

# Refugee Policy Adrift:

The United States and Dominican Republic Deny Haitians Protection



January 2003



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Printed in the United States of America

ISBN: 1-58030-024-3

## Mission Statement

The Women's Commission for Refugee Women and Children works to improve the lives and defend the rights of refugee and internally displaced women, children, and adolescents. We advocate for their inclusion and participation in programs of humanitarian assistance and protection. We provide technical expertise and policy advice to donors and organizations that work with refugees and the displaced. We make recommendations to policy makers based on rigorous research and information gathered on fact-finding missions. We join with refugee women, children, and adolescents to ensure that their voices are heard from the community level to the highest levels of governments and international organizations. We do this in the conviction that their empowerment is the surest route to the greater well-being of all forcibly displaced people.

## Acknowledgments

**This report is the product of a collaborative effort with the National Coalition for Haitian Rights and the Florida Immigrant Advocacy Center.** The Women's Commission would like to thank the The John D. and Catherine T. MacArthur Foundation, The Andrew W. Mellon Foundation, The J.M. Kaplan Fund and the Open Society Institute.

The Women's Commission would also like to express its appreciation to the Jesuit Refugee Service for its assistance in coordinating the mission. It also wishes to offer special thanks to the women and children asylum seekers, as well as the service providers who assist them, who shared their experiences with the delegation.

The Women's Commission delegation included Merrie Archer, senior policy associate, National Coalition for Haitian Rights; Mary Diaz, executive director, Women's Commission for Refugee Women and Children; Kathie Klarreich, freelance journalist and chair, Women's Fund of Miami-Dade; Cheryl Little, executive director, Florida Immigrant Advocacy Center; and Wendy Young, director of government relations and U.S. programs, Women's Commission for Refugee Women and Children.

Wendy Young wrote this report in collaboration with members of the delegation. Mary Diaz and Diana Quick, director of communications, Women's Commission for Refugee Women and Children, edited the report.

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# HAITI AND THE CARIBBEAN REGION



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# I. EXECUTIVE SUMMARY

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Haitians are witnessing the collapse of their country's nascent democracy as political violence and human rights abuses escalate. As a result, the United States and Caribbean countries may soon face another Haitian refugee crisis. As has been the case during past crises, however, there is no meaningful refugee protection for Haitians in the region.

Thus far, the response of receiving countries—including the United States and the Dominican Republic—has been to adopt measures designed to prevent Haitian asylum seekers from accessing asylum procedures. In the United States, the White House is clearly the driving force behind a discriminatory policy aimed specifically at Haitian asylum seekers. Several executive agencies—including the Department of State, the Immigration and Naturalization Service (INS), the Executive Office for Immigration Review, and the Coast Guard—have been instructed to implement measures that undermine the ability of Haitian asylum seekers to obtain refugee protection. The Dominican government, in turn, has neglected its obligation to identify Haitian refugees and ensure they are provided full protection and adequate assistance.

In addition, the UN High Commissioner for Refugees (UNHCR), the primary international agency with refugee protection as its mandate, must adopt a more vigorous and proactive approach than it is currently devoting to the region.

Political unrest in Haiti is rapidly increasing as the Haitian people grow increasingly unhappy with the failure of President Jean-Bertrand Aristide and his Lavalas Party to deliver the economic stability and respect for human rights that were promised when their democratically elected government was restored to power eight years ago. The government has responded to this unrest with measures that violate basic human rights, including illegal arrests, arbitrary detention, disappearances, extrajudicial killings, crackdowns on the political opposition, and constraints on free speech and assembly. It has also encouraged mob vigilantism that often involves rape and other forms of gender violence, as well as physical violence against and intimidation of children. As the instability grows, some experts are beginning to predict that Haiti will experience an even greater

degree of violence and repression and perhaps even a collapse of the government.

## THE RESPONSE OF THE UNITED STATES

To date, the number of Haitians fleeing their homeland as a result of these political problems is not dramatic compared to past crises, but the United States has already taken steps to deter Haitians from leaving or to quickly return those who are able to make it to the United States. Such steps include:

- Interdiction of Haitian boats both on the high seas and within the territorial waters of the United States;
- Summary return of those individuals who are interdicted with no screening of their asylum claims unless a person explicitly expresses a fear of return, a procedure that offers significantly less protection than those used to identify interdicted Cubans and Chinese in need of protection;
- Resettlement to third countries such as Guatemala, Nicaragua, Australia, and Canada of the few interdicted individuals who are provided with offshore refugee status determinations;
- Prolonged detention of sea arrivals who are able to make it to the United States;
- Application of expedited procedures and fast-tracked asylum adjudications that result in many Haitians having to present their asylum claims without benefit of legal counsel; and
- Forcible return of rejected asylum seekers.

Women and children are not exempt from these restrictionist policies. The Women's Commission for Refugee Women and Children interviewed Haitian women who first spent months in U.S. detention before they eventually were denied asylum and repatriated to Haiti. The women reported suffering further human rights abuses upon return, including imprisonment in harsh conditions and beatings by forces aligned with the Lavalas Party. Some women have been forced to go into hiding subsequent to their return and report that they will attempt to flee Haiti again at the earliest possible opportunity.

These incidents underscore the failure of the United States to provide Haitian asylum seekers, including women and children, with a meaningful opportunity to present their asylum claims. Since December 2001, the U.S. government has systematically singled out Haitians for prolonged detention and fast-tracked adjudication of their claims to asylum.

Haitian men have been detained at a large immigration detention center near Miami, the Krome Service Processing Center. Meanwhile, more than 20 Haitian women were incarcerated in a maximum security Miami-Dade County prison for eight months. Only recently, after sustained public criticism, did the INS transfer the women to a more appropriate facility, the Broward County Work Release Center in Pompano Beach, Florida. Even then, however, it has failed to release Haitian women from detention unless they are pregnant, despite regularly paroling asylum seekers of other nationalities.

Haitian children who arrived in the United States alone have also been detained for months. Many have been held in a local Miami hotel or the Boystown children's shelter. Others were moved to the Berks County children's detention center in Pennsylvania, hundreds of miles away from their legal representatives in Miami.

The INS has forcibly separated Haitian families into different detention facilities, including separating children from one or both of their parents. Several families have been held incommunicado for periods exceeding three months, unable to speak to each other or to prepare for their asylum proceedings together.

Consideration of Haitian asylum claims has been fast-tracked. The Bush Administration has issued an order mandating application of expedited removal, a system based on cursory screening of asylum claims, to all boat arrivals based on its fear of a Haitian refugee crisis. For those Haitians who overcome the hurdle of expedited removal, immigration judges have been assigned especially to adjudicate Haitian asylum cases. These judges have prioritized the calendaring of such cases and conducted hearings as short as 30 minutes, including time for translation, to determine the applicant's eligibility for asylum. Because of this expedited consideration, most Haitians, including children, have appeared before the court unrepresented by counsel.

The United States has also resettled Haitians whom it has deemed refugees to third countries rather than

admitting them into the United States. Most Haitians whom the Coast Guard interdicts on the high seas or in U.S. territorial waters are forcibly returned to Haiti with no screening of their asylum claims. However, if a Haitian who is interdicted affirmatively expresses a fear of return, his or her claim is initially screened on board the Coast Guard vessel. If the INS determines that the asylum seeker has a credible fear of return to Haiti, the individual is transferred to the U.S. military base on Guantanamo Bay, Cuba. If the asylum seeker is then found to have a well-founded fear of persecution during a second interview with an INS asylum officer, the United States will arrange resettlement to Central America, Canada, or Australia in order to avoid bringing the refugee to the United States.

Such measures are by no means unique. Over the years, tens of thousands of Haitians have been displaced inside Haiti or forced to seek protection in other countries because of political and economic instability. The United States has frequently responded to the threat of a mass influx of Haitian asylum seekers by closing its doors and denying them the right to seek asylum.

What is new, however, is the rationale provided by the Bush Administration to justify these restrictionist measures. The U.S. government has explicitly defended its use of interdiction, summary return, prolonged detention, and expedited asylum procedures as necessary both to deter Haitians from leaving their home country and to protect U.S. national security. It also has characterized Haitian migration as being driven by economic factors, ignoring the serious deterioration of political conditions in Haiti.

## THE RESPONSE OF THE DOMINICAN REPUBLIC

Haitians seeking asylum in the Dominican Republic also face barriers that prevent them from obtaining meaningful protection, even though the Dominican government has acknowledged that Haiti is facing a potential political crisis. The Dominican Republic, with support from the United States, has recently adopted measures to further militarize its border with Haiti. Moreover, while a party to the 1951 Refugee Convention Relating to the Status of Refugees and the 1967 Protocol, the Dominican government has failed to implement asylum procedures that are just and effective. The commission charged with adjudicating asylum claims rarely meets, creat-

ing a backlog of several hundred pending claims.

Meanwhile, Haitians who have applied for asylum in the Dominican Republic are left living in limbo. Asylum seekers are subject to abuse, discrimination, arbitrary arrest, detention, and deportation. They are also denied access to such basic services as housing and medical care. Children are typically unable to attend school.

## THE ROLE OF UNHCR

Despite the potential of an imminent refugee crisis that will demand a quick response and despite the precarious living conditions that Haitians confront in the Dominican Republic, UNHCR has failed to sustain a meaningful presence in the Caribbean region. It has not maintained an office in the Dominican Republic since the last Haitian refugee crisis of the mid-1990s. It has instead chosen to fund refugee assistance through a Dominican social service agency, but even this support was discontinued in December 2002. UNHCR plans to deploy an officer to the Dominican Republic in the future, but has yet to receive the funding to do so. This officer, furthermore, will focus on legal protection of asylum seekers and refugees but not humanitarian assistance.

By eliminating the funding for humanitarian assistance, UNHCR will seriously damage the only safety net available to asylum seekers in the Dominican Republic, as fragile as that safety net might be. While it is true that UNHCR is suffering serious budget shortfalls—forcing the agency to make difficult choices as it confronts refugee problems around the world—its cutbacks mean that there is an insufficient structure in the Caribbean region to address a Haitian refugee crisis if one develops.

## CONCLUSIONS AND RECOMMENDATIONS

In this report, the Women's Commission for Refugee Women and Children documents its findings based on a delegation of refugee and human rights experts to Florida, the Dominican Republic, and Haiti in August 2002 and subsequent research. As part of its study, the Women's Commission conducted dozens of interviews with asylum seekers, government officials, UNHCR officials, and representatives from nongovernmental organizations (NGOs) serving refugees and migrants.

This report concludes that there is a fundamental

lack of access to meaningful refugee protection for Haitians in the United States and the Dominican Republic, two of the largest receiving countries for Haitian asylum seekers. While some Haitians may leave their homeland to escape economic deprivation, this cannot be used as an excuse to deny protection to those individuals who merit refugee protection. Haiti's economic failure, furthermore, is in large part spawned by its political problems.

Likewise, national security concerns growing out of the events of September 11, 2001 cannot be used by the United States to rationalize deterrent measures designed to undermine the right of Haitian asylum seekers to pursue protection. Such measures not only violate international and domestic refugee law, they reflect poorly on a country that prides itself on its respect for refugee and human rights.

This report offers numerous recommendations to restore refugee protection for Haitian asylum seekers. They include:

- The United States must offer Haitians full access to the U.S. asylum system in accordance with its obligations under international and domestic law. This includes immediately discontinuing its interdiction and summary return policy.
- The United States must discontinue its prolonged and arbitrary detention of Haitian asylum seekers. It must implement alternatives to detention for asylum seekers, including release in the vast majority of cases.
- The United States must refrain from the implementation of procedures that expedite consideration of Haitian asylum claims. It must also increase its sensitivity to gender- and age-related claims.
- In addition to granting asylum to Haitians found eligible, the United States should offer Temporary Protected Status (TPS) or Deferred Enforced Departure (DED) to Haitians already present in the United States and resettlement opportunities through in-country processing and regional processing. In-country processing, however, cannot be adopted in the absence of full access to the U.S. asylum system for those Haitians who choose to leave their home country.
- The United States must not detain children. It must provide children with care and services that address their best interests and ensure that their eligibility for asylum is fully considered. It must

not divide families in detention.

- The Dominican Republic must ensure that its borders are open to Haitian asylum seekers. It must also establish a functional asylum process grounded in international refugee law to adjudicate their claims.
- The Dominican Republic must take steps to ensure that the basic assistance needs of Haitian asylum seekers are met. This includes the provision of work authorization to asylum seekers and full access to education for children. It must prevent abuses against Haitians both at the hands of Dominican authorities and the Dominican community and fully prosecute any abuses that do occur.

- UNHCR must demonstrate leadership in assisting the Dominican Republic to fulfill its obligations to asylum seekers and in ensuring that refugees are adequately protected in the region in the event of a Haitian refugee crisis.

The United States and the Dominican Republic, with the support of UNHCR, must restore the right of Haitians to seek refugee protection in their respective territories. Regardless of whether the numbers are small or large, it is critical that the international community allow these potential refugees full and fair access to asylum procedures, an obligation that countries share under international law but have rarely extended to the people of Haiti.

## II. SCOPE OF THE WOMEN'S COMMISSION ASSESSMENT

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In August 2002, the Women's Commission for Refugee Women and Children sponsored a delegation to assess the treatment of Haitian women and children asylum seekers in the United States and the Dominican Republic. The delegation was a collaborative effort with the National Coalition for Haitian Rights and the Florida Immigrant Advocacy Center.

The delegation evaluated the ability of Haitian asylum seekers to access protection and their treatment pending adjudication of their claims to refugee status. It also addressed the situation of Haitian

returnees denied asylum and repatriated to their homeland. It conducted the assessment against the backdrop of the deteriorating political and economic situation in Haiti and escalating human rights abuses against those perceived to oppose the existing government's leadership.

This report builds on the Women's Commission's ongoing focus on detention and asylum concerns in the United States, as well as its expertise in the international protection of refugee women and children.



© U.S. Coast Guard

*The U.S. Coast Guard intercepts boats filled with Haitian refugees.*

# III. BACKGROUND

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*I was forced to flee Haiti because I was being persecuted by members of Lavalas. My family was politically active and we all spoke out against Lavalas. Because he spoke out, my father was killed. My brother was very active in politics, and he was also killed. My other brother was stabbed by Lavalas and he almost died. They even hurt our children. My brother's son was beaten. They found my daughter, who was nine years old then, and they kicked her in the mouth.*

*When my life was in danger because they were threatening me and came after me, I had no other choice but to flee, because there was no one to protect me in Haiti. So I got on that boat with all the other people to flee Haiti and find freedom somewhere else. We did not know where we would land, only that we had to flee Haiti to save our lives... We did not leave our homes because of hunger or lack of food, we left because of the political violence in Haiti.*

—Testimony of Marie Jocelyn Ocean, Haitian asylee and former INS detainee, before the Senate Judiciary Subcommittee on Immigration (October 1, 2002).

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## HAITI'S TROUBLED HISTORY

Haiti has a proud but turbulent history marred by political violence and extreme poverty. It suffered three centuries of European colonialism, first under Spain and later France. The Haitians, whose ancestors were slaves forcibly brought to the island from the west coast of Africa, rebelled in 1791 and succeeded in expelling the French in 1804, making Haiti the first black republic in the Western Hemisphere.<sup>1</sup>

Self-rule, however, brought neither prosperity nor peace to the nation. For decades, the country endured a succession of brutal leaders and foreign occupation. During the first century of Haitian independence, only one leader survived without being either deposed or assassinated.<sup>2</sup> The Duvalier government, which ruled from 1957 to 1986 under the leadership of “Papa Doc” Duvalier and his son “Baby Doc,” was among the most notorious of Haiti’s repressive regimes and was characterized by deep-seated corruption, human rights abuses, and economic deprivation.<sup>3</sup>

Although the Duvaliers were finally overthrown in 1986, their legacy lived on. Their fall was followed by a military junta, which pursued policies similar to those of the Duvaliers. The country suffered massacres and widespread human rights violations. When an election was finally held in 1987, it result-

ed in a bloodbath. The Duvalierists and the military undermined the election and opened fire on voters.<sup>4</sup>

In 1990, Haiti experienced new hope.<sup>5</sup> Jean-Bertrand Aristide, a popular Catholic priest from the slums of Port-au-Prince, was elected president by 67 percent of the electorate.<sup>6</sup> That hope, however, proved short-lived. In September 1991, just seven months after his election, Aristide was ousted by a violent military coup.<sup>7</sup> His removal led to hundreds of thousands of Haitians going into hiding and tens of thousands fleeing the country in search of protection from the ensuing political violence and massive human rights abuses.<sup>8</sup>

The United States intervened in 1994, with the support of a multinational force sanctioned by the United Nations. The elected government of Aristide and his Lavalas Party were restored to power. However, despite the hopes of the Haitian people and the international community that Haiti might finally be on track toward political and economic stability, violence, human rights violations, corruption, and extreme poverty continue to haunt the country.

## THE POLITICAL SITUATION IN HAITI IS AGAIN DETERIORATING

Restoration of the constitutionally elected govern-

ment of President Aristide has not resulted in an end to the political and economic woes of Haiti. Despite an initial period of progress, the Haitian people continue to struggle in their search for stability and respect for human rights. Institutions to support justice, democracy, and economic development remain weak and largely ineffective.

After Aristide resumed office, the United States and the international community directed hundreds of millions of dollars in aid to Haiti in an effort to strengthen the country's infrastructure and instill stability. The infusion of aid, however, resulted in little change.<sup>9</sup> Sustained development continued to elude the country. A democratic society was restored in name only, as exemplified by the failure of the Haitian government to implement free and fair elections.

At the completion of his term of office in 1995, President Aristide stepped down from the presidency and was replaced by his hand-picked successor, Rene Preval, after pressure was placed on him and his supporters to respect the democratic process.<sup>10</sup> The Lavalas government manipulated the parliamentary elections of 1997 to ensure Preval's continued power. In late summer of 1996, Aristide—whose support for Preval had been minimal—broke from his own Organisation Populaire Lavalas Party to start a new party, Lanfanmi Lavalas (hereinafter the Lavalas Party).<sup>11</sup>

In 2000, opposition parties that ran against the Lavalas Party deemed the parliamentary and local electoral process fraudulent after they failed to win. Later that year, Aristide resumed the presidency after opposition parties boycotted the presidential election.

The failure to hold free and fair elections provoked a suspension of aid from the United States and most other international donors. Only humanitarian aid through nongovernmental organizations has been sustained. The Organization of American States (OAS) has since attempted to negotiate a resolution to the political standoff between the Aristide government and its political opposition in order to develop a framework for a legitimate electoral process.<sup>12</sup>

Meanwhile, political and economic conditions in Haiti have further deteriorated.<sup>13</sup> In September 2001, Amnesty International described the human rights situation in Haiti as "more serious today than at any point since the return of Aristide."<sup>14</sup> In 2002, political violence and human rights violations continued to escalate.

The OAS has been unable to broker an agreement between the country's political factions. The Assistant Secretary General of the OAS expressed frustration with the process and warned that fighting within Haiti's political class and the complacency of the international community toward Haiti's problems are leading the country toward disaster.<sup>15</sup>

The U.S. Department of State has noted the deteriorating human rights conditions in Haiti, including extrajudicial killings by the Haitian National Police, illegal and arbitrary arrests, and crackdowns on political opposition members and journalists. Human rights activists, former members of the military, and labor leaders are frequently beaten and arbitrarily detained. Others have fled to seek refuge in neighboring countries or the United States.<sup>16</sup>

The Aristide government has done little to control mob violence and vigilantism and in fact has condoned it through adoption of a "zero tolerance" policy purportedly aimed at crime. In June 2001, President Aristide announced that it was not necessary to wait to bring criminals to court if either citizens or the police caught them in the act of committing crimes, thus effectively favoring a system of street justice over a functioning criminal justice system based on due process and respect for human rights.<sup>17</sup>

This policy has unleashed retribution against not only dozens of perpetrators of both major and minor crimes, but also citizens who are viewed as political opponents of the Lavalas Party. The violence became extreme in December 2001; in response to an alleged coup attempt, Lavalas supporters attacked political opposition members, human rights activists, and journalists, burning down their homes and intimidating the independent media.<sup>18</sup>

Such street violence also reflects the extent to which law and order in Haiti has deteriorated since restoration of the Aristide government. The international community prioritized the development of a professional police force in its effort to help stabilize Haitian democracy but was unsuccessful in rooting out corruption and brutality.<sup>19</sup>

In July 2002, the Inter-American Commission for Human Rights issued a report investigating the December 2001 unrest and concluded that there was no coup attempt and that the backlash was staged and orchestrated by the Lavalas government.<sup>20</sup> Experts have noted that the vigilante groups are tied to different factions of the Lavalas Party that are in competition for power, creating a chaotic and dan-

gerous situation that foments violence.<sup>21</sup>

In August 2002, a new wave of violence erupted. Amiot “Cubain” Métayer, a former Aristide ally whom the Haitian government had arrested in connection with the December 2001 unrest, was broken out of prison in Gonaïves by his gang, the Cannibal Army, along with nearly 160 other prisoners, many of them known human rights abusers.<sup>22</sup> Leading up to this spectacular jail break were the beginnings of a gang war led by the Métayer gang in which they invaded and burned down government buildings, attacked police, and called for Aristide’s arrest. Following the escape, they led violent anti-Aristide demonstrations and continued to spread fear and chaos throughout Gonaïves.<sup>23</sup> Local residents fled into hiding. The government did little to restore order.<sup>24</sup> Amnesty International concluded that these armed gangs constituted a serious challenge to the rule of law in Haiti.<sup>25</sup> The National Coalition for Haitian Rights reported that the violence in Gonaïves was “an unmistakable sign of the extent to which basic Haitian institutions have weakened.”<sup>26</sup>

The U.S. Department of State described the violence in Gonaïves as “deplorable” and called upon the government of Haiti to re-arrest all prison escapees, to prevent further lawlessness on the part of “popular organizations,” and to protect Haitian citizens from such violence.<sup>27</sup> To date, however, Métayer remains free and only a handful of the other former prisoners have been arrested.<sup>28</sup>

This incident was followed a few weeks later by tire burnings and street violence in Carrefour Feuilles, a neighborhood in the capital, Port-au-Prince. Three popular radio stations were forcibly shut down after receiving threats from armed men; these threats were clearly encouraged or condoned by the government, as President Aristide had previously alleged that Haitian journalists who report on the street violence are perpetuating the type of violence associated with the 1991 coup that overthrew him.<sup>29</sup>

In September 2002, street violence instigated by gangs again broke out, this time in the Cité Soleil slum of Port-au-Prince. It resulted in 20 dead and 100 wounded. This event was followed by a crackdown on journalists viewed as opponents of the Aristide government.<sup>30</sup>

In October 2002, public uncertainty about the future of Haiti was exacerbated by rumors that the Haitian government planned to convert any monies in private accounts from U.S. dollars to Haitian gourdes,

a move that would deplete private savings. Many Haitians withdrew their money in response, despite denials from the government that it had any intent of taking such a measure.<sup>31</sup>

In November and December 2002, demonstrators both for and against the Aristide government again took to the streets. Students forcibly attempted to lower the Haitian flag to half mast at a police station in Petit-Goâve in protest against the Aristide government. Thousands of protesters took to the streets of Cap-Haïtien, Haiti’s second largest city, calling for Aristide’s resignation. In response, Aristide supporters demonstrated in Port-au-Prince and largely shut down the city.<sup>32</sup> This unrest left dozens of people injured or dead, including high school and university students.<sup>33</sup> Four other civilians were killed in Las Cahobas, 50 miles from the capital, when armed assailants raided a police station and freed four prisoners accused of assassinating a judge.<sup>34</sup> Aristide supporters burned down the headquarters of an opposition party, the Mobilization for National Development party.<sup>35</sup>

Aristide himself rejected the calls for his resignation and blamed his opponents for sabotaging Haiti’s progress and creating a polarized environment.<sup>36</sup> He also characterized the opposition as representing only the elite, accusing them of not liking poor, darker-skinned Haitians.<sup>37</sup>

Societal breakdown in Haiti has affected the entire spectrum of Haitian society. As usually happens in such situations, however, it has rendered women and children particularly vulnerable to human rights abuses. Gender-based violence, child labor, and trafficking are widespread. Rapes are common, according to the Haitian Center for Research and Action for the Promotion of Women.<sup>38</sup> UNICEF reported in 1999 that 37 percent of women allege that they themselves or someone they know was a victim of sexual violence.<sup>39</sup> Another 33 percent reported that they were victims of some other form of physical violence.<sup>40</sup>

Women and children are also deprived of nutrition, basic health services, and education. Almost one-fourth of children under the age of five are chronically malnourished.<sup>41</sup> Haiti has the highest incidence of HIV/AIDS in the Caribbean and Latin American region; approximately 74,000 Haitian children with HIV-positive parents have been left orphaned, many of them HIV-positive themselves.<sup>42</sup> Approximately 40 percent of children never attend school. Less than 15 percent graduate from secondary school. Due to high

education fees, poor families sometimes opt to send only their male children to school.<sup>43</sup>

Children are also vulnerable to trafficking, often finding themselves in situations of forced servitude. Many are trafficked internally from rural to urban areas within Haiti, a phenomenon that particularly affects girls between the ages of six and 14. Other children are sent to the Dominican Republic, the United States, and elsewhere. UNICEF recently reported that approximately 2,500 Haitian children are trafficked each year into the Dominican Republic alone, mostly to work as domestic servants.<sup>44</sup> Known as “restavèks,” these children are often subjected to slave-like conditions and mental and physical abuses.<sup>45</sup>

In short, political conditions in Haiti remain unstable and respect for human rights unfulfilled. Lavalas members and armed gangs acting in the name of Lavalas target with impunity members of the political opposition and citizens who speak out against the government.

