1994**



**INTERNATIONAL AFFAIRS  
OFFICE**

**AMERICAN BAR ASSOCIATION**

**Governmental Affairs Office**

**DIRECTOR**  
Robert D. Egan  
202 331-2600  
ABA INTL AFFAIRS

1800 M Street, N.W.  
Washington, DC 20036-5886  
(202) 331-2200  
FAX (202) 331-2220

**THE STATE COUNSEL**  
Kevin J. Donohue  
202 331-2682  
ABA INTL AFFAIRS  
1999 K Street, N.W.  
202 331-2601  
ABA INTL AFFAIRS

**THE STATE COUNSEL**  
James A. Langan  
202 331-2600  
ABA INTL AFFAIRS

**THE STATE COUNSEL**  
John A. Langan  
202 331-2600  
ABA INTL AFFAIRS

**THE STATE COUNSEL**  
Lynn B. Langan  
202 331-2601  
ABA INTL AFFAIRS

**THE STATE COUNSEL**  
Lynn B. Langan  
202 331-2601  
ABA INTL AFFAIRS

**THE STATE COUNSEL**  
Lynn B. Langan  
202 331-2601  
ABA INTL AFFAIRS

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202 331-2601  
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Lynn B. Langan  
202 331-2601  
ABA INTL AFFAIRS

**THE STATE COUNSEL**  
Lynn B. Langan  
202 331-2601  
ABA INTL AFFAIRS

**THE STATE COUNSEL**  
Lynn B. Langan  
202 331-2601  
ABA INTL AFFAIRS

June 13, 1994

The Honorable Romano Mazzoli  
Chairman  
Subcommittee on International Law,  
Immigration and Refugees  
Committee on the Judiciary  
House of Representatives  
Washington, D.C. 20510

Dear Mr. Chairman:

The American Bar Association commends you for conducting hearings on June 15, 1994 to examine U.S. policies toward Haitian refugees. We ask that this letter be made a part of the record of these hearings.

The Association has been deeply troubled by the current policy. Several weeks ago, ABA President R. William Ide III wrote to President Clinton to urge that the automatic repatriations stop immediately. Regrettably, this detrimental policy continues today. A copy of the May 9 letter to the President is enclosed.

Because the level of violence in Haiti imperils the welfare of the entire population, the Association prefers providing temporary safe haven to Haitians who have escaped the terror until conditions there improve. But, as the Administration has decided to undertake refugee screening, it is imperative that certain procedural safeguards be implemented to ensure that refugees are not erroneously rejected and returned to life-threatening situations. Such procedures should include:

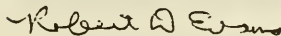
- experienced asylum/refugee officers
- competent interpreters
- advanced notification of the procedures and burdens
- legal assistance
- independent review
- monitoring by the United Nations High Commissioner for Refugees

We understand that the Administration has nearly finalized a processing plan for carrying out President Clinton's May 8, 1994 announcement that there would be a change in Administration policy. Although the plan provides for the involvement of the United Nations High Commissioner for Refugees at all stages of the process, the Haitians apparently will not receive individualized counseling or be permitted legal representation.

Moreover, they will be interviewed by immigration officers who do not have prior experience in making asylum or refugee determinations, and, if rejected, will be returned to Haiti by the end of the day without benefit of an independent appeal or review. We further understand that this process will take place aboard ship in Jamaican waters and that a similar process will be implemented in the Turks and Caicos Islands. Such procedures, however, will not afford Haitians a meaningful opportunity to demonstrate their eligibility for asylum and would lack protections necessary to ensure that eligible refugees are not erroneously rejected.

If Haitians are granted access to legal counsel, the ABA is committed to working with other organizations to solicit pro bono attorneys to assist those applying for protection. We call on the Congress to ensure that fair procedures with provision for counsel are established and implemented without further delay.

Sincerely,



Robert D. Evans

Enclosure

cc: Members of the Subcommittee on  
International Law, Immigration  
and Refugees



R. WILLIAM IDE III  
 President  
 American Bar Association  
 750 North Lake Shore Drive  
 Chicago, IL 60611  
 Telephone: 312/988-5109  
 Fax: 312/988-5100

AMERICAN BAR ASSOCIATION

Direct Personal Replies to:  
 One Peachtree Center  
 Suite 5300  
 303 Peachtree Street  
 Atlanta, GA 30308  
 404/527-4000  
 404/527-8460 Direct Dial  
 Fax: 404/521-9343  
 ABA/net: IDEWMIll

May 9, 1994

The President  
 The White House  
 Washington, D.C. 20500

Dear Mr. President:

For more than two years, refugees fleeing widespread terror and human rights abuses by an illegal regime have been returned to Haiti without regard to the consequences that await them. Although the American Bar Association is encouraged that this detrimental policy will soon end, it is essential that the new procedures give Haitians a meaningful opportunity to demonstrate their eligibility for asylum.

