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**No Port in a Storm**

**The Misguided Use of In-Country  
Refugee Processing in Haiti**

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## **SUMMARY OF FINDINGS**

**When the September 30, 1991 military *coup d'état* exiled Haiti's democratically elected president and unleashed some of the most brutal repression in Haitian history, the U.S. government went to new extremes in curtailing the rights of Haitian asylum seekers. The damage done by this misguided and discriminatory refugee policy will persist long after a political settlement is achieved in Haiti.**

**For many years, the United States government has been interdicting Haitians on the high seas and returning them to Haiti with only minimal efforts at screening for refugee status. This policy, coupled with discriminatory treatment of Haitian asylum seekers in the U.S., has been the focus of longstanding criticism and a stream of legal challenges.**

**The Bush Administration's response to the September 1991 political crisis was feeble and to the refugee crisis, reprehensible. The United States joined other nations in the western hemisphere in condemning the coup, refusing to recognize the new military-backed government and imposing sanctions. However, after an initial hesitation, and in spite of widespread human rights violations and generalized violence, the interdiction policy continued. The exception was a short interlude when Haitians picked up at sea were taken to Guantánamo Bay to be screened for asylum seekers after a Florida federal district judge imposed a temporary restraining order halting forced repatriations. In February 1992, the Bush Administration established an in-country processing (ICP) program through the U.S. Embassy in Port-au-Prince. That same month, the Supreme Court lifted the ban on the involuntary return (*refoulement*) of Haitian refugees.**

**The parameters of debate shifted dramatically, however, when on May 24, 1992, then-President Bush ordered all Haitians to be interdicted on the high seas and summarily returned to Haiti, with no prior screening for refugees fearing persecution. ICP, which had historically been conceived as an additional avenue of protection for refugees in selected countries, became the only option for victims of Haiti's repressive military regime.**

**U.S. foreign policy and refugee policy have been historically inseparable and interdependent. The case of Haiti, and Haitians, is no exception. Newly elected President Clinton, who had made campaign promises to rectify the illegal and irresponsible refugee policy, opted instead to continue it. His administration justified this reversal by raising the spectre of a huge, uncontrollable invasion of economic refugees and by arguing that the policy saved lives.**

**The Clinton Administration has undeniably contributed to progress made thus far in the reinstatement of constitutional government. Nevertheless, the pre-inauguration announcement that the policy of forcibly returning refugees would continue, with the support of President Aristide, was inconsistent with the Administration's stated commitment to seeking justice in Haiti. Increased efforts on the political front became the excuse for forfeiting the rights of the refugees.**

**In January, the incoming and outgoing administrations agreed to blockade the island with U.S. Coast Guard cutters, Navy ships and helicopters in order to prevent refugee flight. Clinton's administration went so far as to defend the policy of forced return, successfully, before the Supreme Court, leaving the heretofore globally recognized principle of *non-refoulement* in a shambles. It further proposed to expand and improve ICP, thereby attaining what has since been touted as "complete coverage" for Haitian asylum seekers. Thus, in an ironic twist, *non-refoulement* is considered irrelevant to a major refugee crisis, and ICP, for the first time in its history, is considered an appropriate sole remedy.**

**In March 1993, The Inter-American Commission on Human Rights of the Organization of American States issued an interim resolution in response to a petition pending before it challenging the U.S. government's Haitian**

**interdiction program. The resolution found that the interdiction policy is in violation of international law and should be suspended immediately.**

**In spite of observable improvements made this year in the program, ICP in Haiti, while certainly able to help some people, cannot be considered an adequate sole remedy for asylum seekers. It is both a product and a victim of the flawed and politicized view of the Haitian refugee crisis held by the U.S. government, and as such, is isolated from and distrusted by international and local refugee experts and human rights organizations, not to mention the very people it is meant to assist.**

**The State Department runs the program and is responsible for every aspect of it. The Immigration and Naturalization Service (INS) handles the actual case adjudication, which is heavily influenced by the faulty premise behind the program and overly reliant on the State Department including for information on country conditions and Haitian culture. Human rights analysis from the State Department is contradictory and at times appears tailored to fit the refugee policy. The fact that the U.S. government considers ICP an adequate response in the Haitian context is testimony to its biased perspective on human rights.**