Individuals vulnerable to such violence include opposition members, journalists, human rights activists, people suspected of involvement in anti-Lavalas activities, and their colleagues, friends, and families.<sup>46</sup> There also appears to be an increasingly religious element to human rights violations, as Lavalas supporters view members of Protestant churches with suspicion, due to their perceived attachment to a Christian right party that is a member of the opposition coalition known as the Convergence Démocratique.

As the instability escalates, some are beginning to question Haiti’s future. Some experts are even wondering if the Aristide government will be forced from power,<sup>47</sup> which would potentially undermine further the evolution of democratic institutions in Haiti.

In response to the unrest, the U.S. government has expressed strong concern about political conditions in Haiti. Ambassador Roger Noriega, the U.S. representative to the OAS, stated that the United States has very serious concerns about Aristide’s leadership, the human rights abuses occurring in Haiti, and the need to develop a framework for free and fair elections in 2003. He elaborated by observing:

*We are concerned about the well-being of the Haitian people; we are concerned about the effectiveness and legitimacy of institutions that still bear the stigma of the flawed elections of 2000; and we are concerned about the reluctance so far of the Aristide administration to*

*meet the commitments it has made to the OAS, its member states, and the Haitian people.*<sup>48</sup>

Secretary of State Colin Powell has expressed similar reservations. When pressed on the question of democracy in Haiti and the role of U.S. foreign aid, he responded: “I regret to say that, in the eight years since 1994, I have not seen the kind of progress I would have expected to see.”<sup>49</sup>

U.S. concern about Haiti’s political stability is in large part driven by its fear of a mass outflow of Haitian asylum seekers. Over the years, political and economic instability has either internally displaced or forced tens of thousands of Haitians to seek protection in other countries, particularly in the Caribbean region and the United States. The inability of the Aristide government to instill true democracy and economic development has generated a new outflow of asylum seekers since Aristide’s inauguration in 2001.

Thus far, the number of Haitians leaving their homeland has been relatively low compared to past political crises in Haiti, most notably that of the first half of the 1990s. Regardless of whether the numbers are small or large, however, it is critical that the international community allow these refugees full and fair access to asylum procedures, an obligation that countries share under international law but have rarely extended to the people of Haiti.

Already in recent months, the United States has adopted measures specifically designed to prevent the arrival of Haitians on U.S. shores. Such measures are not new; an analysis of U.S. treatment of Haitian asylum seekers in years past reveals a consistent failure to offer refugee protection to Haitians displaced by the political turmoil that has plagued their country.

## THE UNITED STATES HAS OFTEN FAILED TO PROTECT HAITIAN REFUGEES

U.S. policy toward Haitian asylum seekers historically has been ambivalent, based largely on concerns about a mass influx even during times when there is no evidence that large numbers of Haitians are planning to come to the United States. Various Administrations—Republican and Democrat alike—have frequently characterized Haitians as “economic migrants” rather than acknowledging that many are fleeing persecution. While it may be true that not all Haitians who arrive in the United

**Coast Guard Migrant Interdictions At Sea  
Fiscal Year 1982 - 2003  
As of December 26, 2002**

**Fiscal Year 1992-2003**

	FY93	FY94	FY95	FY96	FY97	FY98	FY99	FY00	FY01	FY02	FY03
<b>Haiti</b>	<b>4270</b>	<b>25302</b>	<b>909</b>	<b>2295</b>	<b>288</b>	<b>1369</b>	<b>1039</b>	<b>1113</b>	<b>1391</b>	<b>1486</b>	<b>548</b>
Dominican Republic	873	232	3388	6273	1200	1097	583	499	659	177	614
Cuba	2882	38560	525	411	421	903	1619	1000	777	666	316
People's Republic of China	2511	291	509	61	240	212	1092	261	53	80	16
Mexico	0	0	0	0	0	30	171	49	17	32	0
Ecuador	0	0	0	2	0	0	298	1244	1020	1608	327
Other	48	58	36	38	45	37	24	44	31	55	20
<b>Total</b>	<b>10584</b>	<b>64443</b>	<b>5367</b>	<b>9080</b>	<b>2194</b>	<b>3648</b>	<b>4826</b>	<b>4210</b>	<b>3948</b>	<b>4104</b>	<b>1841</b>

(From Coast Guard website—<http://www.uscg.mil/hq/g-o/g-opl/mle/amiostats1.htm>)

Note: The above Coast Guard statistics reveal some interesting information. First, despite perceptions, in FY 2002 Haiti was not the country whose nationals were interdicted in the highest numbers. Ecuador led the way, with 1,608 compared with 1,486 for Haiti. In the past three years, the number of Ecuadoreans interdicted (3,872) rivaled the number of Haitians (3,990).

Second, the number of Haitians interdicted in FY 1995 (909) dropped precipitously from the prior year (25,302). This strongly suggests a correlation between political instability and the number of people trying to leave Haiti. A period of political stability and an improved human rights situation followed the United States' invasion of Haiti in September 1994 and the return of Jean-Bertrand Aristide to power shortly thereafter. This correlation indicates that economic deprivation has not necessarily been the leading factor causing Haitian migration, as the U.S. government often argues.

Third, the number of Haitians interdicted during the first three months of FY 2003 (548) is not dramatically higher than in the past three years. If the current rate of interdiction holds true for the rest of the year, fewer than 2,500 Haitians will be intercepted in 2003. This slight increase certainly does not justify the enforcement measures the United States has recently implemented to deter and prevent Haitian arrivals.

States will qualify for refugee status—and that some in fact do come for economic reasons—this phenomenon of mixed flows does not justify denying Haitians the right to have their asylum claims fully and fairly considered.

The United States has consistently employed such measures as interdiction, summary return, detention, and offshore screening when faced with migration from Haiti, both as a means to control migration and to deter other Haitians from attempting to make it to the United States. It has also searched for so-called “regional responsibility-sharing solutions” to Haitian migration, which often involve arranging Haitian resettlement or temporary safe haven in other countries in the Caribbean, Latin America, or elsewhere. These efforts are perhaps better characterized as responsibility-shifting, as they have been adopted instead of allowing Haitians to enter the United States itself.

The U.S. government has typically sustained these migration control measures even during some of the most tumultuous political times in Haiti. In 1981, then U.S. President Ronald Reagan authorized the interdiction of undocumented immigrants on the high seas. Grounded in a presidential proclamation, the stated rationale for the policy was that the arrival of undocumented immigrants was “detrimental to the interests of the United States.”<sup>54</sup> Exercise of this authority, however, targeted Haitians specifically, as Haiti was the only country with which the United States entered into an interdiction and return agreement,<sup>55</sup> despite the fact that Haitians at that time represented only 2 percent of the undocumented population. The Haitian government signed off on the agreement when the United States threatened to withhold U.S. aid to Haiti.<sup>56</sup> By February 1990, only six Haitians out of the over 21,000 interdicted were allowed to apply for asylum in the United States, despite the well-documented brutality of the Duvalier regime and the military junta that ruled Haiti throughout that period.<sup>57</sup>

In response to public criticism of what became known as the Alien Migrant Interdiction Operation and a legal challenge to its permissibility under international law, the program was revised in January 1991 to better inform interdicted Haitians about their right to apply for asylum and to improve the pre-screening interviews conducted on Coast Guard cutters.<sup>60</sup> As a result, the number of Haitians who were allowed to apply for asylum increased slightly to 17 out of 960 interdicted in the first seven months

Since the 1980s, Haitian refugee advocates have brought multiple lawsuits against the U.S. government arguing that the government’s treatment of Haitians violates both the U.S. Constitution and international refugee law. These challenges were successful in at least two cases. The first lawsuit, *Haitian Refugee Center v. Civiletti*, was filed in 1980 on behalf of 4,000 Haitians. A Circuit Court of Appeals found that a special “Haitian Program” had been established that denied Haitians due process.<sup>58</sup> In the second case, *Jean v. Nelson*, the Supreme Court affirmed a decision by the lower courts to release 1,000 Haitians who were indefinitely detained at the Krome Service Processing Center, Miami.<sup>59</sup>

after the policy change was implemented.<sup>61</sup>

However, the interdiction policy continued to be of grave concern to refugee experts, who questioned both the legitimacy of interdiction itself and its targeted application to Haitians only.<sup>62</sup> Underscoring the disparate treatment received by Haitians was the interdiction of a boat in July 1991, which carried 161 Haitians and two Cubans; while the two Cubans were allowed to proceed to Miami, every single Haitian was summarily returned to Haiti.<sup>63</sup> Ironically, the Haitians had rescued the Cubans on the high seas.

This criticism intensified in the wake of the coup that overthrew the democratically elected government of Jean-Bertrand Aristide in September 1991. Of note is the fact that the number of Haitians leaving Haiti during Aristide’s brief initial time in office before his ouster dwindled to almost none.<sup>64</sup> However, during the period of rampant political violence and human rights abuses that ensued, 300,000 Haitians were internally displaced, thousands crossed into the Dominican Republic, and more than 60,000 fled by boat.<sup>65</sup> Despite the widely acknowledged political crisis in Haiti, the United States continued to interdict Haitian asylum seekers with the stated rationale that interdiction was necessary both to save Haitian lives and to deter a mass influx. While it was true that an untold number of Haitians perished at sea while trying to make their way to the United States, refugee experts pointed out that rescue-at-sea does not necessitate immediate repatriation.

The administration of President George Bush, Sr., initially pursued a regional burden-sharing agreement with countries in the Caribbean and Latin America to share the hosting of interdicted Haitians. This plan

gained the support of Belize, Honduras, Venezuela, and Trinidad and Tobago, which agreed to offer temporary shelter in refugee camps. The Dominican Republic refused to allow Haitians to remain in its territory but agreed to act as a processing point for resettlement in the region. This plan failed to materialize, however, due to a lack of widespread support from other countries.<sup>66</sup>

As a result, at the end of 1991, the United States began to forcibly repatriate those Haitians it had been temporarily holding on board Coast Guard cutters, a policy it justified by claiming that any alternative would create a magnet effect and that the lives of Haitians were endangered by risky boat voyages. It also claimed that there was no evidence that returned Haitians were subject to persecution.<sup>67</sup> This assertion was strongly refuted by UNHCR, which concluded that reprisals forced many Haitians to flee a second time.<sup>68</sup> Amnesty International also confirmed that returned Haitians were persecuted upon return. This included a 16-year-old girl who was murdered on her first night back in Haiti.<sup>69</sup>

Refugee advocates immediately challenged this return policy in federal court as a violation of both the U.S. Constitution and international law. A U.S. district court issued three separate temporary restraining orders in favor of the Haitians, at which point the government began to house interdicted Haitians at Guantanamo Bay, Cuba.

However, the Eleventh Circuit Court of Appeals and the U.S. Supreme Court both upheld the immediate returns to Haiti. The Eleventh Circuit ruled that the Haitians had no legally enforceable rights in the United States because they were outside U.S. territory.<sup>70</sup> Even prior to this decision by the circuit court, the Supreme Court responded to an emergency motion by the Administration arguing that it had evidence that 20,000 Haitians were massing on the shores of Haiti waiting to head to Guantanamo Bay. The Court issued a two-sentence order allowing the resumption of repatriations.<sup>71</sup> Attorneys for the Haitians questioned the Administration's assertion about the numbers and argued that Guantanamo was able to house more arrivals. Later, the Department of State admitted that it was unsure about the number of Haitians preparing to leave, and the Coast Guard concluded that there was no evidence of Haitians "massing." Moreover, U.S. officials later stated that Guantanamo could house an endless number of arrivals.<sup>72</sup>



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*Thousands of Haitians were held at the Guantanamo Bay U.S. naval base on Cuba in the 1990s.*

While both the U.S. Congress and federal court system wrangled over the treatment of Haitian asylum seekers,<sup>73</sup> Haitians continued to flee their homeland. By the first half of 1992, almost 35,000 Haitians had been taken to Guantanamo Bay, almost 14,000 had been repatriated, almost 1,200 were being held on Coast Guard cutters, and approximately 6,700 were allowed to pursue asylum in the United States after having been found to have plausible asylum claims.<sup>74</sup>

In response to the increasing flow of Haitian asylum seekers, the first Bush Administration again shifted course in May 1992 and issued a new executive order mandating that any undocumented person interdicted by the Coast Guard outside U.S. territorial waters would be subject to immediate return unless the Attorney General exercised his "unreviewable discretion" to refrain from returning an individual deemed a refugee.<sup>75</sup> In effect, Haitians were now subject to return with virtually no screening of their potential eligibility for refugee protection; the order explicitly stated that it should not be interpreted as requiring any procedures to determine a person's eligibility for refugee status.<sup>76</sup>

The order became known as the "Kennebunkport Order," referring to its issuance while President Bush vacationed in Maine. While the order itself did not specifically refer to Haitians, it was widely understood as driven by a desire to prevent the arrival of Haitians in the United States; the White House simultaneously issued a press release declaring the Haitian boat crisis to be a "dangerous and unmanageable situation." Again, the action was justified as necessary to prevent Haitians from making the risky boat voyage.<sup>77</sup>

The executive order was also reinforced by announcements made on Voice of America in Haiti

## U.S. REFUGEE LAW: AN OVERVIEW

The Refugee Act of 1980 brought the United States into compliance with the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, which the United States ratified in 1968. The Refugee Act created a two-prong system of refugee protection, under which the United States could either identify refugees still residing abroad and offer them resettlement in the United States or could grant asylum to those individuals who arrive in the United States and ask for protection.<sup>50</sup> The definition of a refugee is grounded in the Refugee Convention and is identical both for resettled refugees and asylum seekers: an individual who has a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.<sup>51</sup>

**Resettlement:** The executive branch of the U.S. government determines the number of refugees selected for resettlement in consultation with Congress each year.<sup>52</sup> Since creation of the resettlement system, the numbers have varied widely from more than 132,000 in fiscal year 1992 to a low of 27,000 in fiscal year 2002 following the terrorist attacks of September 11, 2001. Even before September 11, however, U.S. resettlement admissions were decreasing; during the Clinton Administration, the numbers had already dropped by 40 percent.<sup>53</sup>

Resettlement is discretionary rather than obligatory. Over the years, it has been driven by a complex number of factors, including U.S. foreign policy interests, family reunification concerns, and compelling humanitarian needs.

**Asylum:** Persons seeking refugee protection once they arrive in the United States are known as asylum seekers. The Refugee Act of 1980 mandated the establishment of an asylum procedure to protect individuals with a well-founded fear of persecution in their homelands who are physically present in the United States. This provision recognized that at times the United States acts as a country of first asylum, and as such, has an obligation under international law to refrain from returning those individuals who need protection.

There are two procedures through which a person can access asylum in the United States. First, a person who is either in the United States in some recognized status (such as a tourist or foreign student visa), or who is undocumented but presents him- or herself to the Immigration and Naturalization Service (INS) within a year of entry, may request refugee status through the “affirmative” asylum system. An officer from the INS asylum corps, which is staffed by adjudicators trained in human rights and country conditions, will then interview

the applicant and evaluate the claim. The officer has the authority to grant asylum to a person who meets the refugee definition. Individuals who are not granted asylum by an asylum officer and lack lawful status in the United States are referred for “removal” (deportation) proceedings before an immigration court, where they can again raise asylum as a defense to removal from the country. Immigration judges, who conduct removal proceedings and adjudicate asylum claims, are employees of the Executive Office for Immigration Review, a separate agency from the INS but still part of the Department of Justice.

Except for Cubans, those asylum seekers who arrive at U.S. ports of entry without the requisite documentation to enter and are apprehended by the INS are subject to expedited removal, a system created under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Under expedited removal, INS inspectors posted at ports of entry screen individuals lacking the appropriate documentation to enter the United States. If a person fails to articulate a fear of return or the intent to apply for asylum, he or she may be immediately returned to the home country. Such inspections typically occur without the benefit of rest, consultation with an attorney, and sometimes even adequate translation services.

If an individual expresses a fear of return or a desire to apply for asylum, the INS will transfer him or her to a detention center, where an INS asylum officer conducts a threshold interview to determine whether the person’s fear of return is “credible,” a process that can take anywhere from a few days to a few weeks. If an asylum officer deems a person not to have a credible fear of persecution, the person can request a review of that determination by an immigration judge.

If after review either an asylum officer or an immigration judge finds that the person has a credible fear, the person is then placed in removal proceedings before an immigration judge, during which the person can raise asylum as a defense to deportation from the United States. An immigration judge will determine in the course of such proceedings whether the individual has a well-founded fear of persecution and is thus eligible for refugee protection.

Decisions by immigration judges can be appealed to the Board of Immigration Appeals, the highest administrative appeal body with jurisdiction over immigration cases, including asylum. Like the immigration courts, the Board is part of the Executive Office for Immigration Review. Decisions of the Board can be appealed to the U.S. federal court system.

urging Haitians to seek refugee protection at the INS office in Port-au-Prince rather than undertaking a boat journey. The announcement warned that all interdicted Haitians would be immediately repatriated.<sup>78</sup> However, the option to apply for refugee status while still in Haiti was impractical. Haitians were required to first apply by telephone or mail with the embassy, an impossible requirement to meet for most Haitians who lack telephones and are illiterate.

Refugee advocates were hopeful that the Kennebunkport Order would be revoked, however, after Bill Clinton won the presidential election in November 1992. Clinton had indicated during his campaign that he would stop the forced repatriations, describing the Bush policy of interdiction and summary return as “cruel.”<sup>79</sup>

This hope proved short-lived. After his election and just before he assumed office, Clinton announced that he would indefinitely maintain the interdiction policy initiated by former President Bush. He publicly based his decision on the same rationale: interdiction and summary return were necessary to prevent Haitians from attempting the risky flight by boat.<sup>80</sup> However, his reversal was also in response to pressure from Republican members of Congress and the state of Florida and reports that as many as 200,000 Haitians planned to set sail for Florida after Clinton’s inauguration.<sup>81</sup> Many, including experts who visited the region, argued that these estimates were grossly inflated.<sup>82</sup>

Clinton also proposed in-country refugee processing as an alternative form of protection and used Voice of America to urge Haitians not to attempt to make it to the United States. Like Bush, he suggested that would-be asylum seekers should present themselves to the INS office in Port-au-Prince and seek admission as refugees while still in Haiti. An Administration official justified in-country processing as preferable because “asylum claims can be made in an orderly way.”<sup>83</sup> However, Clinton did promise to speed up the adjudication process for in-country applicants.<sup>84</sup> The Department of State contracted with two nongovernmental organizations, the U.S. Catholic Conference and World Relief, to set up additional refugee processing sites in Cap-Haïtien and Les Cayes so that applicants would not have to travel to Port-au-Prince to have their claims considered.

Immediately, refugee advocates criticized the President-elect for reneging on his campaign promises. They also questioned the adequacy of in-country

processing as an alternative to asylum.<sup>85</sup> Concerns raised included that in-country processing may actually place Haitians in greater danger while they are waiting to complete the processing and that many Haitians may be too fearful to present themselves while still in country in the first place. Moreover, in 1992, the International Organization for Migration office in Port-au-Prince was receiving an average of 15-20 applications for resettlement a day but was slow in actually moving accepted applicants to the United States. Only 61 cases departed for the United States that year.<sup>86</sup> Approval rates were also low; in 1993, only 800 cases had been approved for resettlement through in-country processing out of a total of 50,000 applications.<sup>87</sup>

The U.S. Supreme Court dealt another blow to refugee advocates and Haitian asylum seekers a few months later. In an 8-1 ruling issued in June 1993, the Court held that the interdiction and summary return of Haitians encountered on the high seas did not violate either domestic law under the Immigration and Nationality Act or Article 33 of the UN Convention Relating to the Status of Refugees prohibiting the return of refugees or asylum seekers.<sup>88</sup>

The majority of the Supreme Court found that Article 33 of the Refugee Convention,<sup>89</sup> as well as then section 243 of the Immigration and Nationality Act which codified the principle of non-return defined by the Convention,<sup>90</sup> extend protection only to those refugees and asylum seekers within U.S. territory, not to those who are outside U.S. borders. The majority wrote:

*The drafters of the Convention—like the drafters of section 243(h)—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; but a treaty cannot impose un contemplated extraterritorial obligations on those who ratify it through no more than its general humanitarian intent.<sup>91</sup>*

In his lone dissent, Justice Harry Blackmun noted:

*The refugees attempting to escape from Haiti do not claim a right of admission to this country. They do not even argue that the Government has no right to intercept their boats. They demand only that the United States, land of refugees and guardian of freedom, cease forcibly driving them back to*

*detention, abuse, and death. That is a modest plea, vindicated by the Treaty and the statute. We should not close our ears to it.*<sup>92</sup>

While provoking a public outcry and unease at the international level, this decision stood largely unchallenged. In fact, the U.S. Department of Justice soon thereafter issued a legal opinion that concluded that even persons interdicted within the territorial waters of the United States were not entitled to hearings to determine their eligibility for asylum. It deemed that U.S. refugee law only requires that individuals who are present at U.S. ports of entry, at land borders, or in the interior of the United States be given an opportunity to have their asylum claims considered.<sup>93</sup>

In the interim, counsel for the Haitians were successful in challenging the government's refusal to admit approximately 140 Haitians who had been found to have a credible fear of persecution but were HIV-positive. Under an injunction issued by a U.S. district court, the government was compelled to release this relatively small number of Haitians and allow them to proceed to the U.S. mainland to pursue asylum.<sup>94</sup> They had been housed on Guantanamo Bay in harsh conditions for almost two years, despite their vulnerable medical condition.