We therefore urge you to take the following actions:

- \* Rather than waiting, immediately stop automatic repatriations and provide intercepted Haitians with full and fair hearings on their asylum claims and access to legal assistance.
- \* Grant temporary protection to Haitians in the United States until conditions permit their safe return to Haiti.
- \* Provide fair procedures to those Haitians who are applying for refugee status abroad whether in Haiti or elsewhere in the region.

When refugee screening interviews have taken place on Coast Guard cutters in the past, they lacked procedural safeguards to ensure that eligible refugees were not erroneously rejected. We urge you not to reinstitute that discredited process and offer our assistance in developing a fair one.

Sincerely,

R. William Ide III

APPENDIX 14.—STATEMENT OF CHERYL LITTLE, CO-CHAIR, FORUM FOR HAITIAN JUSTICE AND FLORIDA RURAL LEGAL SERVICES, INC.

STATEMENT BY CHERYL LITTLE ON BEHALF OF  
THE FORUM FOR HAITIAN JUSTICE AND  
FLORIDA RURAL LEGAL SERVICES, INC.

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To	Angela Sharpe	From	Cheryl Little
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Fax #		Fax #	

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I. INTRODUCTION

I am an attorney at the Miami Office of Florida Rural Legal Services (FRLS), which specializes in assisting Haitians who wish to immigrate to the US. I also co-chair "The Forum for Haitian Justice" (FHJ), an alliance formed by Congresswoman Carrie Meek which consists of dozens of organizations and individuals who jointly address issues of concern to the Haitian community in the US. This statement represents the views of FHJ in general, and of FRLS in particular.

Over the past several decades, Haiti has developed one of the worst human rights records in the world. Many Haitians have felt compelled to flee their homeland and in so doing may have tried to reach US shores. Haitians have died en route to the US, and many more have been forcibly returned to Haiti by US authorities.

Our organizations would argue that the best solution of the Haitian refugee problem lies in the restoration of Haitian democracy, including the return to Haiti of its only elected President, Jean-Bertrand Aristide. The strongest evidence for this is that during Aristide's brief period in office, the number of people attempting to flee Haiti dropped dramatically.

Indeed, during some months of Aristide's government, the US Coast Guard encountered no Haitian vessels at all. By contrast, the Coast Guard last year intercepted and forcibly repatriated 2,324 Haitians.

Our organizations believe that until democracy is restored in Haiti, the single most positive thing Congress can do to address the Haitian exodus is to pass bill H.R. 3663 -- "The Haitian Refugees Fairness Act."

## II. THE CONTENT OF H.R. 3363

The Haitian Refugees Fairness Act essentially makes two declarations: (1) that the US will not forcibly repatriate foreign nationals intercepted at sea until it has determined -- *according to internationally recognized standards* -- that they are not bona fide refugees; (2) that the US will grant "temporary protected status" (TPS) to most Haitians who have been living without recognized status in the US since November 17, 1993. TPS recipients would be permitted to live and work in the US "for 24 months from the date of enactment of the Act or . . . until the President certifies to Congress that a democratically elected government is securely in place in Haiti, whichever occurs later."

### III. THE IMPORTANCE OF H.R. 3663

#### 1. *Saving lives and countering terrorism*

The most important aspect of H.R. 3663 is that its passage would without question spare the lives of innocent children, women, and men. Many Haitians who have been forcibly returned by the US have been persecuted -- i.e., wrongfully arrested, threatened, beaten, imprisoned, tortured or murdered, with Haitian authorities attempting to prevent any investigation of these abuses. Nothing short of the provisions of H.R. 3663 will prevent this from continuing to occur. For example, if TPS is not granted the Haitians, then many of those "screened in" to the US at the Guantánamo Naval Base in 1991, after being found to have "credible fears" of persecution in Haiti, might well be repatriated against their will. As to the dangers they would then face, even President Clinton and the State Department have recently acknowledged that Haiti's military is engaging in a country-wide "deliberate elimination" of political opponents, "including rank-and-file former Aristide supporters." Only H.R. 3663 can stop legitimate political refugees from being delivered into the hands of these terrorists.