**The most obvious shortcomings in ICP, as applied in Haiti, are the following:**

- 1. There is no protection component. A number of cases have been documented of Haitians who have been persecuted at different stages of the process, including while awaiting a decision, after conditional approval and after being denied asylum. Risks are exacerbated by inordinately long delays in processing all but the most exceptional cases.**
- 2. There are built-in characteristics, stemming from the U.S. government's incorrect assessment of the refugee crisis, which lead to limited access to the reasonably expedited treatment an asylum seeker logically needs and deserves. All applicants who are not "high-profile" or deemed to be in imminent danger will not even have an initial interview until six or more months after approaching the program. This includes people who would be able to meet the burden of proof for asylum. Priority (vetting) determinations based solely on the contents of a written questionnaire do not constitute a fair hearing under the circumstances.**
- 3. There is evidence of inconsistency in adjudication, unfair application of the standard for asylum and questionable credibility determinations. Cases reviewed showed that past persecution is nearly always a prerequisite for approval. In several cases reviewed, a denial of asylum was only overturned when the applicant was brutalized in the interim. Even among cases where persecution has already occurred, asylum has been denied.**
- 4. Those potential asylum seekers who do not feel that they can safely avail themselves of the program are left with no option. Haitian human rights groups and NGOs feel that this is the case for a significant number of victims of persecution.**
- 5. Haitians interdicted on the high seas and returned are subject to detention under a 1980 decree prohibiting the organization of illegal departures from the country. The existence of this law blurs the distinction between illegal departure and refugee flight. The presence of ICP does not alter the fact that forcibly returning Haitians interdicted on the high seas, puts them at serious risk of both prosecution and persecution.**

**The Clinton Administration's efforts toward achieving a political solution in Haiti can be favorably contrasted to his predecessor's inaction. Nevertheless, this progress is diminished by the continuation and promotion of a refugee policy that is inhumane and illegal and ultimately calls into question the U.S. government's commitment to human rights and a democratic regime in Haiti. It would be a mistake to assume that progress in the restoration of constitutional government signals an end to repression, and hence to the needs of asylum seekers. It is imperative that this policy be replaced with an approach to Haitian refugees which incorporates basic refugee protections.**

ICP has been unfairly used as an excuse for forcibly repatriating Haitians. A broader solution to the Haitian refugee crisis which respects the basic principles of non-refoulement and temporary refuge is called for. ICP could appropriately serve as part of such a response.

Finally, the treatment meted out to Haitians has furthered a global trend toward curtailing the rights of asylum seekers and closing borders in the face of victims of persecution. The Haitian experience flags some of the dangers inherent to attempts to address refugee migration through abbreviated procedures and summary return.

## I. INTRODUCTION

The September 30, 1991 military coup that exiled President Jean-Bertrand Aristide after only eight months in office, submerged Haiti under a tidal wave of repression and despair. The military fury unleashed against the broad popular sectors that brought Aristide to power has left hundreds, perhaps thousands, dead and made many thousands more the targets of various forms of brutal persecution.<sup>7</sup> A direct result of this widespread destruction of Haitian society has been forced migration on a massive scale. Human rights groups estimate that the number of people internally displaced or in hiding since the coup is in the hundreds of thousands.<sup>8</sup> Tens of thousands more took to the high seas, thereby exercising their internationally recognized right to leave their country and seek asylum.<sup>9</sup>

In the wake of the coup, the Bush Administration was faced with two closely interrelated problems: what to do about the political explosion in Haiti, and what to do about its human fallout. President Bush's response defied all logic. He reacted in a lukewarm manner to the critical fact of President Aristide's ouster while exerting considerable effort to keep the refugees off U.S. shores.

A longstanding U.S. policy of discrimination against Haitian refugees is the platform upon which the

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<sup>7</sup> The Inter-American Commission on Human Rights reported in an August 27, 1993 press release, that 1,500 people had been killed since the coup and 300,000 driven into hiding. Haitian human rights groups estimates are even higher. See generally Americas Watch and National Coalition for Haitian Refugees, *Silencing a People* (New York, AW and NCHR, 1993.) See also, Department of State *Country Reports on Human Rights Practices for 1992* (Government Printing Office, Washington, D.C., 1993), Haiti discussion at pp. 421-425, and reports and press releases of the UN/OAS International Civilian Mission, March - August, 1993.