In March 1994, exiled Haitian President Aristide sent a letter to U.S. President Clinton notifying him of his intent to terminate the agreement between Haiti and the United States that had been in place since 1981 and had permitted the return of interdicted Haitians. Sent in an atmosphere of increasing tension between the two leaders over the failure to restore the democratically elected government of Haiti, the letter argued that Haitians were being returned without safeguards to protect them against imprisonment, disappearance, or torture. Albeit in exile as a result of the 1991 military coup that deposed him, President Aristide remained the recognized head of state and therefore had the authority to terminate the bilateral arrangement that facilitated the interdiction policy.<sup>95</sup>

In addition, members of Congress and human rights leaders increased pressure on President Clinton to revisit the interdiction policy, as he had promised to do. Nine members of Congress were arrested while protesting the policy outside the White House. Randall Robinson, Executive Director of TransAfrica, engaged in a widely publicized month-long hunger strike. The UN Security Council, meanwhile, voted

unanimously to impose an embargo on Haiti to force the coup leaders to step down.

These efforts provoked yet another shift in U.S. policy. In May 1994, the Clinton Administration reversed the Kennebunkport Order that mandated the return of Haitians without any prior interview or screening. It instead ordered that Haitians be interviewed offshore to determine whether they were refugees and thus unable to return home.<sup>96</sup> Haitians who were deemed refugees would be resettled in the United States. Shortly thereafter, the United States reached agreements with Jamaica to allow processing of interdicted Haitians on board a U.S. Navy vessel in Kingston harbor and on land in the Turks and Caicos Islands. These bilateral agreements were designed to supplement refugee processing on the U.S. military base at Guantanamo Bay.<sup>97</sup> It also agreed to allow UNHCR and voluntary agencies access to provide counseling and assistance to the asylum seekers.

The announcement, however, was accompanied by numerous cautions from the White House. President Clinton himself stated that it would be a grave mistake for Haitians to try to reach the United States by boat. He cautioned: "I hope we will not have a new flood of refugees, but we are increasing our naval reserves in case that happens."<sup>98</sup>

That concern quickly became reality. The political situation in Haiti continued to deteriorate; in July 1994 the military rulers of Haiti expelled 164 human rights monitors from the United Nations and the OAS.<sup>99</sup> The total number of Haitians interdicted climbed to over 17,000, overwhelming the ability to process their refugee claims on board U.S. ships.

On July 5, 1994, the Clinton Administration again altered its policy after more than 3,000 Haitians were interdicted in just one day. It announced its intent to seek a regional solution to the problem.<sup>100</sup> Only those Haitians who were identified as refugees through in-country processing were allowed to resettle in the United States. Expanding upon the processing agreements reached with Jamaica and the Turk and Caicos Islands, the United States sought to supplement its capacity to detain Haitians on Guantanamo through agreements with countries in the region to provide temporary safe haven in refugee camps. It initially reached an agreement with the government of Panama to temporarily house Haitians, but the agreement fell through before it

was ever implemented due to domestic opposition in Panama.<sup>101</sup> Antigua, Grenada, Suriname, St. Lucia, and Dominica offered to host a total of approximately 11,000 refugees, to be housed in camps run by UNHCR. The Bahamas also agreed to serve as a processing site.<sup>102</sup>

By August 1994, more than 20,000 Haitians had been taken to Guantanamo. The number leaving Haiti had dropped precipitously and some Haitians on Guantanamo had opted to voluntarily return to Haiti.<sup>103</sup> Ultimately, 10,600 were paroled into the United States from Guantanamo.<sup>104</sup>

Congress and refugee advocates expressed strong concerns that regional safe havens, on-board refugee interviews, and in-country processing were inadequate to meet the obligations of the United States to offer protection to Haitian refugees. They cited insufficient procedural safeguards and inexperienced and at times hostile interviewers as significant barriers to identifying refugees in need of protection. They also raised concerns about the conditions of detention at Guantanamo Bay.<sup>105</sup>

Also undermining true protection even for those Haitians accepted for resettlement through in-country processing was the inability to actually relocate such people to the United States. More than 1,800 refugees remained stuck in Haiti due to the UN embargo on flights out of the country. The voluntary agencies in charge of processing therefore stopped accepting any new cases.<sup>106</sup>

By the summer of 1994, the refugee influx compelled the Clinton Administration to take several steps to topple the military leaders controlling Haiti. The United States joined with the UN and OAS and imposed additional economic sanctions on Haiti. It froze the assets in U.S. banks of anyone affiliated with the Haitian coup and discontinued commercial air traffic in and out of Haiti. It also sought UN support for military intervention and peacekeeping forces. Finally, in September 1994, U.S. troops invaded Haiti with the backing of the UN.

Even after the invasion, however, the United States continued to detain almost 6,000 Haitians on Guantanamo Bay. The United States provided incentives to these individuals to encourage their return home and warned that those who remained after January 5, 1995 would be forcibly returned and denied repatriation assistance.<sup>107</sup> It said that those few who could not return safely would remain at Guantanamo and under no circumstances would be

#### HAITIAN CHILDREN FORCIBLY RETURNED FROM GUANTANAMO BAY

Included in the residual population remaining at Guantanamo in 1995 were approximately 350 unaccompanied children, some of whose parents had been killed by the Haitian coup leaders. Their continued detention offshore stood in stark contrast to the treatment afforded unaccompanied Cuban children held at Guantanamo at the time, who were admitted into the United States.<sup>114</sup>

Ultimately, UNHCR conducted best interest determinations for the Haitian children to determine whether they should be allowed to join family members in the United States. More than half were denied such permission, and 161 children were returned to Haiti with assistance from the International Committee for the Red Cross and the Save the Children Federation under contract with the U.S. Department of State.<sup>115</sup>

A team of refugee experts who assessed the return of the unaccompanied children, however, raised serious concerns about the fate of the child returnees. It concluded that the U.S. government had forcibly repatriated Haitian children with little regard for the children's physical security or the ability of caregivers to whom they had been returned to provide for them properly. Of the 12 children they were able to track down in Haiti, some were living with strangers rather than their families and some had become street children. Some children actually had parents living in the United States but had not been reunified with them. The team concluded that the repatriation effort had created a serious humanitarian tragedy.<sup>116</sup>

admitted to the United States.<sup>108</sup> In fact, on January 5, authorities on Guantanamo conducted rapid evaluations of the remaining caseload of approximately 4,500 and returned all but 771 individuals.<sup>109</sup>

UNHCR deemed the evaluation process to be cursory. Both it and the International Organization for Migration refused to cooperate in the return process, due to their concerns about the program's inadequacy.<sup>110</sup> UNHCR observed:

*While the restoration of the democratically elected government of Haiti and the presence of the MNF [multinational forces] are positive developments, this Office believes that it would be clearly inappropriate to conclude generally that Haitian asylum seekers would*

*no longer face persecution upon return to Haiti. The very recent change in regime in Haiti does not alter the way in which the asylum claims of Haiti should be evaluated. Asylum applications from Haiti should thus continue to be considered on their individual merits...*<sup>111</sup>

The United States also resumed interdiction and summary return; in fiscal year 1995, the number of Haitians intercepted at sea approached 1,000. The U.S. Committee for Refugees described the resumption of interdiction as “tragic.”<sup>112</sup>

#### THE UNITED STATES ALLOWS SOME HAITIANS TO REMAIN

As the political crisis in Haiti of the early and mid-1990s calmed, two programs were initiated that allowed Haitians who had been paroled into the United States to regularize their status.

In January 1998, then-President Clinton ordered “Deferred Enforced Departure” (DED) for any Haitians who were paroled into the United States or who had applied for asylum before December 1, 1995. DED provides relief from deportation and work authorization for a limited period of time. The program primarily benefited Haitians who had been paroled in from Guantanamo Bay in the first half of the 1990s.<sup>118</sup>

The grant of DED by the Administration was followed almost a year later by “The Haitian Refugee Immigration Fairness Act of 1998” (HRIFA), legislation which resulted from a sustained advocacy campaign by refugee, immigrant, and human rights organizations.<sup>119</sup> This legislation allowed Haitians who had been continuously present in the United States since December 31, 1995 and had applied for asylum, been paroled into the United States, or were orphaned children to adjust their status to permanent residence. It was estimated that 50,000 Haitians qualified for adjustment under the bill.

HRIFA in part remedied the injustice that Haitian asylum seekers had experienced in years past. It also recognized the ongoing fragility of the political and human rights situation in Haiti even after the return of the democratically elected government.<sup>120</sup> However, even HRIFA was viewed as an undelivered promise of relief to Haitians; the INS’s implementation of the law was sharply criticized for its inadequacy, resulting in thousands denied status.<sup>121</sup>

The reintegration of Haitian returnees proved difficult. The Haitian government created a National Office of Migration to assist rejected asylum seekers or voluntary repatriates with housing and employment. However, the office remained poorly funded and ineffective.<sup>113</sup>

Restoration of the Aristide government had the desired effect that the U.S. government sought; the number of Haitians leaving their country dropped rapidly in correlation with the decrease in violence and human rights abuses. This phenomenon, however, should not only be understood in the context of the effectiveness of addressing the root causes of refugee flows, but should also be regarded as direct proof that the Haitians who fled their homeland during the military takeover of their country were in fact fleeing for their lives and not to escape poverty, as was so often insisted upon by those policy makers who defended the interdiction policy.<sup>117</sup> Return of the democratically elected government gave the Haitian people new confidence in their country’s future.

While the debate over the U.S. policy toward Haitian asylum seekers began to quiet down after Aristide resumed office, the legacy of the boat crisis has to date not diminished; interdiction, summary repatriation, and offshore processing still remain the policy of the United States. Most recently, citing national security concerns and a fear of another mass influx, the United States has also adopted harsh new detention and expedited removal procedures that are clearly targeted at Haitian boat arrivals.

#### THE UNITED STATES HAS MAINTAINED LOW APPROVAL RATES FOR HAITIAN ASYLUM CLAIMS

The United States has used not only interdiction, summary return, regional burden-sharing agreements, in-country processing, and detention to regulate, prevent, and deter the arrival of Haitians in the United States. It has also maintained relatively low approval rates when adjudicating asylum claims brought by those Haitians who have been allowed access to the asylum system. This at times has been true even during periods when rampant and severe human rights abuses were well documented in Haiti.

Throughout the 1980s and early 1990s, the approval rates for Haitian asylum claims were strikingly low and well below the norm for other nationalities. In the period between 1983 and 1991, less than 2 percent of Haitian applicants were granted asylum, the lowest approval rate among nationalities submitting

the largest number of applications, and at a time when the overall asylum approval rate for other nationalities stood at 23.6 percent.<sup>122</sup> For example, despite the massacre that occurred in conjunction with Haiti's 1987 election, not a single Haitian was granted asylum in the United States that year.<sup>123</sup> In contrast, asylum seekers coming from Communist countries such as the Soviet Union during that period were granted at rates as high as 75 percent.<sup>124</sup>

The approval rate for Haitian asylum applicants increased for a brief period of time after the overthrow of President Aristide in 1991; during that period, the grant rate climbed to 30.6 percent.<sup>125</sup> This increase corresponded with a shift in responsibility for asylum adjudications from INS district directors, generally characterized by their enforcement mindset, to a newly formed asylum corps, consisting of officers with human rights training.<sup>126</sup>

By 1994, the approval rate was only 18 percent before the immigration courts.<sup>127</sup> In July 1994, when President Clinton reversed the Kennebunkport Order and allowed refugee processing to resume, the rate of approval for Haitians who were interdicted and processed on board Navy vessels temporarily increased to 30 percent, significantly higher than the Administration's predicted rate of 5 percent.<sup>128</sup> The approval rate in 1996 continued to hold at 30 percent for cases adjudicated by the INS asylum corps but the grant rate dropped to only 10.6 percent for cases decided by immigration judges. Both rates again stood in stark contrast to the approval rate for countries such as Cuba, whose nationals were granted at more than 60 percent.<sup>129</sup>

By 1997, the grant rate by asylum officers had fallen to 15 percent<sup>130</sup> and the grant rate by the immigration courts stood at 12 percent.<sup>131</sup> By 1999, the grant

rate by asylum officers decreased again to 7.6 percent,<sup>132</sup> and the grant rate by the immigration courts had fallen to 5 percent.<sup>133</sup>

In 2000, when political conditions in Haiti began to markedly deteriorate, the rate of approval by asylum officers again crept upward to 22 percent, whereas the approval rate by immigration judges remained at 10 percent.<sup>134</sup> In 2001, the approval rate for cases decided by asylum officers again increased to 24 percent and that of the immigration judges to 12 percent.<sup>135</sup> Both, however, were well below the average approval rate for all nationalities, which in 2001 stood at 56.5 percent for asylum officer adjudications and 34 percent before the immigration judges.<sup>136</sup>

Also of note throughout the Haitian boat crisis was the low approval rate for Haitians who applied for resettlement through the in-country processing system. Of the 60,000 Haitians who applied for refugee status while still in Haiti in the first 18 months of the program's implementation, from December 1992 through July 1994, only 1,500 applicants were approved.<sup>137</sup> This low rate is troubling given the consistent emphasis throughout the period on in-country processing as the preferred means to identify and offer protection to Haitian refugees.

There is little doubt that U.S. political concerns have often influenced Haitian asylum adjudications. In May 1992, for example, the Director of the INS asylum unit reversed more than half of the asylum grants given to Haitians by asylum officers in Miami. He then offered special incentives to officers to deny Haitian asylum claims. Officers were allowed to count a denial of a Haitian claim as equal to two case completions as opposed to a grant only counting as one. Case completion rates are used to evaluate an officer's job performance.<sup>138</sup>

# IV. THE UNITED STATES CONTINUES TO DENY PROTECTION TO HAITIANS

## U.S. CONTINUES INTERDICTION, SUMMARY RETURN, AND OFFSHORE PROCESSING

The Alien Migration Interdiction Operation, started in 1981, continues today. While not exclusive to Haitians—the Coast Guard also interdicts Cubans, Chinese, Dominicans, Ecuadoreans, and others—it is clear that the policy of deterring and preventing the arrival of Haitians in the United States remains a priority even in the context of the deteriorating political conditions that Haiti is currently experiencing.

While at times interdiction has been accompanied by a full refugee interview or at least some screening of a Haitian’s potential claim to asylum, the current practice is to immediately repatriate a person unless he or she specifically expresses a fear of return. One U.S. Department of State official described the policy as “shout and you get an interview.” It may not even be the case that a Creole-speaking Coast Guard official is on board.

If an interdicted Haitian does manage to communicate a fear of return, the Coast Guard notifies the INS, which transports an asylum officer to the ship in order to conduct a preliminary credible fear inter-

view. If the asylum officer determines that the individual does have a credible fear of return, then the person is transferred to Guantanamo Bay, Cuba.

At Guantanamo, another INS asylum officer conducts a second interview to determine whether the person has a well-founded fear of persecution and thus qualifies for refugee status. Asylum seekers do not have access to counsel to assist them with the interview. They also have no right to appeal negative determinations by the asylum officer. These safeguards would normally be available if the asylum seeker had been allowed to pursue asylum in the United States rather than being subjected to interdiction and thus prevented from arriving in the United States. (While Guantanamo is a U.S. naval base, it is not considered the equivalent of U.S. territory.)

Despite these differences, the Department of State recently defended the interdiction process. It stated: “We believe that any interviews conducted by asylum officers on board Coast Guard cutters are genuinely calculated to identify and protect refugees.”<sup>140</sup>

Those few asylum seekers who are not immediately repatriated to Haiti, who pass a credible fear screening, and then are found to be refugees while on Guantanamo, are still not admitted to the United States, regardless of whether that is their

### INTERDICTED CUBANS AND CHINESE RECEIVE ENHANCED TREATMENT

The treatment afforded interdicted Haitians starkly contrasts with the enhanced procedures applied to interdicted Cubans and Chinese, both nationalities that have strong political allies in Washington, D.C.

If a Cuban national is interdicted, a Spanish-speaking INS official (usually an asylum officer) is sent to the Coast Guard cutter. The officer explicitly asks the Cuban if he or she fears returning to Cuba. Those who express a fear are interviewed on board. If the officer does not conclude that the person’s fear is credible, he or she is returned to Cuba but is advised that it is possible to apply for refugee status in-country at the U.S. interests section in Havana. Those found to have a credible fear are transferred to Guantanamo for a full-blown refugee interview. If deemed refugees, however, they are resettled in third countries, just as the Haitians are.

If a Chinese national is interdicted, he or she is given a questionnaire in his or her dialect to fill out. While the questionnaire asks general questions about the person’s background and reasons for leaving China, it is designed to elicit a fear of persecution in a roundabout way. If a Chinese person expresses a fear of persecution, he or she is interviewed on board by an asylum officer. If credible fear is established, he or she is brought to the United States and allowed to apply for asylum.

— Summary of a presentation by Judith Kumin, UNHCR, before the Canadian Council for Refugees (November 21, 2002) (citing Yale Law School draft report on “Interdictions on the High Seas: History, Practice, and Emerging Issues.”)

intended destination or whether they have family ties there. Instead, the U.S. government offers them resettlement to a third country.

The Department of State has arranged third country resettlement to such countries as Guatemala and Nicaragua, two of the poorest countries in the western hemisphere and ones in which it is unlikely that a Haitian would have family or community ties. It does, however, offer reception and assistance services through Caritas, a nongovernmental organization, and provides the refugees with temporary financial support equal to approximately U.S.\$3,000 to facilitate their integration in the third country. Despite this assistance, a Department of State official told the Women's Commission that at least some of the Haitians who were relocated to Central America did not remain there. They surfaced in Mexico where they were detained by the Mexican authorities. Presumably, they were on their way to the United States when stopped.

The U.S. government has also explored arranging resettlement of Haitians to Canada and Australia, both traditional resettlement countries. The INS and the Department of State have recently negotiated a "safe third country agreement" with Canada.<sup>141</sup> The primary focus of the agreement is to prevent asylum seekers from transiting through one of the two countries to seek asylum in the other. Most of the asylum seekers who will be affected are those who wish to seek asylum in Canada but will have to apply in the United States instead (approximately 14,000 refugees a year transit through the United States on their way to Canada, whereas very few travel through Canada to reach the United States). Canadian officials have admitted that their goal is to lower the number of potential asylum applicants who arrive in Canada, due to its increasing backlog of asylum claims.

To offset the increase in asylum applications it will receive as a result of the agreement with Canada, however, the United States government requested the inclusion of a provision that calls for mutual assistance in the resettlement of persons deemed to require protection in "appropriate circumstances."<sup>142</sup> This provision, which represents a noticeable aberration from the rest of the text in that it addresses resettlement concerns rather than asylum issues, quickly became known as the "side deal" in the negotiations.<sup>143</sup>

Canadian officials involved in the negotiation of the safe third country agreement revealed that the pri-

mary purpose of the provision is to allow for the resettlement of 200 U.S. interdiction cases—many likely to be Haitians—in Canada each year. Refugee advocates on both sides of the border expressed strong concern that the United States not renege on its commitment to offer protection to interdicted asylum seekers and that Canada not facilitate the United States' failure to offer such protection.

Such an arrangement is particularly troublesome in light of the failure of the United States to reach even half of its annual resettlement admissions target of 70,000 refugees for fiscal year 2002. Due largely to national security concerns, the United States suspended resettlement for several months and then resumed it at a much slower pace than necessary to achieve its admissions target. It has since lowered the target for fiscal year 2003 to 50,000 allocated admissions,<sup>144</sup> in part justified by its stated inability to identify enough refugees who qualify for refugee status and thus are eligible for resettlement.<sup>145</sup>

Given the thousands of Haitians interdicted in recent years and deteriorating political conditions in Haiti, it is perplexing that the United States would not consider greater admissions of Haitian refugees through resettlement and would instead seek their relocation to Canada. At the time this report was going to print, however, both countries had signed off on the agreement. The Canadian Cabinet had already approved it, and it had been signed by U.S. Secretary of State Colin Powell.<sup>146</sup>

The United States has also informally discussed the transfer of small numbers of interdicted Haitians whom INS asylum officers deem refugees to Australia. At least one Haitian family has been resettled from Guantanamo Bay to Australia under this arrangement.<sup>147</sup>

This phenomenon is even more troubling than the groundwork being laid for transfer of such individuals to Canada. Canada has generally been recognized as one of the most generous countries in the world in terms of its reception of refugees. In contrast, Australia has become one of the most restrictionist. Albeit relatively generous in terms of its support of resettled refugees, it has also adopted strict interdiction and summary asylum procedures and has limited the ability of accepted refugees to reunify with their families.<sup>148</sup> Resettlement of Haitians to Australia also separates them from the community and family support that is more likely to be available in the United States, where there are established Haitian communities.

The United States in turn has agreed to accept for resettlement a small number of refugees, most from Iraq, intercepted in Indonesia on their way to Australia.<sup>149</sup> Both the United States and Australia therefore are frustrating the intent of asylum seekers to reach their desired destination.

The Department of State, however, believes that this arrangement has worked well, asserting that the primary goal is to provide the Haitians in question with protection and that the affected family was satisfied with the arrangement. It characterizes the resettlement agreements with both Canada and Australia as a form of refugee burden sharing.<sup>150</sup> However, it remains unclear why two powerful western countries which host relatively few refugees compared to many developing countries need to assist each other in the context of their refugee protection obligations.

Underscoring the reluctance of the U.S. government to expand resettlement opportunities for Haitian refugees was its recent ambivalent characterization of Haitians in its annual report outlining its resettlement priorities for fiscal year 2003. The report states: “While the vast majority of migrants fleeing Haiti seek economic opportunity, the situation continues to be unstable and could lead to migrant outflows.”<sup>151</sup> It then goes on to predict that virtually all of the refugee slots reserved for the Latin American and Caribbean region will be allotted to Cubans.<sup>152</sup> The ambivalence of this statement stands in stark contrast to the Department of State’s annual human rights report on Haiti, which highlights the grave political problems the country is currently experiencing.<sup>153</sup>

Clearly, the United States intends through these arrangements with Central American countries, Canada, and Australia to send yet another signal to Haitian asylum seekers that even when granted refugee status, they will not be welcomed to the United States.

## DECEMBER 2001 HAITIAN BOAT ARRIVALS

### THE JOURNEY TO THE UNITED STATES

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*If I hadn't been trying to escape persecution, I never would have gotten on that boat. We spent nine days wet and hungry, and it was a terrible journey, but we had to do it to save*

*our lives. All I did on the boat was pray. I asked God to save me, and He did because our boat was rescued.*

— Statement of Julia, a passenger on a boat of Haitian asylum seekers that arrived in the United States in December 2001.

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On December 3, 2001, a crowded boatload of almost 200 Haitians ran aground off the coast of Florida. Included in the group were approximately 26 women and 14 children. Virtually all came from the Gonaïves region of Haiti.