#### 2. *Complying with international law*

In May of 1992 President Bush instructed the Immigration and Naturalization Service (INS) to forcibly repatriate *all* Haitians intercepted at sea without *any* investigation into the likelihood of their persecution in Haiti ("the Kennebunkport Order"). This has remained US practice to this day.

This practice is a gross violation of international laws which the US officially endorses (e.g., Article 33 of a 1951 Geneva Convention and Article I of a 1967 U.N. Protocol, both "Relating to the Status of Refugees." These laws expressly forbid signatory governments from forcibly returning people to a territory where they are likely to suffer political persecution. The practice also violates the 1931 "Interdiction Agreement" between the US and Haiti, since the agreement clearly stipulates that "bona fide refugees" will not be repatriated.

Although the White House has recently announced its intention to resume interviewing intercepted Haitians, it seems unlikely that this new screening process will meet the standards of international law. In our view, H.R. 3363 is essential to ensuring that the US satisfy *in practice* the internationally recognized standards of refugee processing to which it has committed itself on paper.

### 3. *Reducing Double Standards*

The US is very generous to certain groups of refugees. In recent years it has granted "temporary protected status" to refugees from Bosnia, El Salvador, Kuwait, Lebanon, Liberia and Somalia. In 1993 it approved for refugee status 51,000 Jewish and other religious minority applicants who wished to leave the former Soviet Union -- an approval rate of 95%. Yet an even more striking example of US generosity is Cuba, a country which ironically is one of Haiti's closest neighbors.

Under "The Cuban Adjustment Act" of 1966, most Cubans who make it to the US are eligible for permanent residency one year after their arrival. During the Mariel boatlift of



1980, for example, over 250,000 Cubans were resettled in the US. Last year over 5,000 Cubans made it to South Florida in small vessels. Among them was a group which arrived on the same boat as a group of Haitians. The Cubans were immediately welcomed by the US government, while the Haitians were immediately imprisoned. These practices are routine, but the contrast could hardly be more stark.

The harshness with which Haitians are treated is quite remarkable, especially in view of the fact that human rights abuses in Haiti seem at least as bad -- if not worse -- than those in Cuba. In 1987 -- a year of particularly bloody repression in Haiti following a sabotaged election -- the US did not grant asylum to a single Haitian applying for asylum in the US. Indeed, several US courts have confirmed a pattern of systematic immigration discrimination which extends back to 1964.

While H.R. 3663 would not eliminate the blatant double standard to which Haitians are now subject, it would guarantee at least a modicum of justice.

#### *4. TPS' Relief of US Institutions*

Many foreign nationals have been provisionally admitted to the US with the understanding that they may apply for -- but not necessarily be awarded -- asylum status. Unfortunately, US government resources are overwhelmed by the prospect of processing the applications of people currently in this category. The INS' asylum backlog is expected to reach 500,000 by October of this year, yet the INS has said that to process even the 10,000 plus Haitian Guantanamo asylum cases would probably take "100 years". The TPS

provisions of H.R. 3363 would significantly reduce this costly backlog, since TPS recipients are not required to pursue asylum claims, and many Haitians will want to return to Haiti once its democracy is restored.

The TPS provisions of H.R. 3663 would economically benefit other US institutions as well. Many of the Haitians who would receive TPS are presently forbidden to work — indeed, many are in detention. H.R. 3663 would eliminate the expense of detention, and by permitting TPS recipients to work, would gradually transfer costs associated with their maintenance from various government institutions to the Haitians themselves. Significant public funds could thereby be liberated for other purposes.

#### 5. *Enhancing the image of the US*

US policy on Haiti has attracted much criticism in recent years. For example, the practice of automatic repatriation has been condemned by the Organization of American States, by the United Nations High Commissioner for Refugees, and by Amnesty International. Such condemnations tarnish the image of the US, undermine its moral authority, and weaken its credibility in the international arena. These damaging processes would be reversed by the passage of H.R. 3663.

#### 6. *Relevance to the President's recent initiative on refugee processing*

On May 8, 1994 President Clinton announced that the US would resume the practice of interviewing Haitians intercepted at sea. This is an improvement over the current practice of automatic return, but there are many reasons why the new policy seems unlikely to meet the standards of H.R. 3663.

First, for the foreseeable future all interviews will be conducted on ships. When the US last used shipboard interviews (from 1981 to 1991), of over 23,000 interviewed Haitians only 28 were given permission to apply for asylum. By contrast, after the 1991 coup when US courts forced the US government to interview intercepted Haitians on land, the INS gave over 10,000 of 36,000 interviewed Haitians permission to apply for asylum. Indeed, at one point the approval rate for on-land interviews reached over 85%, though it quickly fell after pressure from Washington. There is little doubt that the on-land interview process was better able to determine people's histories, and to identify bona fide refugees.