<sup>8</sup> The term "in hiding" (*marronage*), commonly used in post-coup Haiti, refers to a range of survival measures taken by individuals who have been persecuted or fear persecution. Being in hiding often involves constant movement, prolonged displacement and inability to work or to be united with family members. Its many manifestations include not sleeping at home at night, leaving town entirely, frequent moving from place to place or remaining confined indoors at a location deemed safe by friends or other helpers. It is often a progressive or fluid state and the causal fear and insecurity are compounded by economic hardship and personal isolation.

<sup>9</sup> Article 13.2 of the Universal Declaration of Human Rights states, "Everyone has the right to leave any country, including his own, and to return to his country." Article 14, 1 states, "Everyone has the right to seek and to enjoy in other countries asylum from persecution." Article 12.2 of the International Covenant on Civil and Political Rights states, "Everyone shall be free to leave any country including his own." Article 22 of the American Convention on Human Rights guarantees the right to leave any country and further guarantees the right to "seek and be granted asylum in a foreign territory..." (pgph. 6) and the right of non-refoulement (Pgph. 8). Article 33 of the 1951 Convention Relating to the Status of Refugees states, "No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion."

management of this extraordinary human crisis is based. So it comes as no surprise that precisely when military repression reached a new high, tolerated and even promoted by the *de facto* government, the quality of U.S. treatment of Haitian refugees reached a new low. Indeed, both the Bush and Clinton administrations have gone to great lengths to turn the meaning and intent of international and U.S. refugee law upside down in order to restrict to the fullest extent possible the entrance of Haitian refugees.

During his campaign, President Clinton promised to do what his predecessor had not: contribute to the return of democratic government in Haiti and discontinue what he denounced to be an illegal and dangerous policy of forced repatriation. Even prior to his inauguration, President Clinton began to take more forceful steps toward achieving the reinstatement of the constitutional government of Haiti. In July of this year an accord was signed by President Aristide and General Raoul Cédras creating the framework for a political settlement.<sup>10</sup>

Meanwhile, on the refugee question, President Clinton not only continued the policy of forced return, he strengthened it by surrounding the island with some twenty U.S. Coast Guard cutters and Navy vessels ordered to interdict and return any Haitian leaving the island for the United States. Shortly after his election, his administration appeared before the Supreme Court to argue, in *Sales v. Haitian Centers Council*, that the principle of non-refoulement did not apply to Haitian refugees on the high seas, thereby sacrificing the most fundamental principle of refugee protection in order to salvage that same policy.<sup>11</sup> The decision in *Sales v. HCC* was a serious blow to the internationally recognized rule of non-refoulement and formally strips the U.S. of the moral authority it once exercised in the defense of asylum seekers the world over.

Responding to the Supreme Court decision, the United Nations High Commissioner for Refugees (UNHCR) stated that, "This decision is contrary to the views of UNHCR's Executive Committee that refugees should not be refused entry to a country where they are seeking asylum, and that asylum seekers rescued at sea should always be admitted, at least on a temporary basis....[T]he UNHCR considers the Court's decision a setback to modern international refugee law which has been developing for more than forty years....It renders the work of the Office of the High Commissioner in its global refugee protection role more difficult and sets a very unfortunate example."<sup>12</sup>

In March 1993, the Inter-American Commission on Human Rights of the Organization of American States (OAS) issued an interim resolution in response to a petition pending before it challenging the U.S. government's Haitian interdiction program. The resolution found the program to be in violation of international law and called for its immediate suspension.

The Haitian constitutional crisis might well be on the difficult path toward resolution in coming months. Nevertheless, it would be erroneous to assume that the signing of papers in New York, or the eventual reinstatement of

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<sup>10</sup> The Governors Island Accord was signed on July 3, 1993 and provides a general framework for reinstatement of constitutional government. It requires President Aristide to name a Prime Minister who will be confirmed by a reconstituted Parliament. Steps are then to be taken for lifting of international sanctions, the retirement of army commander General Raoul Cédras, creation of an independent civilian police force and the October 30 return of the President. Robert Malval, the Prime Minister-designate named since by President Aristide, has been approved by the reconstituted Haitian Parliament. The U.N. Security Council suspended the sanctions against Haiti on August 28.

<sup>11</sup> The 1951 Convention Relating to the Status of Refugees, Article 33, prohibits States from returning refugees to countries where they may face persecution. In a June 21, 1993 decision in *Sales v. Haitian Centers Council* the Supreme Court found that the letter of neither domestic nor international law prohibited the United States from returning Haitian refugees picked up on the high seas, even though, as Judge Stevens wrote in the majority opinion, "such actions may even violate the spirit" of international treaty law.