They arrived on a 31-foot-long rickety boat, named *Simapviussetzi*, Creole for “If I’m alive, it’s because of Jesus.”<sup>154</sup> They had traveled for 10 days on a perilous journey that covered 500 miles.<sup>155</sup> In contrast to most interdicted Haitians—who are immediately repatriated after the U.S. Coast Guard intercepts them—the passengers were turned over to the custody of the INS and transferred to various detention facilities.<sup>156</sup> The Coast Guard permitted their arrival out of concern for the safety of the passengers and because the waters were too shallow to attempt a transfer to a boat that could return the Haitians to their home country.<sup>157</sup>

Because they were taken to dry land, U.S. law required the INS to screen the new arrivals’ potential asylum claims under the system of expedited removal. U.S. officials, however, were also quick to note that the action did not signal a reversal of the standing policy to interdict and immediately repatriate Haitians attempting to make it to the United States.<sup>158</sup>

In describing the ordeal of the boat trip, Frances said:

*I escaped on the boat with many other people from Gonaïves...When I was on that boat there was no space for all the people and I spent nine days in the same position. My legs haven't been the same since then. It's difficult to walk, and my muscles are always strained and tight. But I had to put myself through that to save my life.*<sup>159</sup>

## HAITIANS SUBJECT TO PROLONGED DETENTION

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*This made it even more difficult for us, to watch so many other women from other countries come in and quickly get released. I didn't think the United States would treat people differently just because of the place they were born, I thought everyone was equal here. But we were not treated like everyone else, even though we are all human and we all have the same blood. It became clear to us that the only reason we were in jail indefinitely is because we are Haitian.*

— Interview with Marie Jocelyn Ocean, who was detained for approximately six months before she was granted asylum and released.

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The arrival of the *Simapvivsetzi* provoked the White House to initiate a new and increasingly restrictive set of policies to deter and prevent a Haitian refugee outflow. This included prolonged detention and expedited asylum processing.

The Haitians quickly discovered that the United States would not offer them the freedom they sought. Instead, it was the beginning of a year in limbo—locked in prisons and detention centers, a seemingly endless wait for release to family, friends, and community and an equally endless fear of deportation back to Haiti.

The INS transferred the Haitians to various detention facilities shortly after their arrival. It detained the men in the Krome Service Processing Center, families and some unaccompanied children in a local Miami hotel, other unaccompanied children in the local Boystown Children's Shelter or the Berks County Juvenile Center in Pennsylvania, and the women in a county prison. Only unaccompanied children, three pregnant women, and those ultimately granted asylum were deemed eligible for release.

Pursuant to the expedited removal system, INS asylum officers interviewed the Haitian boat arrivals to determine whether they had a "credible fear" of persecution, an initial screening that all but two individuals passed. Under U.S. law, an asylum seeker is then eligible for release from detention, a parole policy that the INS itself has declared should be the norm.<sup>160</sup>

In fact, the past practice of the INS Miami District has been to release asylum seekers who establish that they have a credible fear.<sup>161</sup> For example, in the

### CONGRESS CREATES DEPARTMENT OF HOMELAND SECURITY THAT WILL FUNDAMENTALLY AFFECT RESETTLEMENT, ASYLUM, AND DETENTION PROGRAMS

In November 2002, Congress enacted legislation to create a new cabinet-level federal agency, the Department of Homeland Security (DHS). The Bush Administration had requested the legislation in the wake of the terrorist attacks of September 11, 2001 to consolidate functions that relate to the prevention of and response to terrorism.

The legislation dismantles the INS and fundamentally alters the structure currently in place to oversee and implement U.S. detention and asylum policies. It transfers most immigration and asylum-related functions to DHS, including the detention of asylum seekers, certain functions relating to overseas refugee processing, and the adjudication of asylum requests by the asylum corps. The refugee and human rights community is very concerned about the absorption of refugee-related functions into an agency for which the primary focus will be the prevention of terrorism. The fear is that the new agency will approach such programs with a law enforcement mindset that will simply sacrifice humanitarian concerns instead of balancing them with national security concerns.

Two important functions, however, were exempted from the consolidation of immigration and asylum-related functions under DHS. First, the custody of children in immigration or asylum proceedings will be transferred to the Office of Refugee Resettlement (ORR), a component of the Department of Health and Human Services. ORR has decades of experience working with refugee children resettled in the United States and is well-positioned to develop appropriate care and custody for children seeking asylum.

In addition, the Executive Office for Immigration Review, which houses the immigration courts and the Board of Immigration Appeals, was retained by the Department of Justice. The long-term impact of this remains to be seen, as Attorney General John Ashcroft has recently sought to streamline immigration and asylum procedures, measures which many immigration and refugee experts fear will jeopardize due process.<sup>139</sup>

month prior to the arrival of the December 2001 Haitian boatload, 96 percent of all asylum seekers—including Haitians—were granted parole.<sup>162</sup>

The newly arrived Haitians, however, were singled out for disparate treatment. Release continued to be the norm for all other nationalities, whereas 97 percent of the Haitians were denied parole and remained detained.<sup>163</sup>

For months, the Bush Administration denied that there had been a change in policy. It was not until March 2002 that the INS finally admitted in federal court that after consultation with other affected federal agencies, its headquarters had issued a directive to its Miami District to discontinue the release of Haitian asylum seekers unless it explicitly approved parole.<sup>164</sup>



*The INS often detains asylum seekers for prolonged periods in local jails and correctional facilities. Families are frequently split up.*

© Miami Herald

The stated rationale for the directive was to deter Haitians from making the dangerous voyage by boat and a fear of mass migration. This reasoning was strikingly similar to the justification used by past Administrations for the various restrictions placed on Haitian refugees during the 1980s and 1990s. However, this time the rationale that the policy was largely designed to ensure the safety of Haitians fleeing by boat was undermined by the initial decision to also detain Haitians who arrived by plane, a decision the Administration later reversed after a lawsuit was filed.<sup>165</sup>

The Haitian detainees themselves quickly became aware of the fact that they had been singled out for prolonged detention. Sophie, a young woman who was detained with her mother, observed: “Everybody else gets released. It’s hard for us to watch everyone coming in and out. I understand what we did, but to see the Chinese, the Hispanics come and go...”<sup>166</sup>

## WOMEN HELD FOR MONTHS IN MAXIMUM SECURITY PRISON

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*At TGK, I felt like I was going crazy. I couldn’t breathe. I wanted just to run. At night, I couldn’t even sleep. The officers were constantly knocking on the door and making me stand up every time I fell asleep. I felt like I was locked in a closed space.*

— Interview with Gisele, who was detained in a maximum security prison for eight months before being transferred to a less secure facility.

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The Haitian women were initially detained for eight months in the Turner Guilford Knight (TGK) Correctional Center, a maximum security Miami-Dade County prison. The Women’s Commission and the Florida Immigrant Advocacy Center (FIAC) have documented numerous problems with conditions of detention in TGK.<sup>167</sup> Such problems include the inappropriate use of strip searches, frequent lock-downs, disruption of sleep for headcounts, inadequate medical care to address even critical conditions such as diabetes, a lack of accessible translation services, inedible food, extremely limited access to the outdoors, and separation of families. Although the women asylum seekers detained at TGK were housed separately from the general population, they were effectively treated the same as the criminal inmates. The Miami-Dade County Commission itself, which oversees the TGK facility, passed a resolution that concluded that TGK was unsuitable for the housing of immigrant detainees and that called upon the INS to work with it to find alternative facilities to house the women.<sup>168</sup>

Attorneys representing the women also confronted numerous problems accessing their clients at TGK. They often waited hours to visit their clients and were not provided private interview rooms to conduct confidential interviews. In its past visits to the facility, the Women’s Commission also experienced such delays. It also witnessed prison officials walking into the attorney client visitation room in the middle of confidential interviews with detained asylum seekers.

The detention of the Haitian women at TGK seriously interfered with their ability to present their asylum claims. Isabella’s asylum claim was founded on her assertion that she was raped. As part of the

preparation of her asylum claim, her attorney attempted to arrange a visit by a psychologist to TGK to ascertain the nature and extent of the abuse Isabella had experienced.

The volunteer mental health professional who agreed to help with Isabella's case, however, was denied access to the facility by the INS. The INS officer-in-charge told the attorney that she would never permit any independent mental health professional access to INS detainees at TGK. She stated that only TGK-employed medical staff would be allowed to conduct such assessments.<sup>169</sup>

This denial was in direct conflict with INS-issued detention standards, which provide: "Psychological examination by a practitioner or expert not associated with the INS or the facility can provide a detainee with information useful in immigration proceedings before the Executive Office for Immigration Review and the INS. Therefore, the District Director will generally approve examinations for such purposes, if the requested examination would not present an unreasonable security risk."<sup>170</sup> Independent psychological evaluations in fact can be pivotal to the success of an asylum claim.

Isabella was ultimately denied asylum by an immigration judge. She filed an appeal before the Board of Immigration Appeals but then withdrew the appeal. She told her attorney that she could no longer tolerate detention and so was abandoning her asylum claim.<sup>171</sup>

The impact of detention on the mental well-being of the Haitian women held at TGK was devastating.<sup>172</sup> Gisele experienced an emotional breakdown. After weeks of depression, she entered a catatonic state and experienced episodes of fainting and losing control of her bowels. She was ultimately transferred to a psychiatric ward located on the TGK premises.<sup>173</sup>

It must be noted that the INS did have an alternative to detention of women at TGK throughout the period the women were imprisoned there. In April 2002, Barry University offered to sponsor the parole of women and children, a role that the university had successfully played in the early 1980s.<sup>174</sup> However, despite some initial receptivity, the INS rejected this offer, erroneously claiming that the university had withdrawn the offer.<sup>175</sup>

## WOMEN TRANSFERRED TO BROWARD COUNTY WORK RELEASE CENTER

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*It was because God loved us that we didn't die at TGK.*

— Interview with Sophie five days after her transfer to the Broward County Work Release Center.

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Finally, on August 26, 2002, responding in large part to pressure from the Miami community and refugee advocates, the INS Miami District began transferring detained women asylum seekers, including Haitians, to the Broward County Work Release Center in Pompano Beach, Florida.<sup>176</sup> In announcing the transfer to Broward, the INS Miami District Director stated:

*What we are seeing today with the acquisition of the Wackenhut facility is the result of many months of work listening to the concerns of our communities and doing what we could to provide the best possible detention environments for our detainees. The concern over the well-being of our detainees was never taken lightly. With the support of elected officials, we have been able to address these concerns through acquisition of this facility.<sup>177</sup>*

Operated by the Wackenhut Correction Corporation, a large private correctional company, the Broward County Work Release Center is a 300-bed minimum security residential care facility primarily designed to house convicted men and women who are transitioning back into the community.<sup>178</sup> The INS entered into an initial contract with Wackenhut to use 72 beds, but noted that it expected to expand the program at a later date.<sup>179</sup> The INS detainees are completely isolated from individuals in county custody.

Four days after the INS transferred the women asylum seekers to Broward County, the Women's Commission toured the facility. It found that living conditions in the Broward facility represent a significant improvement over both TGK and the Krome Service Processing Center, where women detainees in the custody of the INS Miami District had been held in the past.

The facility generally provides a more open living environment than either TGK or Krome. The housing units, located on the second floor, are dormitory-style rather than cells. Each has a window that allows nat-

ural light. The rooms appear very clean. The women can keep personal belongings, including family photos, in lockers. Four women share each room, to which a bathroom is attached. The facility allowed the women to choose their roommates upon arrival.

Staff monitor the women around the clock. The facility administrator noted that the officers perform head counts once every eight hours or every time a staff shift begins, a security measure which he described as an INS requirement. During the night, he stated, the staff will open the door to the women's room and look in rather than banging on the walls as is done at TGK. He indicated that windows would be installed in each door to minimize the disruption further.

Broward has employed six bilingual staff members that speak French, Spanish, or Creole in addition to English. The facility can also use telephonic translation services through an INS-contracted service to communicate with detainees. Such services are regularly available at facilities the INS uses, but are rarely actually used; it will remain to be seen whether the Broward facility utilizes them effectively. The facility administrator also reported that the staff is working on developing a library that will include reading materials in languages other than English.

The detainees can use phone cards to place calls and can also place free calls to family members every two weeks if they otherwise cannot afford to make calls. These services represent a significant improvement over TGK, where women generally could only make collect calls and the telephone system was unreliable.<sup>180</sup> The telephones at Broward, however, are located in open areas that fail to ensure privacy.

Family members can visit detainees on the weekends between 4:00 and 7:00 p.m. They are allowed contact visits, meaning that the detainee and visitor can speak face-to-face without a barrier between them. In TGK, by contrast, family members were separated from the detainee by a glass divider and the hole through which they could speak was located near the floor, requiring the detainee and her family to bend over in order to hear each other.

Broward provides free hygiene items to the women. The Broward facility also allows the women detainees to wear street clothing rather than prison uniforms and to wash their own clothing in a laundry room located on their floor. Their family members can also bring them hygiene items or clothing if they so desire. Again, this is a vast improvement

over the services provided at TGK. There women wore prison uniforms and had to either buy their toiletries from a commissary or depend on the facility to provide such basic items as toothpaste and sanitary napkins, a service that the women described as unreliable and at times missing. Access to such items is often a critical factor in detainees' lives, as it can mean the difference between feeling dehumanized or preserving a sense of dignity.

The women can participate in multiple activities, including English, acculturation, and life skills classes. The outdoor exercise area is spacious and pleasant. It is equipped with sports equipment. However, the women are limited to one hour of outdoor access a day.

There is also exercise equipment available indoors, as well as televisions, games, art materials, and vending machines. The facility administrator stated that it is his intent to provide the women with all the privileges possible.<sup>181</sup>

The two attorney client visitation rooms are large. They allow for contact visits and appear designed to ensure confidentiality. During the Women's Commission's visit, there were noticeably fewer instances in which facility officers interrupted the visit than had been the case at TGK.

However, subsequent to the Women's Commission's site visit, attorneys from the Florida Immigrant Advocacy Center reported that they were no longer able to use the two visitation rooms or to visit the women's housing unit on the second floor. Instead, they were forced to use a large public visitation room on the first floor where privacy is almost impossible.<sup>182</sup>

The Broward center has arranged facilities on-site in which the women's asylum proceedings are conducted. It provides space for both asylum officers to conduct credible fear interviews and immigration judges to hold hearings. This is important, as otherwise the INS would transport the women to Krome for their hearings, a process that often subjects the women to hours of travel and waiting time.

The women themselves described Broward County as much more comfortable than TGK. Gisele, who had suffered severe depression while imprisoned at TGK, said: "I feel like I can breathe in here. I'm very happy here. It is good."<sup>183</sup> An attorney who accompanied the Women's Commission to the Broward facility observed that Gisele appeared noticeably happier and more relaxed than she had at TGK.

Solange said: “We’d rather be here than at TKG. The staff talks to us.”<sup>184</sup>

In short, while the women are not allowed to leave the premises and are monitored by staff, the facility is sufficient for the short-term detention of asylum seekers pending a finding that they have a credible fear of persecution. This is a significant improvement over the unacceptable conditions at TKG and other facilities.

However, several concerns remain outstanding. The first matter of concern is the relationship between the facility and the INS. The facility administrator admitted that the INS provided insufficient information about the women placed in the facility’s care. He was eager to learn more about why newcomers may be in INS custody. Such information is essential in order to design programs that meet the needs of detainees and to identify any physical or mental health problems that may result from their refugee experiences.

Second, while the Broward facility staff has expressed an openness to facilitating the ability of attorneys to visit their clients and to speak with new arrivals, the Florida Immigrant Advocacy Center has reported that this flexibility is not shared by the INS Miami District. In addition to the new restrictions on the use of attorney/client visitation rooms, attorneys have raised concerns that the INS has tried to inhibit them from visiting detainees by placing onerous paperwork requirements on them before every visit.

Unless the visit is part of a group legal orientation session, attorneys are required to file a notice of representation each time they wish to visit a potential client, a time-consuming and cumbersome procedure that hampers the ability of the Haitians to obtain prompt legal assistance. The attorneys are also required to provide 24-hour advance notice before each visit. Moreover, the INS allows the women to attend only one group legal orientation session, disregarding the fact that they may need additional assistance or simply may benefit from hearing the presentation multiple times. In addition, a Broward employee told an attorney from FIAC that the INS warned the facility “to keep an eye on FIAC.”<sup>185</sup>

It is also disturbing that the Broward facility—like Krome—has a past history of sexual harassment problems.<sup>186</sup> While the facility administrator outlined concrete steps that the facility has taken to ensure that such abuses do not reoccur,<sup>187</sup> it is critical that nongovernmental organizations, UNHCR, and most importantly, the INS itself monitor the facility to

ensure that such abuses are not repeated.

Finally, of grave concern is the continued detention of Haitian women even after they have established a credible fear of persecution. Regardless of the improvements in the conditions of their detention that the transfer to Broward County might represent, it is troubling that the Haitians have been singled out and subjected to prolonged detention. At the time of this report, they had spent more than a year in detention, a far lengthier period than any other nationality detained in the Miami District.

The INS has described the Broward facility as a national pilot site to test alternatives to detention, and in fact used a congressional appropriation specifically designated to develop such pilots to fund its use.<sup>188</sup> This is simply not the case, as Broward simply represents an alternative *form of* detention.

#### HAITIAN WOMEN WHO ARRIVED ON THE DECEMBER BOAT MAY BE MOVED AGAIN

At the time of this report, only 10 of the 26 Haitian women who arrived on the December 2001 boatload remained at the Broward County Work Release Center. Three women were released shortly after their apprehension because they were pregnant, and two women were released after they were granted asylum. Almost half of the women had been deported.<sup>189</sup>

The few Haitian women left at Broward were at risk of transfer to other county prisons. The INS told FIAC that it was considering moving Haitian women whose cases are on appeal or who do not have an imminent court appearance to facilities in other parts of Florida. Presumably, this move would be motivated by the need to open up bed space at Broward for the most recent Haitian arrivals (see below).<sup>190</sup>

In fact, one Haitian woman, Isabella, had already been transferred. She was first taken temporarily to the Monroe County Jail, a maximum security prison located in Key West, approximately four hours from the Broward facility. Isabella reported that she had signed an INS document agreeing to the transfer. However, she is illiterate and does not understand English, so she did not realize the nature of the document that she had signed. When an officer at Monroe explained it to her, she asked the INS to bring her back to Broward. The INS complied, but handcuffed her hands behind her back throughout the several hours that the transfer took. She told her attorney that she believed that she was being pun-

ished for asking to return to Broward.<sup>191</sup>

Some time later, Isabella was transferred again. The INS did not inform her attorney of the transfer. Only later was the lawyer able to ascertain that Isabella was in Orlando, but even then was not informed about the exact facility to which she had been taken. She later discovered that the INS had moved her client to the Clay County Jail outside of Jacksonville, Florida, a facility that has been heavily criticized for its poor living conditions.<sup>192</sup>

In past years, the INS has frequently relied on county prisons scattered across the state of Florida to detain asylum seekers and immigrants. Such facilities are often inaccessible due to their remote location, which prevents detainees from obtaining representation at all or interferes with the ability of their attorneys to visit them. Human and refugee rights organizations have documented numerous problems in such facilities.<sup>193</sup>

#### FAMILIES HAVE BEEN SEPARATED WHILE IN DETENTION

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*I wasn't allowed to say good-bye. I suspected that I would never see my mother again when they pulled me aside. I really didn't understand about my mother, and I didn't know where I was going. It was upsetting, because I didn't know when I would see her, or how she was doing, or what would happen to her. When I finally saw her at TGK, I asked: "Where have you been?"*

— Interview with Sophie, who was separated from her parents and three siblings after their arrival in the United States.

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The INS forcibly separated several families who arrived together as part of the December 2001 boatload. Some spouses and children were imprisoned in facilities hundreds of miles apart.

The separation of families is not unusual. The INS has sought to address the problem by opening its first family detention center in Berks County, Pennsylvania near Reading. The facility, however, can only house 40 individuals at one time. Family members, moreover, sleep in separate wings at night, with the exception of children under age seven who stay with their mothers.

The INS publicly denied that it had separated the

Haitian families. The INS Miami District chief of staff told the media that he doubted that his office had divided families. He said: "The Berks County facility is a family facility that the INS has. Why would we send half a family there?"<sup>194</sup> However, the Women's Commission verified the separation of families by visiting the detention facilities in both Florida and Pennsylvania.

The Women's Commission delegation interviewed two of the families that had been sent to different detention centers. Lucia and her 16-year-old son Paul were first detained at a hotel in Miami before being sent to the family detention center in Pennsylvania. Lucia's husband Jean remained behind at the Krome Service Processing Center in Miami. The Women's Commission spoke with Jean during its visit to Krome and later spoke with Lucia and Paul at the Berks County Family Shelter. The family had not seen or spoken to each other for more than three months.

Jean told the Women's Commission that the family was almost immediately separated after they arrived in the United States. He only saw his family at their credible fear interview and initial court appearances held at Krome. He said that the INS permitted the family only one visit, during which they were forced to communicate through a glass divider in the visitors' room. He was not allowed time to consult with his wife and son before their asylum interview or court appearances.<sup>195</sup>

When the Women's Commission asked Jean about the separation from his family, he replied: "I was told that my wife and son were sent to a hotel, but I don't know where. I am very worried, but there is nothing I can do about it." Jean concluded: "No one on that boat thought we would be detained for so long. It gives me a lot of problems to be separated. We've lived together for so long, and this is the first time we are separated. But the government has decided, and we can do nothing."<sup>196</sup>

Jean was also concerned about the safety of his children who remained behind in Haiti. He said that they had disappeared, and he was worried that something had happened to them. He was anxious to know if Lucia had heard from them, but he was unable to speak with her to find out.

When the Women's Commission spoke with Lucia and Paul at the Berks County Family Shelter, they were relieved to hear that Jean was okay and that he now knew where they were detained.<sup>197</sup> At the time

of this report, the family continued to be detained in separate facilities.

The Women's Commission also interviewed Solange and Sophie, a mother and daughter, who were initially separated from each other; Sophie was detained at a local hotel in Miami and Solange at TGK. Two months later, Sophie was reunited with her mother when she was transferred from the hotel to TGK. Subsequently, they were both relocated to Broward.

Solange and Sophie, however, remained permanently separated from the rest of their family, which consisted of the father and three sons. Initially, the father and the two younger sons were held at the same hotel as Sophie, but even then the family was not allowed to see or speak with each other as they were housed in separate rooms. The adult son was immediately placed at Krome.

The family's asylum case was adjudicated separately. The father and two younger sons were granted asylum and released. However, Solange, Sophie, and the adult son were denied and continued to be detained.<sup>198</sup> Even after the father and the two teenage sons were released, Solange and Sophie had still not had contact with them. They said that they had put the name of their family members down on a visitor request list while at TGK but were never able to see them.<sup>199</sup>

#### HAITIAN ASYLUM ADJUDICATIONS ARE FAST-TRACKED

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*There was almost no one to help us when we were in detention. Even though the laws were too complicated for us to understand alone, our detention made it very difficult for us to get access to lawyers, and we had to go to court very quickly. Being detained made it so much harder for us to even have a chance in court...It was impossible to know what was happening or what we should do, because there was no one to explain anything to us because the lawyers can't come to the hotel. So I went to court alone without understanding what I was supposed to do or anything that was happening, which was terrifying.*

— Testimony of Marie Jocelyn Ocean before the Senate Judiciary Subcommittee on Immigration (October 1, 2002).

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In addition to being being detained for a prolonged

period, the Haitian asylum seekers who arrived in the United States in December 2001 were subjected to accelerated scheduling and processing of their removal proceedings. The Executive Office for Immigration Review posted additional immigration judges to the Krome Service Processing Center exclusively to hear Haitian cases. As a result, Haitians were subject to very quick calendaring of their cases, and many did not have time to obtain an attorney and had to appear before a judge without representation.<sup>200</sup>

Many of the detainees prepared their English-language asylum forms without legal or translation assistance. Some relied on prison or INS officers to help them fill out their asylum applications or simply copied that of another detainee. The sister of one detainee told the Women's Commission that when she inquired about whether her sister should obtain the assistance of a lawyer, an INS officer told her: "You are not allowed to get a lawyer yet," an assertion completely unfounded in immigration law, which gives asylum seekers and other individuals in removal proceedings the right to be represented by counsel.<sup>201</sup>

The Women's Commission interviewed Marie Jocelyn Ocean, one of only 17 detainees from the December boatload to be granted asylum, about her experiences with the U.S. asylum system. She told the delegation that she had appeared unrepresented in immigration court four times before she obtained the assistance of a lawyer. She did not have the opportunity to consult with an attorney before then, because the INS had detained her in a local hotel where attorneys were not allowed to visit.