Another concern is the Administration's prediction that the entire interview and adjudication process will take about one hour per person. Because most interviews will require two-way translation (Haitians not speaking English, and adjudicators not speaking Creole), the effective interview time will therefore be more like 30 minutes (assuming unhesitating and perfect translations). Yet the INS Asylum Procedures Manual instructs its officers that interviews should be terminated "only when the applicant has been allowed to *fully explain* why he or she fears persecution" (emphasis added). Experienced immigration lawyers agree that one hour is generally grossly insufficient for a Haitian refugee to "fully explain" their fear of persecution.

Another discouraging sign is Deputy National Security Advisor Sandy Berger's statement in mid-May that 95% of interviewed Haitians will likely be denied asylum. Such preconceived approval rates clearly bias the appraisal process. Similarly, current INS policy is to accept no more than 5,000 refugees per year from the whole of Latin American and the Caribbean. Unless this quota is revised strongly upward, Haitians will be returned to their

deaths no matter what the quality of their interviews (Freedom House presently rates Haiti among the top 20 violators of human rights in the world).

A related worry is the exceptional standard of proof which will be required of Haitian refugees. Haitians detained at Guantánamo a few years ago were admitted to the US on the basis of a "credible fear" of persecution. In 1990, with the passage of the Lautenberg Amendment, certain Soviet and Indochinese nationals were eligible for refugee status if they showed a "credible basis" for concern about persecution. However, the Haitians interviewed under the Clinton program will have to establish a "well-founded fear" of persecution. The shift in language is slight, but the latter criterion is intended to be much more severe. Given that refugee claimants will have access neither to legal counsel nor to supporting documents and witnesses in Haiti, and given the magnitude of the disaster which awaits wrongly returned Haitians, "credible fear" is by far the more humane and appropriate standard. Almost certainly, if the stricter standard is used, some wrongly returned Haitians will have to pay for INS errors with their lives.

Another unpromising development is the Administration's recent announcement that screening within Haiti will remain "the primary route for Haitians seeking refugee status." Such 'In-Country Processing' (ICP) is a notorious sham within Haiti itself, one INS official there said, noting that the extraordinary proof of danger required almost ensures that "the only qualified refugees will be dead ones." This judgement is shared by many agencies which monitor human rights abuses in Haiti. INS standards of proof would have to change radically before Haitians could regard ICP as *their* primary hope of refuge, and it is distressing that official US perceptions are so far removed from the experience of ordinary Haitians.

It is also troubling that despite President Clinton's admission of the dangers which face repatriated Haitians, during the more than one month since his new interdiction policy was declared he has continued the forcible return of all intercepted Haitians (over 1,400 of them). Many of these people have been arrested upon their arrival in Port-au-Prince. This is not surprising, partly because the military-appointed President of Haiti (Emile Jonaissant) announced in May that anyone who flees — or is even preparing to flee — Haiti without "proper documents" will be arrested and prosecuted. Mr. Jonaissant's armed forces have already conducted several violent assaults against civilians in an apparent attempt to enforce this decree.

When all the above factors are added to the inexperience and heavy anticipated workloads of the new adjudicators, including current INS Border Patrol agents, to the cultural gulf between them and their interviewees, to the traumatized condition of those freshly interdicted, to the absence of a meaningful appeal procedure over what will literally be life-or-death decisions, etc., it is little wonder that Amnesty International writes: "It is hard to believe that [the President's] new measure will provide asylum-seekers with a hearing which includes all the essential safeguards required by international standards for the protection of refugees." We agree, and conclude that H.R. 3663 is desperately needed to secure those 'international standards.'

#### IV. CONCLUSIONS

By far the best solution of the Haitian refugee problem would be the restoration of Haitian democracy. Although President Clinton's May 8, 1994 initiative on refugee processing may bring some improvement to the situation, it is likely to fall decidedly short of international standards on the protection of refugees. To ensure that these standards are met - as common decency requires -- it is *essential* that Congress pass H.R. 3663. That passage would also benefit the US itself in various ways. However, the most important aspect of the Haitian Refugees Fairness Act remains, as its name suggests, its contribution to justice: H.R. 3663 would undoubtedly rescue innocent children, women and men from avoidable terror, torture and death. The US Congress should not allow the blood of these innocents to be on its hands.











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