<sup>12</sup> "Office of the High Commissioner concerned by Supreme Court Haitian Decision," June 22, 1993 press release.

legitimate government, will automatically result in an end to fear and violence. The serious flaws in the refugee policy will, therefore, continue to have consequences – both as gross injustice to Haitians and as a disastrous legal precedent, breathing life into a global trend to narrow and limit the heretofore universally recognized principles protecting those who flee persecution.

The U.S. treatment of Haitian refugees touches on broader legal and moral questions amid the current debate about asylum reform. This policy provides an example of how the distinction between illegal immigration and refugee flight can be lost as countries close their borders to asylum seekers.

## II. HISTORY OF U.S. POLICY TOWARD HAITIAN REFUGEES

The U.S. government has been a champion of large groups of asylum seekers around the world, particularly those fleeing what were socialist-bloc countries. For refugees from the former Soviet Union, Vietnam and Cuba, to name a few, the U.S. has upheld the principles of refugee protection, relaxed the standard for qualifying for refugee status and pressed other countries to accept large numbers of refugees by playing a leading role in seeking alternatives and providing resettlement opportunities.<sup>13</sup>

The purpose of the Refugee Act of 1980 was to bring U.S. law into compliance with international principles and make the granting of asylum and refugee status more uniform. "Until 1980, refugees were defined more by where they came from than by the circumstances and persecution which might have precipitated their flight."<sup>14</sup> Conversely, the traditional approach of the U.S. government toward those fleeing regimes that it considers allies has been far more severe and often outright discriminatory, particularly when refugee groups see the U.S. as the logical choice for asylum. The treatment of Salvadorans, Guatemalans and Haitians fleeing brutal military-dominated regimes in the eighties are cases in point. Eventually temporary protected status was granted to Salvadorans, and Guatemalans now have somewhat better access to the asylum process.<sup>15</sup> The situation for Haitians, however, has only continued to deteriorate.

The U.S. government has long deplored the practice of totalitarian regimes of restricting the exit of their citizens. Nevertheless, it has lauded the Haitian government for measures it has taken since 1980 to restrict the exit of Haitian refugees. What's more, it has recently become the principal enforcer in denying Haitians the right to leave their country and particularly the right to seek asylum.

For years the U.S. has used a bilateral agreement with the Haitian government as the basis for the interdiction,

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<sup>13</sup> "On November 21, 1989, the President signed into law...legislation [called the Lautenberg Amendment] establishing categories of refugee applicants. As a consequence, some 58% of all refugee admissions during FY 1990 are being adjudicated according to a standard different from the worldwide standard." Inzunza, "The Refugee Act of 1980 Ten Years After - Still the Way to Go," *International Journal of Refugee Law*, Vol. 2 No. 3, 1990, p. 420. According to Inzunza, in FY 1990, 96% of refugees resettled in the U.S. would be applicants from communist-bloc countries.

<sup>14</sup> *Ibid.* p.416. The Refugee Act of 1980, among other things, regulates overseas processing of refugees (Section 207), asylum adjudication (Section 208) and incorporates the principle of non-refoulement (Section 243).

<sup>15</sup> Salvadorans were granted Temporary Protected Status (TPS) through the Immigration Act of 1990, which added section 244A to the Immigration and Nationality Act providing the Attorney General with discretion to grant TPS. Both Salvadoran and Guatemalan refugees also were afforded the opportunity to have their asylum claims reconsidered pursuant to the 1991 District Court decision in *American Baptist Churches v. Thornburgh*, 760 F.Supp. 796 (N.D.Cal. 1991)

screening and repatriation of Haitian asylum seekers. In 1981 the U.S.-Haitian interdiction program was launched based on an exchange of diplomatic letters between the two governments and an executive order from then-President Reagan.<sup>16</sup> Under that agreement, Haitian "flag vessels" found in international waters and bound for the U.S. would be interdicted and returned to Haiti. However, the agreement stipulated the U.S. obligation to screen Haitians for claims of persecution, thereby formally recognizing the application of the internationally recognized principle of non-refoulement.

During the next decade, the procedures used to screen boat people and determine refugee status were questioned and attacked by refugee advocates and human rights monitors. From 1981 until the September 1991 coup, 22,716 Haitians were repatriated, according to State Department figures. A total of twenty-eight were allowed to enter the U.S. to pursue asylum claims.<sup>17</sup> The harsh treatment afforded Haitians in the U.S., who have routinely suffered prolonged detention and asylum-approval rates of less than two percent, has also been a long-standing concern. However, at issue were the procedures, not the principle.