No one had explained the court process to Marie, and she did not receive a list of *pro bono* legal services programs until her third appearance in court. However, even then she was not able to contact any of the programs on the list, because her access to a telephone was severely limited at the hotel. It was not until she was transferred to TGK that she was able to get in touch with a FIAC attorney.

According to attorneys based in Miami, some immigration judges conducted expedited asylum hearings that typically lasted only 30 minutes to one hour.<sup>202</sup> This included time for translation. As a result, the overwhelming majority of the claimants were denied asylum; by June 2002, FIAC reported that it had filed almost 100 appeals with the Board of Immigration Appeals, most for claimants who had

## HAITIAN WOMAN'S GENDER PERSECUTION CLAIM DENIED

Lynda reported that she was harassed and raped by supporters of the Lavalas Party, who perceived her as an opponent to the Aristide government. She said that one night, 11 men, three of whom were in uniform, broke into her home and searched it. They shoved her against a wall. Her leg was injured as she was pushed against a nail that was protruding from the wall. Her husband was beaten severely.

Two nights later, a man returned alone, who Lynda believes was one of the 11 men who participated in the prior incident. He forced his way into her home and pressed a gun against her chest. He yanked her ear, ripping her earring out. He then raped her. Her young son was asleep in the room next to where the rape took place. Lynda showed the Women's Commission scars between her breasts, which she said were a result of the rapist biting her. She also has a scar on her leg from the attack that occurred earlier.

Lynda appeared once before an asylum officer for her "credible fear" interview and three times in immigration court before she received the services of a lawyer. She told the Women's Commission delegation that she was very uncomfortable during her asylum officer interview, which took place 10 days after she arrived in the United States. Both the asylum officer and the telephonic interpreter were male. She was reluctant to discuss the rape in their presence, so she only shared with them the information about the first night that the group of men appeared at her home.

Lynda also reported that she was intimidated by her first court appearance. The immigration judge handed her an English-language asylum application and told her to fill it out. She reported: "He just said, 'Fill it out, or you will have to go back to Haiti.' However, I did not know English. I had no lawyer and no family to help me." Lynda reported that a TGK official helped her to complete the form, and because she did not understand English, she simply copied another Haitian woman's asylum application.

Lynda obtained the services of a *pro bono* lawyer to assist her during her merits hearing, the proceeding in which the immigration judge considered her eligibility for asylum. Because she had the assistance of a lawyer and understood the nature of the proceedings better, Lynda felt able to testify regarding the rape.

The immigration judge, however, denied her asylum. He based his decision on lack of credibility, citing Lynda's

failure to reveal the rape at her asylum officer interview as evidence to support his conclusion. He noted on the record that the asylum officer interview notes must be presumed to be true, disregarding the fact that credible fear interviews are informal in nature and take place soon after a person's arrival, often without an attorney present to assist the individual. The immigration judge also ignored the effect that having to tell her story to a male asylum officer and interpreter had on Lynda's ability to articulate her reasons for being in the United States.

The INS Gender Guidelines in fact recognize that women may feel unable to discuss with male asylum officers or interpreters issues arising from sexual violence. The Guidelines indicate that the use of female officers to conduct such interviews may be preferable. They state: "An interview should not generally be cancelled because of the unavailability of a woman asylum officer. But we must also recognize that, because of the very delicate and personal issues arising from sexual abuse, some women claimants may understandably have inhibitions about disclosing past experiences to male interviewers."<sup>206</sup> They also note: "Testimony on sensitive issues such as sexual abuse can be diluted when received through the filter of a male interpreter."<sup>207</sup>

Case law also supports the notion that information provided to the INS should not form the basis for adverse credibility findings in subsequent immigration proceedings. Such information may be inherently unreliable because of a person's fear of government authorities, poor record keeping, and the fact that such interviews are often not designed to elicit the details of an asylum claim.<sup>208</sup>

Lynda wrote from detention:

*Please immigration, do something for me. I have all these problems. I am not a criminal. I recognize that I entered the United States illegally, but it was because I had a lot of problems. I was being persecuted in Haiti...It was because I was beaten by the Lavalas members who also violated me that I left my country...Immigration, please help me so I do not die at the hands of Lavalas. Please do not send me back to Haiti. If you send me back to Haiti, you would be the one killing me because the Lavalas will not have pity on me at all...I beg you to let me stay here in the United States.*<sup>209</sup>

appeared before an immigration judge unrepresented.<sup>203</sup> Of the 23 decisions the Board of Immigration Appeals has issued thus far, 19 decisions were summary affirmances of the immigration judges' denials of asylum. One Board decision was issued before the applicant had submitted a brief to outline his case. An attorney who represents Haitians commented: "The bottom line is that the Haitians didn't have a chance to make their case."<sup>204</sup>

Legal representation is critical to the ability of asylum seekers to successfully gain refugee protection in the United States. Georgetown University has found that asylum seekers are four to six times more likely to win their asylum cases when represented by counsel.<sup>205</sup>

#### RETURNED HAITIANS SUBJECT TO FURTHER HUMAN RIGHTS ABUSES

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*I don't have a future in Haiti. Haiti doesn't have a future. All the time there is violence, tires burning, and people being beaten. I was almost killed. The next time that you call, I might be dead. I will do whatever it takes to get out.*

— Interview with Rigmane Ovilma, who was persecuted after the United States returned her to Haiti

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Of the 167 Haitians who arrived in December 2001 and were subjected to prolonged detention, more than half have since been deported.<sup>210</sup> Some of the returnees never received the assistance of counsel and were ordered deported, and some simply gave up when faced with indefinite detention. These forcible returns are especially disturbing in light of evidence that returned Haitians are at risk of further human rights abuses upon their return.

Detainees are deported in groups by the INS and are subject to handcuffing and shackling during transport. Once returned, they are transferred to the custody of Haitian authorities.

Haitians who were deported by the INS report that Haitian officials met them at the airport in Port-au-Prince. The Haitian authorities then detained the returnees in Delmas 33, a prison known for its extremely hazardous living conditions.<sup>211</sup> The head of the Haitian Office of National Migration was dismissive of the merits of the returned Haitians' asy-

lum claims, telling the media: "Most Haitian asylum seekers are exploiting the current political crisis in Haiti to stay in the United States."<sup>212</sup>

In an interview with the Women's Commission, the director general of Haiti's Interior Ministry admitted that Haitians returned from the United States are arrested and imprisoned. He attributed this to the fact that there is no other place to receive returnees and no funding available to establish an appropriate reception center. The Haitian authorities divide the returnees into three categories: those with criminal backgrounds, those with drug and psychiatric problems, and those who entered the United States unlawfully. He stated that the Haitian government attempts to reunite individuals in the latter category with their families.<sup>213</sup>

The Women's Commission interviewed Rigmane Ovilma, a 22-year-old woman whom the INS deported on July 29, 2002. Rigmane stated that the INS picked her up at TGK at 2:00 a.m. on the day that she was returned to Haiti. She was handcuffed and shackled on the way to the airport and throughout the government flight that took her back to Haiti. Rigmane observed: "I was so afraid to be sent back, especially in handcuffs and shackles. I thought I would be killed in Haiti."<sup>214</sup>

Rigmane reported that the Haitian authorities took the returnees into custody at the airport in Port-au-Prince, photographed them, and then took them to Delmas 33. While in Delmas, she was held in one cell with more than 60 women, some of whom had committed violent crimes. Others were very sick or pregnant. One woman was there with a newborn infant. There was only one cot for every three women. They were provided no food or water. There were no toilet facilities, forcing the detainees to urinate and defecate on the floor.

Rigmane reported that she was held at Delmas 33 for two days until her family was able to locate her. They found out that she was in prison only because another detainee still at TGK told them that Rigmane had been deported; she could not call them to let them know she was back in Haiti. The Delmas officials forced the family to pay a large fine (approximately U.S. \$400) to obtain her release.<sup>215</sup> Rigmane said that there were two other women in a similar situation who were deported at the same time as she who were also jailed and fined. Rigmane observed: "CIMO [a Haitian security force] probably knows that I came to the United States and

asked for asylum.”

Upon her release, Rigmane returned to her family home in Gonaïves. She reported that after her return she and her family experienced significant abuse and harassment from government security forces. Her mother’s restaurant was sprayed with gunfire. Police later stopped her and her brother-in-law after a street demonstration against the Lavalas government. The officers hit her on the back and chest with their rifles. She reported that her brother-in-law suffered more injuries, including a blow to the head. She was hospitalized after she began to spit up blood. She reported that she continues to spit up blood and that her throat hurts as a result of the attack.

Rigmane has since been in hiding and said that she is afraid to return to her home. She told the Women’s Commission that she will likely try to flee Haiti again, as she fears for her life.

Other returnees have reported similar experiences.<sup>216</sup> It is disturbing that the INS continues to deport Haitians from the December 2001 boat arrival in the face of the deteriorating human rights situation and political instability now going on in Gonaïves, from where the vast majority of the asylum seekers originate.

Despite the deteriorating political conditions in Haiti, the U.S. Department of State continued to defend the use of interdiction, summary return, detention and fast-tracked adjudication of Haitian asylum claims. At a congressional briefing sponsored by the House Committee on International Relations, the Deputy Assistant Secretary of State for Western Hemisphere Affairs stated: “Given the threat illegal immigration poses to our national security, we support sending a strong message to the Haitian people that they do not enjoy automatic entry into the United States.”<sup>217</sup>

## OCTOBER 2002 HAITIAN BOAT ARRIVALS

### MOST PASSENGERS MAKE IT TO LAND

On October 29, 2002, an overloaded boat carrying more than 230 Haitian asylum seekers managed to land in Key Biscayne, Florida.<sup>218</sup> All but about 20 passengers made it to dry land. The INS and local police quickly apprehended the new arrivals. Included in their number were 35 women and 26 children.<sup>219</sup> Eleven of the children traveled alone without family, ten of whom were immediately identified as unaccompanied and one of whom was initially classified as an adult until it was discovered that she was actually 17 years old.<sup>220</sup>

The arrival of the new boat raised questions about the effectiveness of the Bush Administration’s interdiction, summary return, offshore processing, and detention policies in deterring Haitians from attempting to come to the United States. One young passenger indicated that he knew that the INS would detain him after he arrived. He commented to the media: “I know that they put you in jail for two or three months.”<sup>221</sup>



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*Asylum seekers who make it to dry land are detained by INS.*

Because these new arrivals made it to land before being apprehended by the INS, they were not subject to expedited removal, a process that at the time of their arrival was applied only at established ports of entry, such as airports (see below for update on changes in this policy). They also were eligible to be bonded out of detention, again a procedure for which they would not have been eligible if they had been apprehended before landing, as was the case with the December 2001 boat arrivals.<sup>222</sup>

The handful of passengers who did not make it to shore were transferred to a Coast Guard cutter. They were eventually repatriated without consideration of their potential asylum claims.<sup>223</sup> Six of the passengers were charged with alien smuggling.<sup>224</sup>

The landing of the October boat was well publi-

cized—the national news covered the arrival of the Haitians and their apprehension by the INS and local authorities. As a result, both Florida Governor Jeb Bush and President George Bush were asked to respond. Both commented that the Haitians should be treated like any other nationality that comes to the United States.<sup>225</sup> President Bush stated:

*First of all, the immigration laws ought to be the same for Haitians and everybody else, except for Cubans. And the difference, of course, is that we don't send people back to Cuba because they're going to be persecuted, and that's why we got the special law on the books as regards to Cubans. But Haitians and everybody else ought to be treated the same way, and we're in the process of making sure that happens.*<sup>226</sup>

Despite these high-level assertions, the new Haitian arrivals were singled out for indefinite detention in much the same manner as their co-nationals who arrived in December 2001.

#### **HAITIANS AGAIN DENIED RELEASE FROM DETENTION; NEW JUSTIFICATION GIVEN TO DENY PAROLE**

The INS took the Haitians into custody and denied their parole. Like the December 2001 boatload, the Haitians were scattered among Miami detention facilities. The women and children were first detained in a local hotel. A few days later, more than 25 of the women were transferred to the Broward County Work Release Center after detainees there of other nationalities were released to make space for the new arrivals. The men were detained at the Krome Service Processing Center, despite the facility having significantly surpassed its capacity.

However, because the passengers of the October boat had made it to dry land and were apprehended in the interior of the United States, they were eligible for parole from detention on bond.<sup>227</sup> Immigration judges quickly ordered the release of some of the Haitians, only to have the INS invoke a new authority it has enjoyed since September 11 to obtain a stay of a judge's grant of bond if it deems the person a "national security risk."<sup>228</sup> In its brief in opposition to the bond, the INS stated:

*The Service maintains inter alia that there are strong public policy concerns that warrant the respondents being held in custody without bond. The Service has received information*

*from other federal agencies that the detention of these aliens has significant implications for national security. The national public policy concerns in the instant case are two-fold: First, there is a concern that the release of these aliens...would cause a mass migration by sea. Rumors of successful entry into the United States have fueled recent migration surges and any perception of changes in U.S. immigration policy could cause future departures by sea...Secondly, in the post-September 11 atmosphere of homeland security, there are serious concerns that the United States government needs to know more about the people who reach our borders, including our sea borders.*<sup>229</sup>

Only the Board of Immigration Appeals can lift the INS's stays on bond orders, a review that is likely to take months. An INS spokesperson defended the agency's decision, stating: "We believe that if this group were to be released, it would send a signal back to Haiti saying 'Hey, we got in,' and it would trigger a mass migration that would be a threat to our national security."<sup>230</sup>

The Haitians in question appeared in immigration court unrepresented without having had an opportunity to even consult with counsel prior to their bond hearings.<sup>231</sup> As with the December 2001 boatload, the Executive Office for Immigration Review created a special Haitian docket and posted additional immigration judges to hear Haitian cases. This expedited calendaring left little time for case preparation. In most cases, the attorneys' requests for continuances in order to prepare their clients for the hearings were denied.<sup>232</sup>

The bond hearings were also unusual in that the INS received significant support for its opposition to the release of the Haitians from other government agencies. The Coast Guard, the Department of State, and the Department of Defense submitted declarations to the immigration court arguing that Haitian migration constitutes a threat to national security. They based their position on: 1) concern that a mass migration from Haiti would require the diversion of Coast Guard and military resources away from national security to interdiction and detention efforts; 2) fear that the use of Guantanamo Bay to detain Haitians would undermine efforts to extract intelligence information from the Al Qaeda members held there; and 3) allegations that third country nationals, such as Palestinians and Pakistanis, might use Haiti as a staging point.<sup>233</sup>

The Department of State concluded: “Despite ongoing political and economic uncertainty in Haiti, the most likely driver of any future mass migration will be U.S. policy towards Haiti and Haitian perceptions of that policy. The disposition of those detained in the October 29 arrival will spur further migration if they are released into the U.S.”<sup>234</sup>

To date, the INS has permitted only the release of pregnant women, of whom there were five.<sup>235</sup> INS regulations explicitly permit the release of pregnant women on humanitarian grounds.<sup>236</sup> However, even their release was delayed.<sup>237</sup> Attorney General John Ashcroft meanwhile defended the detention of the new arrivals, stating that the detainees “are being treated fairly, appropriately, and humanely.”<sup>238</sup>

As was the case for the Haitians who arrived in December 2001, the Executive Office for Immigration Review also expedited the calendaring of the asylum merits hearings for the Haitians who arrived in October 2002. Taking up the Haitians’ cases just six weeks after their arrival, the immigration court allotted only 30 minutes for their asylum hearings, including translation time.<sup>239</sup>

As with their bond hearings, most Haitians had no time to consult with their attorneys prior to their asylum hearings. Despite assurances to attorneys from the Office of the Executive Office for Immigration Review that continuances were likely to be granted by the judges so that attorneys could prepare their clients’ cases, all motions to continue were denied. Attorneys indicated that this had never before happened in asylum proceedings in Miami. As a result, some Haitians have already been ordered removed from the United States.<sup>240</sup>

### **BUSH ADMINISTRATION FURTHER ERODES REFUGEE PROTECTION FOR HAITIANS**

In addition to ensuring that the Haitians were not released from detention, the Bush Administration responded to the arrival of the October 2002 boatload by quickly issuing two new directives aimed at deterring and preventing future sea arrivals, especially from Haiti. These directives directly contradict President Bush’s stated intention to afford Haitians the same treatment accorded to other asylum seekers.<sup>241</sup>

First, ten days after the October boat arrival, the INS issued a notice authorizing the expedited removal of undocumented migrants who arrive by



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*The Haitian-American community protests the treatment of Haitian asylum seekers.*

sea. The order explicitly exempted Cubans. Moreover, the order clearly targeted Haitians, as it quickly came on the heels of the recent Haitian boat arrival and it defined the class of individuals now subject to expedited removal as individuals arriving in the United States by sea or boat who have not been admitted or paroled and who have not been physically present in the United States for the two years prior to the determination of inadmissibility under the order. It also deemed that anyone falling within the designated class would not be eligible for parole from detention throughout their immigration proceedings, unless there is a medical emergency or release is necessary to meet a law enforcement objective. The order again cited as its rationale the deterrence of a mass migration and the prevention of loss of life on the high seas.<sup>242</sup>

While the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 gave the INS the authority to apply expedited removal to undocumented immigrants regardless of where they are apprehended, to date the INS had never exercised that authority other than at established ports of entry, such as airports. By triggering this authority to pre-screen cases, the INS will now be able to circumvent the ability to apply for asylum for any Haitians who make it to dry land, as had the October arrivals. It will also be able to detain them indefinitely through the duration of their proceedings.<sup>243</sup>

The second measure announced by the Bush Administration was a reaffirmation of the ongoing interdiction policy. Shortly after the October boat arrival, another boat carrying more than 200 Haitians was interdicted and the passengers repatriated.<sup>244</sup>

Within days, in an Executive Order reminiscent of

the Kennebunkport Order issued by his father in 1992,<sup>245</sup> President Bush granted authority to the Attorney General to maintain custody of undocumented individuals interdicted in the Caribbean region at any location he deems appropriate. This explicitly includes the Guantanamo Bay Naval Base.

The order also grants the Attorney General the authority to conduct any screenings he deems appropriate to determine whether an individual needs protection. For those found to need protection, the order mandates that the Department of State provide for their custody, care, safety, and transportation and arrange a process for their resettlement in third countries. It also requires the Department of State to make arrangements for the return of those determined not to require protection. Most significantly, the order explicitly states that it should not be construed as requiring *any* procedure to determine whether a person is a refugee or otherwise in need of protection.<sup>246</sup>

The Bush Administration has also rejected the recommendation that it provide at least some minimal means of accessing protection for Haitians by reinstating in-country refugee processing, as was offered at times in the 1990s. The Department of

State responded to a congressional inquiry about the feasibility of in-country processing by stating:

*We do not believe that the extraordinary remedy of an in-country refugee processing program for Haitians is appropriate at this time. Given the level of economic desperation in Haiti, an in-country program is likely to attract many more ineligible than eligible applicants. We believe that existing protection options for Haitians who may be at risk of persecution or torture are sufficient.*<sup>247</sup>

As with past Administrations, it is now clear that the current Administration has no intention of extending refugee protection to Haitians unless they are fortunate enough to make it past the extraordinary hurdles of interdiction, summary return, offshore processing, expedited removal, prolonged detention, and fast-tracked asylum adjudications. Such measures, when considered either in isolation or collectively, violate U.S. obligations under both the 1951 Convention Relating to the Status of Refugees and U.S. asylum law. Most importantly, they jeopardize the protection of Haitians and may result in their return to conditions in which their lives and safety are at risk.

## V ● HAITIAN CHILDREN NOT EXEMPT FROM HARSH TREATMENT

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*I called Haiti and found out that Josef, my 15-year-old brother, came to Miami on the October 29, 2002 boat. I found out that he was taken to Jackson Hospital. When I went to the hospital and into his room, there was an Immigration Officer there. I was about to go in to hug my brother and see how he was doing, but the officer would not let me in. I tried to plead with the officer and begged him to let me see my brother, but he started screaming at me and did not let me in the room. It had been six years since I had seen my brother. I had to leave the hospital in tears without being able to talk to him and see how he was doing.*

— Statement of C\_\_ N\_\_, a permanent U.S. resident, who fought for two months to have her brother released from INS detention.

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The almost two dozen unaccompanied Haitian children who arrived in the United States on the December 2001 and October 2002 boats were also taken into INS custody. The INS detained the children in three sites: a local hotel, the Boystown Children's

Shelter in Miami, and the Berks County Youth Center in Pennsylvania. The children who arrived in October 2002 were handcuffed together with plastic restraints during their transfer from Key Biscayne, where they had arrived, to the Krome Service Processing Center, where they were initially processed.<sup>248</sup>

The INS Miami District has frequently relied on a local hotel to detain temporarily women, children, and families when no other space is available. In April 2002, for example, the INS was holding 113 men, women, and children at the hotel.<sup>249</sup> Conditions in the hotel are inappropriate for immigration detainees for a number of reasons, including overcrowding, sporadic provision of clean clothing, no access to outdoor recreation or fresh air, no toys or other activities for children, and little access to telephones. Until December 16, 2002, children were also deprived of educational services. Now they are transported to the Boystown Shelter to participate in classes there.

Unrelated families are sometimes housed in the same hotel room, including unaccompanied children with unrelated adults.<sup>250</sup> In one case, a 13-year-old boy was housed with an unrelated family, while his father was detained at Krome. Family members who are separated into different detention facilities cannot communicate even by telephone.<sup>251</sup>

Conditions at the hotel are highly punitive. Uniformed guards carrying firearms and handcuffs monitor the detainees—including the children. No Creole interpreters are available. Despite this, the unaccompanied children have reported to their attorneys that they have been asked to sign English-language legal documents that they do not understand.

Hotel detainees also confront tremendous barriers when trying to obtain or confer with legal counsel. The INS generally does not accommodate attorney visits or legal orientation sessions at the hotel itself. Instead, attorneys must submit a request for a visit at least 24 hours in advance. The INS then transports the detainee to Krome, the adult male detention facility, where the visit is supposed to take place.

However, attorneys and detainees experience several obstacles to such visits. First, detainees often must wait hours before the visit actually occurs. Second, the INS frequently either fails to actually transport the detainee to Krome for a scheduled visit, or in some cases, brings the wrong detainee. In one instance, the attorney went to Krome to consult with two Haitian brothers, but the INS brought two Guyanese girls instead.<sup>252</sup>

In January 2003, the INS severely disrupted the ability of *pro bono* attorneys to visit their clients at Krome by evicting the three charitable organizations that serve detainees—the Florida Immigrant Advocacy Center, Catholic Charities, and CLINIC—

from the client visitation room designated for their use on-site. The agencies had provided services at this office since 1996. Having on-site space had enabled them to have contact with their clients as needed, thus greatly facilitating detainees' legal representation as well as alleviating the frustration and confusion they often experience. Despite these important functions, the INS abruptly terminated the arrangement on December 23, 2002, and gave the agencies only three weeks to vacate the premises.

In the case of the unaccompanied Haitian children who arrived on the October 2002 boat, FIAC was able to persuade the INS to facilitate a visit on-site at the hotel. However, when the attorneys arrived at the facility, the INS officer on duty informed them that six out of the 10 children housed at the hotel were actually at Krome that day appearing in immigration court. Despite the fact that the attorneys had scheduled this consultation in advance, the INS prevented them from conferring with their clients prior to their court appearances. After waiting over an hour to speak with the remaining four children, three attorneys and one interpreter were denied access to the hotel by the INS and were told to leave. Only one FIAC paralegal and two interpreters were allowed to remain.<sup>253</sup>

The INS eventually transferred the unaccompanied Haitian children to two children's shelters that operate under contract with the INS, the Boystown shelter in Miami and the Berks County Youth Center in Pennsylvania. Both offer more appropriate living environments and services to the children than are available at the hotel. However, both are also institutional in nature and ill-equipped to handle the long-term detention of children.

It was also unclear why three Haitian boys who arrived in December 2001 were transferred hundreds of miles away to the Berks County facility. Both the Boystown facility staff and the INS alleged that the boys had misbehaved while at Boystown, although the boys themselves were not informed of any misbehavior and their attorney was not provided with any formal notice of any problems their behavior presented. By transferring the children so far from Miami, the boys were isolated from their attorney, readily accessible interpretation services, and the support of relationships they had formed with other detained children.<sup>254</sup>

Moreover, the INS continues to detain children accompanied by family members at the Miami hotel.

This includes a 17-year-old detained with his 18-year-old brother.<sup>255</sup>

At the time of this report, all but one of the unaccompanied children who arrived on the October boat remain in detention, including those who have family members in the United States.<sup>256</sup> In one case, the INS informed the father of a 17-year-old boy that his son would be released to him. A few days later, however, the father found out that instead of releasing the boy, the INS had transferred him to the Krome Service Processing Center, an adult detention center, on his 18th birthday.<sup>257</sup> Another boy who was initially detained as a minor had also been transferred to Krome. Because they are no longer considered children, these boys are now subject to the same no-release policy applied to Haitian adults.

In a second case, a Haitian permanent resident dis-

covered that her 15-year-old brother was a passenger on the October boat. The INS refused to allow her to visit him at the Jackson Hospital where he was initially taken after his arrival. She was then told that she would have to obtain his original birth certificate and a letter from his family in Haiti in order for her brother to be released into her custody. She flew to Haiti to obtain these documents. The INS also told her that she would have to rent a bigger apartment in order for her brother to live with her. Because of the expenses that her trip to Haiti entailed, she could not afford a bigger apartment. She also lost her job due to the amount of time off she took to arrange her brother's release. After this situation attracted extensive media attention, her brother was finally released to her on Christmas Eve.<sup>258</sup>

## VI. TREATMENT OF HAITIAN ASYLUM SEEKERS IN THE DOMINICAN REPUBLIC

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### MIGRATION FROM HAITI TO THE DOMINICAN REPUBLIC IS COMMON

The United States is not alone in the implementation of policies that hamper the ability of Haitian asylum seekers to obtain the protection they require. The Women's Commission also assessed the treatment of Haitians who seek refuge in the Dominican Republic and found serious violations of their rights and a fundamental absence of meaningful protection.

The border between Haiti and the Dominican Republic, which share the island of Hispaniola, is and always has been quite porous. The economies of the two countries are closely linked, and migrants regularly cross each day to engage in commerce, particularly in market places located along the Dominican side of the border. While such crossings are a source of tension between the two countries, there is also an implicit understanding that the cross-border markets are economically beneficial to both sides.<sup>259</sup>

Those Haitians who cross the border are vulnerable to abuse. Dominican border guards often steal their merchandise or force them to pay bribes. They are subject to police abuses, including harassment, beatings, and detention. Some are summarily deported with little or no assistance once repatriated. Often

families are separated by such deportations, sometimes resulting in the children being left behind in the Dominican Republic.<sup>260</sup>

There are also significant levels of human trafficking and smuggling along the border, which often involves trafficking in Haitian children for forced servitude, to situations in which they often face severe mental and physical abuse.<sup>261</sup> A nongovernmental worker on the Haitian side of the border commented:

*Very often I've heard people say: "Instead of seeing my kids suffer here, I'll send them away so that I won't see their suffering." Parents often cry when they say this. They're conscious of the abuses the kids are going through, but they will go into total denial rather than confront what is happening.*<sup>262</sup>

It is estimated that more than one million Haitians reside permanently in the Dominican Republic, although more than half of such individuals are deemed "in transit" by the Dominican government regardless of how long they have lived in the country. Many are working in the sugar cane industry. The children of Haitians who lack status, even if born in the Dominican Republic, are denied citizenship, rendering them stateless.

The Dominican government has responded to criticism regarding abuses faced by Haitian migrants by formally recognizing that Haitians should be able to regularize their status. It has also committed to reuniting children stranded in the Dominican Republic with their parents in Haiti. It is considering immigration legislation that would address some of these issues.<sup>263</sup> However, to date, Haitians continue to live in limbo, leading a precarious life in which they are vulnerable to abuses from their employers, the Dominican community, and the authorities.<sup>264</sup>

Undoubtedly, many Haitians have chosen to live in the Dominican Republic for economic reasons, as the economy there is significantly stronger than that of Haiti. Many other Haitians, however, have come to the Dominican Republic in search of protection from persecution, an elusive goal because of the ineffectiveness of the Dominican asylum system.

## HAITIAN ASYLUM SEEKERS IN SANTO DOMINGO REPORT POLITICAL PERSECUTION IN HAITI

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*My sister came to my house, saying “Sister, sister, you can’t stay here. They are breaking into the party leader’s house and they can come after you, too.” She convinced me to leave the house, and I left. Ten minutes later, the police came to my house. My children were still there. They pounded on my door, and the kids were frightened. “You better f\_ \_ \_ ing let us in.” With that, they came and kicked down the door—holding rifles aimed at people in the house. My girl, they put a rifle butt in her ear. “Give me your mother.” My daughter said: “My mother isn’t here.” “Where is she?” “I don’t know.” “You better figure it out.” They pushed my son to the floor and said: “You show us where your mother is,” and he said he didn’t know.*

*I was in hiding. People came to us and said: “Aren’t these the Macoutes, trying to get rid of Aristide?”... One of them hit me twice on the head, by my ear. They pushed me to the ground. I said: “Please don’t hurt me, I’m pregnant.” They said: “Oh, you’re pregnant, you shouldn’t be messing around in politics,” and they pointed a rifle at me. “Don’t you know Aristide is the only leader you’ll have?” The*

*other one said: “Let her go.” As I was running, they said: “Don’t look back.” I heard shots go off in the air.*

—Interview with Norde Olvatine, a supporter of the Haitian political opposition, regarding why she sought asylum in the Dominican Republic.

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Since enactment of the Dominican asylum law in 1983, approximately 600 asylum seekers, the vast majority Haitians, have presented themselves to the Dominican authorities and applied for asylum.<sup>265</sup> Currently, however, it is estimated that as many as 300 applicants have been waiting as long as two years to have their asylum claims adjudicated.

The Women’s Commission interviewed approximately 20 Haitians who have applied for asylum in the Dominican Republic. Included in this number were journalists, political documentary filmmakers, social service advocates, and political candidates.

In contrast to the Haitian asylum seekers with whom the Women’s Commission met in Miami, virtually all of the Haitian asylum seekers interviewed in the Dominican Republic were well educated, literate, and middle class. In most cases, this difference appeared attributable to the ability of wealthier Haitians to travel on valid passports and/or visas to the Dominican Republic. Most said that they would not have tried the risky sea voyage to the United States, believing that crossing by land into the Dominican Republic was the safer choice for them and their families.

Most asylum applicants in the Dominican Republic are men, but many are accompanied by their wives and children. In its interviews with such families, the Women’s Commission ascertained that although the wives and children had often experienced persecution, the men were the ones who applied for asylum. Thus, consideration of the women’s and children’s claims was tied to that of their male sponsors.

The Women’s Commission also interviewed women who were single heads of household. According to service providers working with the asylum seekers, women-headed households and single women represent 2 percent of the asylum applicants. To date, no unaccompanied minors have applied for asylum, although two children who lost their parents to AIDS were admitted as refugees.<sup>266</sup>

Following are the testimonies of three Haitian families regarding their reasons for flight from Haiti.

- The Bordette family fled Haiti in August 2001. Rose and her husband Raynold traveled together to the Dominican Republic with their six-year-old daughter, Elizabeth. Rose worked for a social services agency that assisted the poor in Port-au-Prince. Because of her work, Rose reported that members of the Aristide opposition threatened her and her family. They received death threats from the opposition, which accused her of engaging in political activities. Raynold observed: “In Haiti, if someone threatens to kill you, they can.” Rose agreed and commented: “We really didn’t have any interest in leaving Haiti. We were professionals living well... We had no economic problems.”

The family reported that it would return to Haiti if it could because their life in the Dominican Republic is very difficult. Rose and Raynold also expressed a strong commitment to rebuilding Haiti. In fact, Raynold was living in the United States for a time but returned after Aristide was restored to power. He commented: “It’s sad to think about the future of Haiti, but I believe that Haiti has to change and that I have to participate in that change. I will wait for now, but I will go back, because I would rather die in my country. I need to go back.”<sup>267</sup>

- The Jaccis family fled Haiti at different times. Jean-Robert, the father, arrived in the Dominican Republic on a valid tourist visa in November 2001. His wife, Jeanne Baptiste, and their three children (ages two through nine) arrived later.

Jean-Robert is a screenwriter who produced a political documentary entitled “Haiti, My Love.” The film urged Lavalas and the opposition to work together to address Haiti’s political and economic problems. As a result, Jean-Robert began to receive death threats. He went into hiding while he explored ways to escape Haiti.

Jeanne, however, remained in the family home. She reported that a gang affiliated with the Lavalas Party stopped her on the street one day. They forcibly took her purse and wedding ring, as well as her and her son’s passport. They then hit her on the face while demanding to know where her husband was. After this incident, Jeanne moved into her family’s home, and she and Jean-Robert obtained a Dominican visa to facilitate his immediate departure. One month later, Jeanne and their three children paid a bribe to a Dominican border guard and crossed the

Dominican border to join Jean-Robert.<sup>268</sup>

- The Gello family reported that they left Haiti in the summer of 2001 after Lavalas supporters targeted the family for the political activities of Hilaire, the father. He fled Haiti with his wife, Carolyn, and their seven-year-old son.

Hilaire was an activist aligned with an opposition party in Haiti. He was outspoken about his concerns about President Aristide’s leadership.

Hilaire and Carolyn reported that the family began receiving threatening phone calls in which the caller would accuse Hilaire of not supporting the Lavalas Party and inquire about Hilaire’s whereabouts. One day, Aristide supporters broke into the family’s home and accused the family of supporting the Popular Convergence, an alliance of opposition parties. The four men were armed and confronted Carolyn, demanding to know where Hilaire was. They searched the house but did not find him. They then pointed their guns at Carolyn, and told her that next time they would take her son away if she did not tell them Hilaire’s whereabouts. The family immediately left Haiti for the Dominican Republic, traveling on valid passports.<sup>269</sup>



© Mary Diaz

*A woman and her four children were forced to flee Haiti because of her political activities.*

In addition, the Women’s Commission interviewed two Haitian women, one who was accompanied by her children and one who was alone:

- Norde Olvatine was active in a political opposition party and spent a great deal of time doing community organizing in Haiti. Her party ran for local office in the 2000 elections and received significant support. It urged President Aristide to increase educational and economic opportunities for young people. One day, police surrounded a home in which Norde and other members of the

party were meeting. They left when they realized how many people were attending the meeting. Later, however, they came to Norde's home and broke in. Norde was not home, but they confronted her family with guns. They held a gun to her daughter's ear, and demanded to know where her mother was. They pushed her son to the floor. Norde went into hiding. Aristide supporters found her, beat her up, and shot at her as she ran. They were shouting pro-Aristide statements throughout the attack. Norde fled to Gonaïves and then made her way to the Dominican Republic.<sup>270</sup>

- Héléne Furcile ran a woman's organization in Haiti. She ran as a candidate for vice-mayor of Port-au-Prince in the 2000 elections. She fled Haiti after armed men shot at her house. She jumped out a back window, badly cutting herself in the process. She went into hiding until a friend was able to help her get a visa to the Dominican Republic. She entered the Dominican Republic in October 2000. Héléne was forced to leave her five children, ranging in age from 10 to 25 years, behind in Haiti.<sup>271</sup>

All of these asylum seekers, as well as the others interviewed by the Women's Commission, reported experiencing serious political persecution in Haiti. However, they also believe that they have not found safety in the Dominican Republic, leading precarious lives on the fringes of Dominican society and feeling constantly at risk of forcible return to Haiti.

## THE DOMINICAN ASYLUM SYSTEM REMAINS INEFFECTIVE

Despite having entered the Dominican Republic in 2001 and having what appeared to be credible and compelling asylum claims, none of the asylum seekers whom the Women's Commission interviewed had received decisions on their asylum applications. The Dominican government has failed to implement a meaningful asylum adjudication process, leaving asylum seekers in limbo for years with no legal status, and thus no effective protection. Asylum seekers also lack the means to support themselves or their families while they wait.

The Dominican government has been a party to the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol since 1978. It enacted implementing legislation in 1983 that embraces the international definition of a refugee and the principle of *non-refoulement*.<sup>272</sup> The Dominican Republic is the

only country in the Caribbean that has enacted asylum laws.<sup>273</sup>

The Directorate of Migration is responsible for receiving asylum applications, which it then refers to the National Office for Refugees (NOR). Asylum seekers must apply within 15 days of arrival if they lacked documentation to enter the country. The NOR opens a file on the asylum seeker and conducts a case intake, which includes an interview with the applicant to ascertain the reasons why he or she left the home country. The Office then may recommend to the Directorate of Migration that the applicant be issued a temporary permit to remain in the country. This document is valid for 60 days but is renewable while the application is pending.<sup>274</sup>

Some of the asylum seekers reported that government officials had interviewed them about their reasons for leaving Haiti. However, they appeared very confused about who exactly had interviewed them. They also described the interviews as being very short, lasting only 30 minutes in some cases, including time for translation. They did not receive the assistance of counsel in preparing for their interview, stating that they had no money to pay a lawyer, and in any case, most Dominican lawyers are on the government's payroll.<sup>275</sup>

A National Commission for Refugees was created to actually adjudicate the asylum claims. The Commission consists of 14 government officials representing seven different agencies, and is chaired by the External Relations Ministry. The other agencies represented on the Commission include the Labor Ministry, the National Directorate on Migration, the National Police, the National Department of Investigations, the Attorney General's office, and the legal counsel to the executive branch.<sup>276</sup> None of these representatives are assigned solely to the Commission but are instead supposed to perform these activities in addition to their regular job requirements.

There exists within the National Commission for Refugees a subcommittee to analyze and review all refugee applications. The subcommittee is made up of representatives from the External Relations, Migration, and Investigations departments of the government. This subcommittee makes recommendations to the full commission.<sup>277</sup>

The National Commission for Refugees is supposed to decide asylum applications within 30 days. It may ask UNHCR for its opinion on a particular application during the adjudication process.<sup>278</sup>

There is no formal mechanism for appealing a denial

of refugee status made by the Commission. Within seven days after the denial is issued, the applicant or UNHCR may ask the Commission to reconsider. After that period has lapsed, the decision becomes final.<sup>279</sup>

For those applicants who are granted refugee status, the Directorate General for Migration is authorized to issue identity documents that recognize the person as a refugee. Family members are also issued identity documents. These documents are valid for one year but are renewable. Refugees are allowed to work once they are granted status.<sup>280</sup>

Service providers working with the Haitians, however, observed that the National Commission for Refugees rarely meets, resulting in an estimated backlog of between 200 and 300 pending claims. The U.S. Committee for Refugees has reported that the Commission finally met in 2001 for the first time in eight years, but that even then no asylum claims were in fact adjudicated.<sup>281</sup>

A Dominican official explained to the Women's Commission that all pending cases are still under review by the subcommittee of the National Commission for Refugees. He noted that the government is hoping to resolve cases before it as quickly as possible. He attributed the delays in adjudications to incomplete applications and the busy schedules of the commissioners. He commented: "Asylum seekers are asking us, 'What day is the decision?' but it is difficult to give a decision. It is not just dependent on the Foreign Affairs ministry, it is dependent on the consensus of others."<sup>282</sup>

Some service providers believe that the system was designed to fail. The executive director of Jesuit Refugee Services in Santo Domingo observed:

*There is no policy of receiving refugees here. The government has found every possible mechanism for not giving refugee status. We have applicants waiting two years for a response, and they are still waiting. There is no response because the government doesn't want their status defined. We feel that they have created this structure so that the situation remains impossible.*<sup>283</sup>

The Dominican government acknowledges that Haitian migration to the Dominican Republic presents a serious challenge and that Haiti is on the verge of a political crisis. The Ambassador in Charge of Haitian Matters for the External Relations Ministry observed that the Dominican Republic has shouldered most of the migration from Haiti in the past

two decades. He conceded that the Dominican government has not effectively reviewed asylum cases. He noted that this is in part because the government has yet to flesh out the criteria for refugee status.

The ambassador believed, however, that the Dominican Republic has been tolerant of asylum seekers, allowing them to enter and to informally work. He also believes that the international community must join together to help Haiti achieve economic and social development.<sup>284</sup>

## UNHCR PRESENCE IN THE DOMINICAN REPUBLIC IS MINIMAL

UNHCR, which often supports countries, particularly in the developing world, in meeting their obligations to conduct refugee status determinations and offer refugee protection, no longer maintains an office in the Dominican Republic or any other country in the Caribbean region. It closed its Dominican office after the Haitian refugee crisis of the early to mid-1990s. Since then, it has monitored the Caribbean region from its branch office based in Washington, D.C.

The UNHCR Washington, D.C. office has focused on building the capacity of the Dominican government to provide meaningful protection and to adjudicate asylum cases. This includes training members of the National Commission for Refugees. In addition to earlier periodic missions to meet with government officials and to offer them training, the UNHCR Washington office in September 2002 dispatched a senior legal counselor to the Dominican Republic on a prolonged mission of two months. The officer was charged with further assessing the situation of asylum seekers and providing support and advice to the Dominican authorities who are dealing with asylum applications.<sup>285</sup>

Until the end of December 2002, UNHCR also funded a nongovernmental organization, Centro de Trabajo Social Dominicano (CTSD), to act as its implementing partner. CTSD was to fulfill two purposes: 1) to monitor the situation of refugees and asylum seekers in the Dominican Republic and to assist in asylum capacity-building activities with the Dominican government; and 2) to provide counseling and some limited humanitarian assistance to refugees and asylum seekers.<sup>286</sup> Such assistance included medical care, documentation, translation, advice regarding the Dominican asylum process, and nominal monetary support in particularly needy cases.

Other service providers, however, were critical of CTSD's performance, believing that it had aligned itself too closely with the Dominican government rather than acting as an advocate for the refugees' needs. The Director of CTSD, however, defended the agency's work with asylum seekers, although she noted that its work was underfunded. It has devoted attention to training those government officials charged with implementing the asylum laws and helping them to develop their refugee status determination procedures.<sup>287</sup> She also indicated that CTSD had assisted 150-180 asylum seekers in 2002, including providing three months of housing assistance, health care, and legal aid. She claimed that CTSD helped asylum seekers with obtaining legal documentation but discontinued this service after the government made it too difficult to obtain such documents.<sup>288</sup>

CTSD also intervened in the cases of approximately a dozen asylum seekers and obtained letters from UNHCR in support of their asylum claims. The letters state that the person is a refugee under the Convention Relating to the Status of Refugees in order to provide the recipient with further proof that he or she has the right not to be deported by the Dominican government.<sup>289</sup> The asylum seekers who possessed these letters, however, were confused about their purpose; they believed that the letter meant that they had in fact already been granted refugee status in the Dominican Republic.<sup>290</sup>

Even the minimal services that CTSD had been able to provide have disappeared. Because of UNHCR's ongoing budget shortfall, it has decided not to renew its contract with CTSD. UNHCR cited its need to prioritize larger refugee crises in other parts of the world and its belief that its dwindling assistance had become a source of unrealistic expectations for refugees and asylum seekers in the Dominican Republic as reasons for its decision to terminate its relationship with CTSD. It also noted that the ability of a Dominican nongovernmental organization to influence the government was limited.<sup>291</sup>

This discontinuation of assistance was a source of concern for other nongovernmental organizations working with refugees and asylum seekers in the Dominican Republic. UNHCR initially indicated that it would rely on its honorary liaison in the Dominican Republic, as it has with other states in the region (typically representatives from nongovernmental organizations or private attorneys), to monitor treatment of refugees and asylum seekers on its behalf. UNHCR also stated that its priorities in the

## U.S. SUPPORTS DOMINICAN MIGRATION CONTROL MEASURES

The United States has supported efforts to crack down on Haitian migration to the Dominican Republic. In large part, this is attributable to the U.S. fear that Haitians and other migrants sometimes use the Dominican Republic as a transit point to reach the United States.<sup>297</sup>

Recently, it has been reported that the United States is exploring the establishment of airport pre-inspection at Dominican airports. If approved, U.S. immigration officials would be stationed at Dominican airports. Such migration checkpoints would permit the United States to screen the documentation of any traveler headed to the United States to ensure that he or she has the appropriate documentation to enter the United States. Such measures, however, also permit the United States to prevent potential asylum seekers from reaching its borders.<sup>298</sup>

The United States has also agreed to support the Dominican army's efforts to seal the border with Haiti. It has pledged to contribute 20,000 M-16 assault rifles, as well as technical assistance and joint training maneuvers that will include assigning 900 U.S. soldiers at any given time to the Dominican-Haitian border. This effort will be launched as early as January 2003 to reinforce the 4,500 Dominican soldiers currently assigned to patrol the border. One U.S. government official reportedly defended this assistance by noting: "We are beginning to think of the Caribbean as the third border, as an area for moving drugs, moving money, and as a high possibility of moving terrorism."<sup>299</sup> Such efforts, of course, are also likely to prevent the movement of people, including individuals who may be trying to flee persecution.

region were to focus on statelessness and citizenship issues, as well as to promote accession to the Convention Relating to the Status of Refugees.<sup>292</sup>

UNHCR, however, subsequently decided to strengthen its presence in the Dominican Republic by the creation of an international post for an expatriate junior professional officer to be stationed in Santo Domingo. It planned to post the officer in an existing office operated by another intergovernmental organization. Funding for the position, however, had yet to be procured at the time this report was printed. In the interim, UNHCR was hoping to deploy an international staff member to temporarily fill the post.<sup>293</sup>

UNHCR indicated that the responsibilities of the person filling the new post will be twofold: 1) encouraging the Dominican government to fulfill its obligations to asylum seekers through an effective refugee status determination process; and 2) monitoring the political situation in Haiti and providing early warning of any potential refugee outflows.<sup>294</sup>

UNHCR has stated that it is concerned that the Dominican government may not be fulfilling its refugee protection obligations. However, it is unclear whether one UNHCR official will be able to cover adequately the myriad and complex issues asylum seekers confront in the Dominican Republic. For example, it does not appear that UNHCR will provide any humanitarian assistance to refugees and asylum seekers. Instead, the staff person will focus on legal protection issues. Albeit critical, this leaves unaddressed the physical protection needs of Haitian refugees and asylum seekers.

UNHCR has also encouraged governments in the region to develop contingency plans should there be a Haitian refugee emergency. This included sponsorship of a regional conference in December 2002 to develop national and regional responses in the event of a refugee crisis. It indicated that the Dominican government has assigned development of such a plan to its military and Coast Guard.<sup>295</sup> This is troubling as such authorities are likely to focus more on migration enforcement efforts than on refugee protection.

The director of Jesuit Refugee Services concluded:

*We've told [UNHCR] that at any moment, the Haitian situation could become more unstable, at any moment, it could explode. They need a contingency plan to prepare for this. It is unjust that refugees are not being attended to here. The government and UNHCR are afraid that the floodgates will open if they provide humanitarian assistance, but there are genuine refugees who are arriving.*<sup>296</sup>

## LACK OF INTEGRATION PROSPECTS FOR HAITIAN ASYLUM SEEKERS

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*Every day, my daughter says: "I want to go back to Haiti." It's too hard here.*

—Interview with Rose, a Haitian asylum seeker who has been waiting one-and-a-half years for a decision on her asylum application from the Dominican authorities.

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Haitian asylum seekers generally live on the fringes of Dominican society. They are unable to obtain adequate social services and yet are also precluded from working legally, often leaving them destitute. Moreover, they are vulnerable to abuses from the Dominican authorities and the Dominican community, including beatings, harassment, discrimination, and labor exploitation.

Little assistance is provided to Haitian asylum seekers. In the past, UNHCR has provided those in dire circumstances with nominal cash assistance through CTSD. These payments, however, were only 1,700 Dominican pesos (approximately U.S.\$100) monthly for three months. It is unlikely that even this minimal assistance will be provided now that UNHCR has terminated its contract with CTSD.

Haitian asylum seekers interviewed by the Women's Commission raised concerns about their housing. They reported living in substandard and overcrowded conditions in unsafe neighborhoods. A single woman was dependent on the charity of an individual unrelated to her who had taken pity on her and had provided her with a corner of her own home in which to live. Another family reported that they were living in an abandoned schoolhouse. The husband in one family was living on the streets after experiencing harassment from the Dominican authorities; he reported that he was too afraid to return home. He said that the Dominican police told him: "It's people like you that come here seeking refugee status who are causing us problems. We'll kill you one after the other."<sup>300</sup>

One Haitian woman interviewed by the Women's Commission, Norde, reported that she stayed in a rundown hotel for the first two months after she arrived in the Dominican Republic. However, she and the people with whom she had traveled ran out of money, so the hotel evicted them. She said: "We called CTSD, but they didn't help us. Someone told us to go to the *batay* and cut sugar cane." *Batays* are rural slums in which many Haitian migrants live, most of whom work in the sugar cane fields.

Norde's three children, ages 11 through 14, were forced to pick up bottles on the street, which they would then return for the deposits, so that the family could survive. She reported that Sonson, her 12-year-old son, was knocked on the head by a Dominican youth and lost consciousness. She again turned to CTSD for assistance but was turned away. Norde, who also had a newborn infant, was forced to beg on the streets.<sup>301</sup>

Many of the asylum seekers reported that they are afraid to leave their homes. They believe that they continue to be at risk of harassment or abuse from Haitians who support the Lavalas Party and Haitian President Aristide. Norde said: “Where I am in St. Louis, Lavalas supporters are persecuting me. They are patrolling the area and tell me that I came here to lie to the Dominican government about Haiti. They said: ‘Look at the faces of a bunch of Macoutes’ when I went to the immigration authorities. They humiliate us so much.” Jean-Robert Jaccis said: “I don’t want asylum in the Dominican Republic. It’s no different than Haiti. They can come across the border to kill me.”<sup>302</sup> He and his family were hoping to obtain asylum in a third country, such as the United States.

The asylum seekers also report that they are vulnerable to abuse from members of the community and that the Dominican police will not intervene to protect them. Rose said that she was beaten up a week after she arrived when she was in line at a local store. She was so badly hurt that she spent the night on the street. She reported the incident to the police but said that they did not investigate.

Carolyn had spent a night in a Dominican prison. The police had detained her after she showed them her identity documents. She said the United Nations had to intervene to obtain her release.

A group of young men was very angry about an incident that had occurred around the time of the Women’s Commission visit. One young man had reported his employer, who had hired him illegally, to the authorities because he had refused to pay the man his wages. The court ordered the employer to pay, but the employer failed to comply with the court order. When the young man and two of his friends went to the court to seek enforcement of the order, they were beaten by the police and imprisoned. The authorities also took their identity documents, without which they are vulnerable to deportation at any time. He reported: “When we showed them that we had applied for asylum, they just beat us harder.”

Despite receiving minimal or no cash assistance, asylum seekers are not allowed to work while in the Dominican Republic until they are officially recognized as refugees. This lack of work authorization forces many Haitians to work illegally. They are thus vulnerable to labor abuses and below market wages.

A government decree was issued in 2001 that renders children without documentation eligible for educational services. However, nongovernmental

organizations working with the Haitian population observed that many Haitian children continue to be excluded from the Dominican schools.<sup>303</sup> In addition, the children are generally not able to attend private school, because they cannot afford the school fees. With the exception of one, all of the families that the Women’s Commission interviewed reported that their children were unable to attend school in the Dominican Republic. The one child who was attending school said that his Dominican schoolmates frequently beat him up.

Haitian women who come to the Dominican Republic without husbands are particularly at risk of abuse and discrimination. One service provider observed that such women are often unable to obtain housing. Landlords suspect that the women will not be able to afford the rent without the support of their husbands and will resort to prostitution. Women whose husbands are deported are often expelled from their housing.<sup>304</sup>

Service providers also noted that single women and women-headed households are in dire need of micro-enterprise projects that can assist them in setting up small businesses. Those women who are employed by others are typically paid less than men and have difficulty supporting themselves and their families.<sup>305</sup>

One mother began to cry as she said: “We don’t really live here. We don’t know how we will live. We don’t get respect here. I don’t work, and my husband doesn’t work.”<sup>306</sup> One man broke down and said: “I can’t take this anymore. I can’t leave a country where I’m persecuted to go to another country where I am persecuted.”<sup>307</sup>

Hilaire agreed:

*There’s really no border and no difference between the two countries. I can’t live here at all. It’s a tremendous humiliation to be dependent on others for food and housing. There’s a difference between being a political refugee and a migrant. They put us in the same category, but we are not. Migrants plan to work and then go home, but we can’t go home.*<sup>308</sup>

Haitian asylum seekers are living on the fringes of Dominican society, unwelcome in their host country but unable to return home.

# VII. CONCLUSIONS AND RECOMMENDATIONS

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## THE UNITED STATES

The United States has failed to offer Haitians meaningful access to refugee status determination procedures to ensure that protection is extended to those at risk of persecution. This failure has resulted in further persecution of rejected asylum seekers who were returned to Haiti. By adopting interdiction, summary return, arbitrary detention, and fast-tracked asylum procedures, the Bush Administration has violated the U.S. obligation to offer refugee protection under both international and domestic law and has implemented a discriminatory polity that specifically targets Haitians. It is also setting a disturbing example for other countries, such as the Dominican Republic.

- Given the escalating political instability and human rights abuses in Haiti, it is critical that the United States allow Haitian asylum seekers full access to refugee status determination procedures and offer protection to those found to have a well-founded fear of persecution.
- The United States must acknowledge that it plays the leading role in the Caribbean, and indeed in the world, in terms of offering protection to Haitian refugees. It should not implement measures that shift the responsibility for their protection to other countries. It must also refrain from supporting other governments, such as the Dominican Republic, in their efforts to close their borders to Haitians.
- The United States should extend Temporary Protected Status (TPS) or Deferred Enforced Departure (DED) to Haitians pending resolution of the political unrest Haiti is currently experiencing. Haitians who arrived by the date that TPS or DED is made available should be considered eligible for such protection. TPS or DED, however, should not supplant consideration of Haitians' eligibility for asylum.
- The United States should increase resettlement opportunities for Haitian refugees.
- The U.S. embassy in Haiti and UNHCR should monitor conditions of return for rejected asylum seekers.

- The United States should facilitate the creation of a return and reintegration program through an appropriate nongovernmental organization or the International Organization for Migration in Haiti.

The commitment of the United States to refugee protection has markedly deteriorated since the terrorist attacks of September 11, 2001. This degradation may be further exacerbated by the absorption of refugee resettlement processing, asylum, and detention functions into the Department of Homeland Security. The Bush Administration's use of legitimate national security concerns to justify its denial of protection to Haitian asylum seekers is disingenuous and a manipulation of the current political environment.

- The United States cannot sacrifice its legal, moral, and ethical obligation to protect refugees in its search for national security, but must instead achieve a balance between its humanitarian and security commitments.
- The Department of Homeland Security must give equal attention to the asylum- and refugee-related functions it is absorbing as it does to its law enforcement functions.

The U.S. characterization of Haitians as "economic migrants" is unfounded and cannot be used to justify interdiction, summary return, arbitrary detention, and fast-tracked asylum procedures. Haiti's economic problems are closely tied to its political instability. Furthermore, the phenomenon of mixed flows of economic migrants with asylum seekers does not alleviate a country of its responsibility to assess an individual's eligibility for asylum and to extend protection to those found to qualify for refugee status.

- The United States must discontinue its discriminatory treatment of Haitian asylum seekers.
- The United States must fulfill its asylum obligations to Haitians at the same time that it addresses the root causes that compel people to flee Haiti.
- The United States should appoint a high-level

task force that includes refugee and human rights experts to restore refugee protection for Haitians, address the root causes of Haitian refugee flows, and coordinate effective U.S. leadership in rebuilding Haiti.

**U.S. concerns about the safety of boat voyages to the United States do not justify implementation of an interdiction and summary return policy for Haitians encountered on the high seas or in the territorial waters of the United States. Rescue-at-sea is the only legitimate response when U.S. authorities encounter Haitians traveling in unsafe vessels. Interdiction risks the return of *bona fide* refugees.**

- The United States must immediately discontinue its interdiction and summary return policy as applied to Haitians.
- At a minimum, asylum officers should be deployed to screen interdicted Haitians to determine whether they have a credible fear of return to their home country. Such screenings should only be conducted after the individual has an opportunity to rest and after he or she has been fully informed about the right to seek asylum. They must be performed with adequate translation services. They should ideally occur on land after the asylum seeker has been provided an opportunity to rest, obtain legal counsel, and prepare for the interview.
- The United States should permit UNHCR and appropriate nongovernmental organizations on board Coast Guard vessels to monitor and assess the interdiction process.
- Those Haitians determined to have a credible fear of return to their home country should be allowed to proceed to the United States to pursue asylum. Alternatively, if instead provided a full refugee status determination offshore, they should be allowed to resettle in the United States.

**When human rights conditions in Haiti have deteriorated during past political crises, the United States has at times facilitated in-country refugee processing and allowed some Haitians found to be refugees to resettle directly to the United States from Haiti. Such programs in isolation represent an inadequate response to refugee situations, as they may place Haitians in danger while they are waiting to complete the processing and many may be too fearful to**

**present themselves while still in-country. However, in-country processing remains a viable option for some when combined with full access to U.S. asylum procedures and refugee processing in neighboring countries. It allows some Haitians to avoid the risky boat voyage to the United States.**

- The U.S. Department of State and INS should implement in-country refugee processing in Haiti. Processing sites should be established in the capital as well as in outlying regions throughout the country. Processing should also be conducted by the U.S. embassy in Port-au-Prince.
- The Department of State should facilitate the full involvement of nongovernmental organizations with expertise in refugee resettlement in this effort. Such agencies can serve a valuable role in assisting applicants through the process and in identifying those refugees most in need.
- Those applicants found eligible for refugee resettlement must be promptly transferred to the United States to ensure that they do not face further human rights abuses.
- Any resettlement program must be designed to identify women-at-risk and unaccompanied minors for whom resettlement is the only viable form of protection. Women and children, including those who have experienced gender- and age-related persecution, must be provided appropriate support services once resettled.
- U.S. resettlement processing must be implemented with the intent of resettling individuals found to be refugees to the United States, not to third countries.

**The decision by the U.S. government not to parole Haitian asylum seekers from INS detention is an attempt to deter a mass exodus from Haiti to the United States. The use of detention as a means to deter the arrival of asylum seekers, particularly when it is applied in a discriminatory manner, is in clear violation of international law and undermines U.S. asylum policy as a tool of protection. It is also inhumane.**

- The United States must discontinue its prolonged and arbitrary detention of Haitian asylum seekers and facilitate their prompt release in keeping with the parole policy in place for asylum seekers of other nationalities who are held in the custody of the Miami INS District.

- The INS must discontinue abusing the discretion given to it after September 11 to stay immigration judges' grants of bond to asylum seekers in the name of national security.
- Families should not be divided while in detention. Most should be released. For those families who cannot be released, they should be placed under supervised release or housed together in appropriate shelter or home environments.
- The INS must discontinue the use of hotels for detention, especially for unaccompanied children. If it does utilize hotels, detainees should be released or transferred to appropriate settings no later than 24 hours after apprehension.

The Broward County Work Release Center is a significant improvement over other detention facilities used by the INS, especially county jails. However, it is not appropriate for prolonged detention and should not be viewed as an alternative to detention.

- The INS, or its successor agency, must discontinue its use of county prisons to detain asylum seekers.
- Parole of asylum seekers must be the norm.
- For those few asylum seekers who cannot be released from custody, the INS, or its successor agency, must develop humane alternatives to detention such as supervised release or open shelters.

The United States has maintained one of the harshest detention policies in the world with regard to children. The detention of children is inhumane and in violation of international legal standards. It also has a serious detrimental effect on a child's well-being and fails to address the best interests of the child. Congress has enacted legislation that transfers custody of unaccompanied children away from the INS to the Office of Refugee Resettlement beginning in March 2003. This shift in responsibility offers an unprecedented opportunity to reform U.S. treatment of such children.

- The Office of Refugee Resettlement must overhaul the detention program for children and reorient their care to models that are in keeping with the best interests of the child. In the vast majority of cases, this means release to family or placement in culturally appropriate foster care

rather than institutional settings.

- The U.S. government must also ensure that all children are represented by counsel and appointed guardians *ad litem* to assist them through their immigration proceedings.
- The INS, or its successor agency, and the Executive Office for Immigration Review must fully implement the INS Guidelines for Children's Asylum Claims to ensure that refugee children are afforded full protection.
- Children who have family in the United States should be released promptly into their custody.

The U.S. government has selectively subjected Haitian asylum seekers to expedited processing. Such measures are unfair when they undermine the ability of an asylum seeker to obtain counsel and to fully prepare and present his or her case. Women and children may be disproportionately affected by such measures, as they often present complex and sensitive asylum claims based on gender- or age-related persecution. Furthermore, the INS has placed restrictions on attorneys' access to their clients that severely hamper the ability of Haitian asylum seekers and others to obtain adequate legal representation.

- No asylum interview or proceeding that involves a Haitian asylum seeker before either an INS asylum officer or an immigration judge should be expedited or summarily conducted in any fashion.
- The INS, or its successor agency, and the Executive Office for Immigration Review should take every step possible to identify and facilitate representation for Haitian asylum seekers.
- The INS must immediately restore the on-site space that was used by charitable organizations to consult with their clients at the Krome Processing Center.
- Unaccompanied children especially should never have to appear in immigration court or before the Board of Immigration Appeals without the assistance of counsel.
- The INS, or its successor agency, and the Executive Office for Immigration Review must enhance their sensitivity to age- and gender-related asylum claims.

## THE DOMINICAN REPUBLIC

Asylum seekers in the Dominican Republic do not have access to meaningful protection. The Dominican asylum system is ineffective due to the government's failure to actually adjudicate pending claims. Asylum seekers are rendered further vulnerable by the failure of the Dominican government to grant them permission to work or to provide them with adequate housing, medical care, and other basic services. Asylum seekers are also at risk of harassment, beatings, arbitrary detention, and deportation.

- The Dominican government must expeditiously adjudicate all pending asylum claims and establish a functional and fair adjudication process for any future claims that may be filed.
- The Dominican government should restructure the National Commission for Refugees to ensure its effectiveness and independence from other government agencies. This should include appointing a senior-level coordinator whose sole job is to oversee the commission's activities. Representatives of the commission should be given the time and resources necessary to fulfill these functions and should be held accountable for their performance.
- The Dominican government should provide work authorization to registered asylum applicants.
- The Dominican government should develop and implement self-sufficiency projects for asylum seekers, especially women who face discrimination not only because they are not Dominican but on the basis of their gender.
- The Dominican government should take steps to ensure that the basic assistance needs of asylum seekers, including housing, health care, and education, are adequately met.
- The Dominican government must prevent abuses from occurring against asylum seekers, both at the hands of government authorities and by the Dominican community. Any abuses that do occur should be fully prosecuted through the Dominican judicial system.
- The U.S. government and UNHCR must encourage and work with the government of the Dominican Republic to implement a meaningful asylum process and to ensure that Haitian asylum seekers are provided adequate assistance.
- The United States must not engage in actions that might hamper the ability of Haitian asylum

seekers to obtain protection, including funding an increased Dominican military presence along the Haitian border and setting up airport pre-inspection stations in the Dominican airport.

**The Dominican Republic has failed to offer meaningful protection to Haitian children. Such children are vulnerable to family separation, labor abuses, trafficking, exploitation, and deprivation of education.**

- The Dominican government must take steps to ensure that it protects the rights of child refugees, asylum seekers, and migrants. This includes prevention of abuses targeted at children and prosecution of traffickers and others who engage in exploitation of children.
- The Dominican government must avoid deportation practices that result in family separation.
- The Dominican government should ensure that education is available to all children, regardless of nationality or immigration status, and should take measures to ensure the full enrollment and participation of foreign-born children in its schools.
- The Dominican government should grant citizenship to children born within its territory.

## UNHCR

**While protection is primarily the responsibility of the Dominican government, the UNHCR has also inadequately met its refugee protection mandate in the Caribbean region. It currently has no presence in the region itself and has also withdrawn its support for nongovernmental organizations providing assistance to refugees and asylum seekers in the Dominican Republic. Its plan to post an officer in the Dominican Republic is a step in the right direction but is likely to prove insufficient to meet the complex asylum and refugee challenges in the Dominican Republic, including humanitarian assistance needs. It also has yet to organize a meaningful protection strategy in the event of a Haitian refugee crisis, an urgent need in light of deteriorating political conditions in Haiti.**

- UNHCR must quickly meet its goal of placing an international staff person in the Dominican Republic as a first step in fulfilling its obligations to those asylum seekers already there and to have an existing presence in case deteriorating political conditions in Haiti result in an increased refugee outflow.

- UNHCR should expand beyond this one-person office to meet the protection and assistance needs of refugees and asylum seekers and to enhance its capacity to respond to humanitarian crises.
- UNHCR should work with the United States and other traditional resettlement countries to promote resettlement opportunities for Haitian refugees residing in the Dominican Republic.
- The United States should facilitate an increased UNHCR presence in the Dominican Republic through financial support.

## THE INTERNATIONAL COMMUNITY

The international community cannot afford to ignore Haiti's political, economic, and social problems if it hopes to avert future refugee crises. The United States especially can play a critical role in ensuring that the Haitian people are able to live their

**lives in safety and dignity and with confidence in their country's future.**

- The United Nations, the Organization of American States, and countries in the region—especially the United States—must invest in sustained and effective state-strengthening activities to instill democracy and ensure a viable economy in Haiti.
- The UN High Commissioner for Human Rights and the Inter-American Commission for Human Rights must closely monitor the human rights situation in Haiti. This will help provide an early warning of any political or refugee crisis that might ensue.
- The United States and Caribbean countries, with guidance from UNHCR, must quickly develop a regional contingency plan that embraces refugee protection as its core in order to prepare for a potential refugee crisis.

# Appendix

## SYNOPSIS OF APPLICABLE INTERNATIONAL LEGAL STANDARDS

### INTERNATIONAL LEGAL STANDARDS PERTAINING TO REFUGEE PROTECTION

After World War II, the international community joined together to establish international standards for the protection of refugees. This effort resulted in the 1951 United Nations Convention Relating to the Status of Refugees and its 1967 Protocol (the Refugee Convention).<sup>309</sup>

The Refugee Convention imposes on countries the obligation to protect any individual found to have a well-founded fear of persecution on account of race, religion, nationality, political opinion, or membership in a particular social group.<sup>310</sup> Countries are prohibited from expelling or returning refugees to a country where their lives or freedom would be threatened on the basis of these criteria.<sup>311</sup> This is known as the principle of *non-refoulement*.

### INTERNATIONAL LEGAL STANDARDS PERTAINING TO THE PROTECTION OF REFUGEE WOMEN AND CHILDREN

The Refugee Convention does not explicitly recognize persecution on the grounds of gender or age as a basis for refugee protection. However, the international community has since recognized the human rights of women and children and that violation of those rights may serve as a basis for refugee status.

The Executive Committee of the UNHCR has addressed the unique protection concerns of refugee women and children on several occasions.<sup>312</sup>

UNHCR has also issued guidelines to address the protection and assistance concerns of both refugee women and children.<sup>313</sup> This includes guidelines that specifically provide direction to the international community on how to address the protection of women and children asylum seekers who have fled gender- or age-related persecution.<sup>314</sup>

Refugee protection must also be interpreted in the context of human rights instruments. In 1979, the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women, a binding treaty that defines the human rights of women.<sup>315</sup> In 1989, it followed with the Convention on the Rights of the

Child.<sup>316</sup> The Convention on the Rights of the Child is the most widely ratified human rights treaty in the world (only two countries, the United States and Somalia, have not joined the treaty).

### INTERNATIONAL LEGAL STANDARDS PERTAINING TO DETENTION

Both treaty and customary international law prohibit prolonged arbitrary detention. Article 9 of the Universal Declaration of Human Rights, the basis for most human rights law, states: “No one shall be subjected to arbitrary arrest, detention, or exile.”<sup>317</sup>

Additional support for this principle is found in the International Covenant on Civil and Political Rights (ICCPR), article 9(1) of which states: “No one shall be subjected to arbitrary arrest or detention.” Article 9(4) of the ICCPR elaborates: “Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.”<sup>318</sup>

The Refugee Convention specifically addresses the detention of refugees by mandating that countries not impose penalties on asylum seekers on account of their illegal entry or presence as long as they present themselves without delay to the authorities and show good cause for their illegal entry or presence.<sup>319</sup> This includes avoiding unnecessary restrictions on the movement of refugees.<sup>320</sup>

UNHCR has elaborated on these international standards as they apply to asylum seekers. In its Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, UNHCR notes that detention of asylum seekers is inherently undesirable and should generally be avoided. It has clearly stated that when detention is used as a deterrent, it is contrary to international standards. It recommends that there be a presumption against detention, but that if used, detention should be limited to a minimal period of time. Finally, the Guidelines urge that detention be resorted to only in cases in which: 1) it is necessary to verify the identity of a person; 2) it is necessary to

determine the elements of a person's asylum claim; 3) an asylum seeker has destroyed or used fraudulent documents to mislead authorities; or 4) it is necessary to protect national security. The Guidelines also call for special protection of populations at risk, including single and pregnant women and children.<sup>321</sup>

UNHCR has directly addressed its concerns about U.S. detention policy to the INS. Prior even to the enormous growth in U.S. detention since 1996, the agency wrote in 1993 to the INS Commissioner:

*The UNHCR Executive Committee has expressed deep concern about the detention of refugees and asylum seekers merely on account of their undocumented entrance or presence in search of asylum. Executive Conclusion No. 44 recommended that "in view of the hardship which it involves, detention should normally be avoided." Detention of refugees and asylum seekers should normally be limited to the shortest time necessary to establish the applicant's identity and the elements of the asylum claim.*<sup>322</sup>

In February 1999, in response to the tremendous growth in U.S. immigration detention since passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, UNHCR again urged the United States to abide by the UNHCR detention guidelines and to exercise its discretion to release asylum seekers.<sup>323</sup> The UNHCR Washington Representative observed: "Asylum seekers who are not a threat to society should not be detained and should not be treated like criminals."<sup>324</sup>

UNHCR most recently noted in an advisory opinion requested by the Florida Immigrant Advocacy Center that "the detention of asylum seekers in furtherance of a policy to deter future arrivals does not fall within any of the exceptional grounds for detention and is contrary to the principles underlying the international protection regime." It further concluded that detention of asylum seekers based on their national origin is discriminatory and constitutes arbitrary detention under both the International Covenant on Civil and Political Rights and the 1951 Convention Relating to the Status of Refugees.<sup>325</sup>

## INTERNATIONAL LEGAL STANDARDS PERTAINING TO INTERDICTION

Article 33 of the Refugee Convention forbids the return of refugees to territories where their lives or freedom would be threatened. This standard is not based on where refugees and asylum seekers are intercepted, but rather on where refugees and asylum seekers are being returned.

While it has never addressed the issue of interdiction directly, the Executive Committee of UNHCR in its Conclusion No. 82 reiterated the need for states "to admit refugees...which includes no rejection at frontiers without fair and effective procedures for determining status and protection needs."<sup>326</sup> The Executive Committee has also emphasized the obligation of states both under refugee law and international maritime law to rescue asylum seekers in distress at sea.<sup>327</sup>

## INTERNATIONAL LEGAL STANDARDS PERTAINING TO FAMILY UNITY

International standards urge governments to refrain from taking actions that separate families. The Universal Declaration of Human Rights emphasizes that the "family is the natural and fundamental group unit of society and is entitled to protection by the society and the State."<sup>328</sup> It also forbids states from taking actions that arbitrarily interfere with an individual's family.<sup>329</sup> The Executive Committee of the UNHCR has reemphasized these principles in the context of refugee families.<sup>330</sup>

The Convention on the Rights of the Child addresses the right of a child to preserve his or her family life. It also mandates that states ensure that a child is not taken from his or her parents against his or her will unless competent authorities subject to judicial review determine that such separation is necessary to protect the best interests of the child.<sup>331</sup>

## NOTES

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- 1 The History of Haiti, www.medalia.net.
- 2 Testimony of Stephen C. Johnson, The Heritage Foundation, before the Senate Judiciary Subcommittee on Immigration (October 1, 2002).
- 3 Id. See also *The Caribbean: Survival, Struggle, and Sovereignty*, Catherine H. Sunshine, EPICA, pp. 156-161 (1988).
- 4 *The Caribbean: Survival, Struggle, and Sovereignty*, supra, pp. 159-160.
- 5 The History of Haiti, www.medalia.net (noting that Aristide was seen as the first leader of the Haitian people since 1804).
- 6 Id.
- 7 Amnesty International, “Steps Forward, Steps Back: Human Rights Ten Years After the Coup” (September 27, 2001).
- 8 Id.
- 9 David Gonzalez, “8 Years After Invasion, Haiti Squalor Worsens,” *New York Times* (July 30, 2002); Rod Liddle, “Why Do We Give Money to Corrupt States?” *The Guardian* (July 24, 2002).
- 10 See Johnson testimony, supra.
- 11 Affidavit of Merrie Archer, National Coalition for Haitian Rights (August 14, 2002).
- 12 Id.
- 13 Nancy San Martin, “In the Streets of Haiti’s Second Largest City,” *Miami Herald* (August 13, 2002); Matthew Hay Brown, “Haiti Unrest Simmers,” *Florida Sun-Sentinel* (August 11, 2002).
- 14 “Steps Forward, Steps Back: Human Rights 10 Years After the Coup,” supra.
- 15 Tim Johnson, “Haiti on Road to Ruin, OAS Leader Says,” *Miami Herald* (November 7, 2002); Michael Norton, “OAS Negotiator Gives Up on Brokering Political Peace Deal in Haiti,” *Miami Herald* (July 11, 2002).
- 16 U.S. Department of State, “Country Reports on Human Rights Practices—2001” (March 4, 2002), available at [www.state.gov/g-2001/drl/rls/hrrpt/2001](http://www.state.gov/g-2001/drl/rls/hrrpt/2001).
- 17 Affidavit of Merrie Archer, supra. See also Human Rights Watch, “Haiti,” World Report 2002, available at [www.hrw.org](http://www.hrw.org).
- 18 Testimony of Dina Paul Parks, National Coalition for Haitian Rights, before the Senate Judiciary Subcommittee on Immigration (October 1, 2002).
- 19 See Jim DeFede, “Is U.S. Policy Subverting Haiti?” *Miami Herald* (December 15, 2002); Arthur C. Helton, *The Price of Indifference: Refugees and Humanitarian Action in the New Century* (2002).
- 20 “Report of the Commission of Inquiry into the Events of December 17, 2001 in Haiti,” Inter-American Commission for Human Rights, Organization of American States (July 1, 2002).
- 21 Parks testimony, supra.
- 22 Nancy San Martin, “Haitian Police Break Up Residents’ Street Protest,” *Miami Herald* (August 8, 2002); “Protesters Seize Control of Haiti’s Fourth-Largest City,” CNN.com (August 6, 2002); “Thousands Protest in Haiti,” Combined News Services (August 6, 2002); “Haitian City Remains Tense After Jail Break,” Reuters.com (August 6, 2002).
- 23 Parks testimony, supra. One of the escapees was Jean Tatoune, a former head of FRAPH, the militia organization implicated in the assassination of approximately 3,000 Aristide supporters after the 1991 military coup. Nancy San Martin, “Haitian Police Break Up Residents’ Street Protest,” *Miami Herald*, supra; Michael Norton, “Haiti Protesters Take Over City,” Associated Press (August 6, 2002).
- 24 Press release, National Coalition for Haitian Rights (August 7, 2002).
- 25 Press release, Amnesty International (August 7, 2002).
- 26 Press release, National Coalition for Haitian Rights, (August 7, 2002).
- 27 Press statement of Phillip T. Reeker, Deputy Spokesman, U.S. Department of State (August 5, 2002).
- 28 Parks testimony, supra; Haiti News Briefs (September 8, 2002) (available at [http://haitisupport.gn.apc.org/fea\\_news\\_main.html](http://haitisupport.gn.apc.org/fea_news_main.html)).
- 29 Parks testimony, supra; see also Haiti News Briefs (September 8, 2002), supra.
- 30 Parks testimony, supra. Also in September, the OAS adopted a resolution expressing concern about the political crisis in Haiti and calling upon the Haitian government to normalize democratic institutions and to take steps to prepare for free and fair elections in 2003. It outlined steps the OAS would take to support the strengthening of Haitian democracy, including the unblocking of foreign aid. The resolution was largely viewed as a victory for Aristide, who had long pressed for the resumption of foreign assistance. Organization of American States, Permanent Council Resolution 822 (1331/02); See David Gonzalez, “Western Hemisphere’s States Support Unblocking of Aid to Haiti,” *New York Times* (September 5, 2002). However, the Haitian government subsequently failed to comply adequately with the steps outlined in the resolution with regard to paving the way for legislative elections in 2003, calling into question whether such aid would resume or not. Tim

- Johnson, "Haiti on Road to Ruin, OAS Leader Says," *supra*.
- 31 Michael Norton, "Haitians Withdraw Millions as Bank Panic Spreads," *Florida Sun-Sentinel* (October 16, 2002).
- 32 See Jacqueline Charles, "Protest, Counter-Protests Worry and Confuse Haitians in S. Florida," *Miami Herald* (November 23, 2002).
- 33 Press release, National Coalition for Haitian Rights (December 3, 2002).
- 34 "Four Killed in Armed Attack on Haiti Police Station," Agence France Presse (December 11, 2002).
- 35 Michael Norton, "Opposition Party Headquarters Burned in Alleged Arson in Haiti," Associated Press (December 8, 2002); Michael Deibert, "Violence Escalates in Haiti," Reuters (December 7, 2002).
- 36 Michael Norton, "Haitian Leader Says He Won't Step Down," Associated Press (December 5, 2002).
- 37 David Gonzalez, "Aristide of Haiti: Pragmatist or Demagogue?" *New York Times* (December 13, 2002).
- 38 See U.S. Department of State, "Country Reports on Human Rights Practices-2001" (March 4, 2002), *supra*; see also "Rape in Haiti: A Weapon of Terror," Human Rights Watch and National Coalition for Haitian Rights (July 1994) (documenting a pattern of rape by Haitian police, military, and other state agents as a means to punish and intimidate women for their actual or imputed political beliefs).
- 39 U.S. Department of State, "Country Reports on Human Rights Practices-2001," *supra*.
- 40 *Id.*
- 41 *Id.*
- 42 Human Rights Watch, World Report, *supra*.
- 43 U.S. Department of State, "Country Reports on Human Rights Practices-2001," *supra*.
- 44 IOM/UNICEF "Trafic des Enfants Haïtiens vers la République Dominicaine" (July 2002); see also "Traffickers Target Haitian Children," BBC (August 11, 2002).
- 45 National Coalition for Haitian Rights, Restavèk No More: Eliminating Child Slavery in Haiti (April 2002); see also Jane Regan, "Children Bear Brunt of Haiti's Social Ills," OneWorld.net (December 4, 2002); U.S. Department of State, "Trafficking in Persons Report" (June 5, 2002), available at [www.state.gov](http://www.state.gov); Press Briefing Notes, International Organization for Migration (August 9, 2002).
- 46 Parks testimony, *supra*. In December 2001, one prominent journalist, Brignol Lindor, was hacked to death, 40 other journalists were attacked and threatened, and 12 were forced to flee the country. Reporters Without Borders, "Haiti—Annual Report 2002," available at [www.rsf.fr](http://www.rsf.fr); Johnson testimony, *supra*.
- 47 See, e.g., Letta Tayler, "Critics Blame Aristide for Rise of Guns, Gangs," *Newsday* (September 8, 2002); Nancy San Martin, "Haitians' Growing Discontent with Aristide May Force U.S. to Act," *Miami Herald* (August 19, 2002); Don Bohning, "Haiti's Immutable Laws," *Miami Herald* Opinion Editorial (August 8, 2002); Canute James, "Police Battle Rioters in Haitian City," *Financial Times* (August 7, 2002).
- 48 Presentation of Ambassador Roger F. Noriega, U.S. Permanent Representative to the Organization of American States, before the Inter-American Dialogue (October 30, 2002); see also "Washington Pessimiste Sur La Possibilité d'une Normalisation Avec Haiti," Agence France Presse (October 30, 2002).
- 49 Talk Radio News, Interview with Secretary Colin L. Powell (October 30, 2002).
- 50 Immigration and Nationality Act, sec. 207-208.
- 51 Immigration and Nationality Act, sec. 101(a)(42). For an excellent overview of the U.S. refugee and asylum systems, see Regina Germain, *AILA's Asylum Primer*, American Immigration Lawyers Association (2000).
- 52 Immigration and Nationality Act, sec. 207.
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- 54 Presidential Proclamation 4865 (September 28, 1981).
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- 56 Cheryl Little, "Inter-Group Coalitions and Immigration Politics: The Haitian Experience in Florida," *The University of Miami Law Review*, p. 717 (July 1999).
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- 58 *Haitian Refugee Center v. Civiletti*, 503 F. Supp. 442 (Southern District of Florida, 1980), modified *Haitian Refugee Center v. Smith*, 676 F.2d 1023 (Fifth Circuit Court of Appeals, 1982).
- 59 *Jean v. Nelson*, 727 F.2d 957 (Eleventh Circuit Court of Appeals, 1984), affirmed, 472 U.S. 846 (1985).
- 60 Immigration and Naturalization Service,

- Memorandum from Asylum Branch, "Procedural Changes in the INS Asylum Pre-Screening Component of the AMIO" (March 1, 1991).
- 61 "INS Revises Policy for Screening Haitians Interdicted at Sea," *Interpreter Releases*, p. 793 (July 1, 1991).
- 62 Id.
- 63 *Miami Herald*, p. B1 (July 8, 1991); see also *Interpreter Releases* (November 25, 1991), *supra*.
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- 73 In March 1992, the U.S. House of Representatives passed the "Haitian Refugee Protection Act of 1992," which would have suspended for six months the repatriation of Haitians housed at Guantanamo. The Senate, however, failed to address the legislation.
- 74 "Bush Orders Coast Guard to Return All Haitians," *Interpreter Releases*, p. 672 (June 1, 1992).
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- 82 Juan P. Osuna and Christine M. Hanson, "U.S. Refugee Policy: Where We've Been, Where We're Going," World Refugee Survey, U.S. Committee for Refugees (1993); "The AILA Human Rights Delegation Report on Haiti," *supra* (noting that nowhere did the delegation find evidence of massive boat building that would indicate a massive outflow of Haitian boat people).
- 83 "Supreme Court Hears Argument in Haitian Refugee Case," *Interpreter Releases*, p. 277 (March 8, 1993).
- 84 *Interpreter Releases*, *supra* (January 15, 1993).
- 85 Id. (quoting Arthur C. Helton, Lawyers Committee for Human Rights; Jocelyn McCalla, National Coalition for Haitian Rights; and Harold Koh, Yale Law School).
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- 88 *Sale v. Haitian Centers Council*, 509 U.S. 155 (1993).
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- 90 Section 243 has since been modified by the Illegal

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- 91 *Sale v. Haitian Centers Council*, 509 U.S. 155 (1993).
- 92 *Id.*
- 93 Office of the Legal Counsel, U.S. Department of Justice (October 13, 1993); see also “No Exclusion Hearings for Interdicted Aliens, Justice Department Legal Counsel Says,” *Interpreter Releases*, p. 381 (March 21, 1994).
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- 96 See “Clinton Modifies Haitian Interdiction Policy,” *Interpreter Releases*, p. 627 (May 9, 1994).
- 97 See “Jamaica, Turks and Caicos Islands to Help U.S. Process Haitians,” *Interpreter Releases*, p. 743 (June 6, 1994), citing *New York Times*, p. A4 (June 4, 1994).
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- 108 *Id.*
- 109 *Id.*
- 110 World Refugee Survey, U.S. Committee for Refugees, p. 199 (1996).
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- 113 *Id.*, p. 195 (1996).
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- 139 See “Board of Immigration Appeals: Procedural Reforms to Improve Case Management; Final Rule” Federal Register, p. 54878 (August 26, 2002) (streamlining Board of Immigration Appeals procedures).
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- 141 “Initialed Agreement Between the Government of Canada and the Government of the United States of America Regarding Asylum Claims Made at Land Borders” (August 30, 2002).
- 142 *Id.*, art. 9.
- 143 See Testimony of Bill Frelick, Amnesty International USA, before the House of Representatives Committee on the Judiciary Subcommittee on Immigration, Border Security and Claims (October 16, 2002); Women’s Commission for Refugee Women and Children, “Comments on the Draft Agreement Between the Governments of Canada and the United States for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries” (July 29, 2002); Lawyers Committee for Human Rights, “Comments on the Proposed Safe Third Country Agreement” (July 24, 2002); Canadian Council for Refugees, “Comments on Proposed Agreement for Cooperation in the Examination of Refugee Status Claims from Nationals of Third Countries” (July 18, 2002).
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- 145 See “Proposed Refugee Admissions for Fiscal Year 2003: Report to Congress,” submitted on Behalf of the President of the United States to the Committees of the Judiciary of the Senate and House of Representatives by the Departments of State, Justice, and Health and Human and Services (September 2002).
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- 147 Interview with Department of State, Bureau for Refugees, Migration, and Population (December 22, 2002). See Jana Mason, “Paying the Price: Australia, Indonesia Join Forces to Stop ‘Irregular Migration’ of Asylum Seekers,” Refugee Reports, U.S. Committee for Refugees (August/September 2001).
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- 150 Women’s Commission interview with Department of State, Bureau of Population, Refugees, and Migration (December 26, 2002).
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- 152 “Proposed Refugee Admissions for Fiscal Year 2003: Report to Congress,” supra, p. 25. These admissions are in addition to the 20,000 visas designated especially for Cubans each year.
- 153 U.S. Department of State, “Country Reports on Human Rights-2001,” supra.
- 154 Jody A. Benjamin, “Coast Guard Allows 183 Haitians Found off Keys to Enter United States,” *South Florida Sun-Sentinel* (December 4, 2002); Luisa Yanez, “Haitian Migrants Taken Ashore,” *Miami Herald*, p. 1B (December 4, 2002).
- 155 *Id.*
- 156 Just three weeks prior to this incident, the Coast Guard had returned 350 Haitians interdicted at sea. See Benjamin, “Coast Guard Allows 183

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- 157 Id.
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- 159 Statement of Frances (August 21, 2002). To ensure their confidentiality, the asylum seekers quoted throughout this report will be referred to by pseudonyms, unless the delegation received express permission to use their names.
- 160 Memorandum from INS Executive Associate Commissioner for Field Operations, “Expedited Removal: Additional Policy Guidance” (December 3, 1997) (stating that parole is a viable option for aliens who have met the credible fear standard); Memorandum from INS Executive Associate Commissioner for Field Operations, “Detention Guidelines” (October 9, 1998) (stating that it is INS policy to favor release of aliens who have been found to have a credible fear of persecution).
- 161 See Women’s Commission for Refugee Women and Children, “Behind Locked Doors: Abuse of Refugee Women at Krome,” p. 17 (noting that the INS Miami District has one of the most generous parole policies in the country).
- 162 “Urgent Action,” Church World Service, Lawyers Committee for Human Rights, and Lutheran Immigration and Refugee Service (May 17, 2002).
- 163 Id.
- 164 Declaration of Peter Michael Becraft, Acting Deputy Commissioner, Immigration and Naturalization Service, Case No. CIV-02-20822-Lenard/Turnoff (U.S. District Court Southern District of Florida).
- 165 When the illogic of this policy was pointed out in a federal lawsuit, the INS reversed the policy for plane arrivals, but continued to place onerous requirements on their parole that are not required of asylum seekers of other nationalities. See Memorandum from Johnny Williams, Executive Associate Commissioner, Immigration and Naturalization Service, “Parole of Haitians Arriving by Regular Means at a Designated Port of Entry in South Florida” (April 5, 2002) (allowing for the parole of Haitians who arrive in the U.S. by regular means but requiring affidavits of support from approved sponsors, address verification, and reporting requirements before a release can be authorized).
- 166 Interview with Sophie (August 30, 2002).
- 167 See Cheryl Little and Charu Newhouse Al-Sahli, “INS Detainees in Florida: A Double Standard of Treatment,” Florida Immigrant Advocacy Center (December 2001), Supplement (January-April 2002); “Innocents in Jail: INS Moves Women from Krome to Turner Guilford Knight Correctional Center, Miami,” Women’s Commission for Refugee Women and Children (June 2001). The INS transferred women from the Krome Service Processing Center, a large immigration detention center in Miami, to TGK after reports of widespread sexual abuse at the hands of approximately 15 INS officers surfaced. See “Behind Locked Doors: Abuse of Refugee Women at the Krome Service Processing Center,” Women’s Commission for Refugee Women and Children (October 2001). While it was critical to remove women from the immediate dangers they faced in Krome, TGK proved incapable of providing the protection and services that women asylum seekers require.
- 168 Legislative Item File Number 021139, Miami-Dade County Commission (March 26, 2002).
- 169 Transcript of telephone message from Kim Boulia, Immigration and Naturalization Service, to Jack Wallace, Florida Immigrant Advocacy Center (June 4, 2002).
- 170 Detention Standard on Visitation, Immigration and Naturalization Service (September 20, 2000).
- 171 Interview with Florida Immigrant Advocacy Center (December 20, 2002).
- 172 See Statement of Julia, Asylum Seeker Detained at TGK (August 21, 2002) (stating that being detained at TGK month after month is terrible); Letter from Female Haitian Asylum Seekers Detained at TGK (July 19, 2002) (outlining conditions at TGK); Letter from TGK Female Detainees (March 4, 2002) (outlining numerous problems at TGK and asking U.S. government to release them).
- 173 Interview with Gisele (August 30, 2002).
- 174 Letter from Sister Jeanne O’Laughlin, Barry University, to Congresswoman Carrie Meek, U.S. House of Representatives (April 26, 2002).
- 175 See Letter from Anthony S. Tangeman, Immigration and Naturalization Service, to Sister Jeanne O’Laughlin, Barry University (September 30, 2002) (rejecting university’s offer to sponsor Haitian asylum seekers); Letter from Sister Jeanne O’Laughlin, Barry University, to Commissioner James Ziglar, Immigration and Naturalization Service (August 19, 2002) (reiterating offer of sponsorship); See also Jody A. Benjamin, “Barry U. Educator Wants to Lead Effort to Free Haitian Detainees,” *Florida Sun-Sentinel* (April 30, 2002) (quoting INS official as willing to consider university’s offer).
- 176 Statement on New Detention Facility in Broward County, Immigration and Naturalization Service (August 12, 2002). See also Jacqueline Charles, “INS Plans to Move Female Haitian Detainees,” *Miami Herald* (August 16, 2002); José Dante

- Parra Herrera, "Detainees Will Move From Jail to Work Center," *Florida Sun-Sentinel* (August 16, 2002); "INS to Move Haitian Asylum Seekers," Associated Press (August 16, 2002).
- 177 "Statement on New Detention Facility in Broward County," *supra*.
- 178 See <http://www.wcc-corrections.com>.
- 179 "Statement on New Detention Facility in Broward County," *supra*. The Broward administrator told the Women's Commission that the INS plans to open a family detention facility on the Broward premises. Interview with Jon Dobre, Broward County Work Release Center (August 30, 2002).
- 180 See Women's Commission for Refugee Women and Children, "Innocents in Jail: INS Moves Refugee Women from Krome to Turner Guilford Knight Correctional Facility Miami," *supra*.
- 181 Interview with Jon Dobre, Broward County Work Release Center (August 30, 2002).
- 182 Interview with Florida Immigrant Advocacy Center (December 20, 2002).
- 183 Interview with Gisele (August 30, 2002).
- 184 Interview with Solange and Sophie (August 30, 2002).
- 185 Interview with Florida Immigrant Advocacy Center (November 19, 2002).
- 186 Jacqueline Charles, "Broward Jail Gets Surprise Review," *Miami Herald* (August 21, 1999); Jacqueline Charles, "Jenne Plans Crackdown at Inmate Center," *Miami Herald* (August 19, 1999); Jacqueline Charles and Sue Corbett, "Providing Sex Can Bring Favors at Work—Release Facility, Inmate Says," *Miami Herald* (August 17, 1999); Jacqueline Charles, "Inmates Say They Had Sex With Guards; Work Release Center Plagued With Problems," *Miami Herald* (August 10, 1999).
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- 200 See Letter to Steven Lang, Executive Office for Immigration Review, from Mary Cramer, South Florida Chapter, American Immigration Lawyers Association (February 19, 2002) (outlining concerns about expedited processing of Haitian asylum cases and strains such measures place on *pro bono* resources); Letter to Florida Immigrant Advocacy Center from Steven Lang, Executive Office for Immigration Review (February 13, 2002) (acknowledging that an unusually large number of detainees in the Miami area are currently appearing in their immigration proceedings without legal representation); Press release from Executive Office for Immigration Review (February 13, 2002) (requesting assistance of Florida bar to represent detainees at Krome and TGK).
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- 202 Interview with Florida Immigrant Advocacy Center (August 26, 2002).
- 203 Testimony of Cheryl Little, Florida Immigrant Advocacy Center, before the U.S. Commission for

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