In the immediate aftermath of the coup, U.S. cutters initially continued to pick up Haitians on the high seas and screen them onboard for asylum seekers. When this practice was legally challenged as insufficient, screening at the U.S. Naval base at Guantánamo Bay, Cuba commenced. Then the discussion and the lawsuits focused on whether "screened-out" refugees could be forcibly repatriated and whether HIV-positive "screened-in" Haitians could be detained indefinitely at Guantánamo and denied due-process rights enjoyed by other screened-in asylum seekers.<sup>18</sup>

Ironically, it was not until the September, 1991 coup introduced some of the most brutal repression in Haitian history, that the U.S. decided to do away altogether with any pretense of screening fleeing refugees. On May 24, 1992, the parameters of debate shifted dramatically when then-President Bush issued the "Kennebunkport Order" under which all Haitian boats would be interdicted by the U.S. cutters and their passengers returned directly to Port-au-Prince with no prior screening for asylum seekers.<sup>19</sup> With the May 24 order, the Bush Administration abrogated the 1981 bilateral agreement with Haiti. The current policy is based on a unilateral action that lacks the formal consent of the Haitian government.

In this way, the Bush Administration solved the U.S. refugee "problem" through a policy of containment that has curtailed the flight, and the rights, of potential refugees. President Clinton inherited this policy, and, swallowing his pre-election aversions, fine-tuned it by blockading the island.

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<sup>16</sup> Executive Order 12324, September 29, 1981. See Bill Frelick, "Haitian Boat Interdiction and Return: First Asylum and First Principles of Refugee Protection," U.S. Committee for Refugees, February 20, 1993, p. 6.

<sup>17</sup> L. Guttentag and L. Daugaard, "United States Treatment of Haitian Refugees: The Domestic Response and International Law," American Civil Liberties Union, *International Civil Liberties Report*, Vol. 1, No. 2, June 1993, p. 10.

<sup>18</sup> Refugees were "screened-in" based on a "credible fear" standard in order to pursue their asylum claims in the U.S. under the higher standard of a "well founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion." "Screened-out" refugees were then returned to Haiti. For a 1992 chronology of U.S. program, policy and legislative decisions affecting refugees and asylum seekers in 1992, see "Refugee Reports," U.S. Committee For Refugees, Vol. XIV, No. 1, January 29, 1993, p. 6.

<sup>19</sup> Executive Order 12,807, Fed. Reg. 23,133, May 24, 1992.

**Interdiction of Haitian refugees:**

1981 - Sept. 1991: 22,803  
Sept. 1991 - July 1993: 30,932  
(May 24, 1992 - July 1993: 5,826)

Total since 1981: 53,735

**III. IN-COUNTRY PROCESSING IN HAITI**

**A. Background**

The United States set up an in-country processing program (ICP) in Port-au-Prince in February 1992 to afford Haitians the option of seeking asylum without first taking to the high seas. At this time refugee screening was still taking place at Guantánamo. Since the May 1992 U.S. presidential order, ICP has been the only recourse for Haitian asylum seekers and has become a palliative for critics of U.S. policy. When he announced the temporary continuation of the Bush interdiction policy, President Clinton added that ICP would be expanded and improved, thereby better justifying forced repatriation.

This novel application of ICP is a first worldwide. In-country processing is part of a broader set of procedures contained in the 1980 Refugee Act and was not intended as a sole means of protection.<sup>20</sup> Similar programs in Vietnam, Cuba and the former Soviet Union were designed to facilitate the processing of chosen groups of refugees the U.S. was already predisposed to accept based on a concept of "presumptive eligibility."<sup>21</sup> In Haiti, on the other hand, the program is designed to cut off a mass influx of people the U.S. is predisposed to reject. What's more, it is the first case where ICP has been imposed on asylum seekers as a substitute for the ability to escape and seek safe haven before articulating individual claims.<sup>22</sup> In the case of Vietnam, the U.S. played a forceful role in encouraging countries of first asylum to accept boat people temporarily until they could be resettled.<sup>23</sup>

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<sup>20</sup> As noted in the *amicus curie* brief filed in *Sales v. Haitian Centers Council*, Joshua R. Floum (Attorney of Record) *et al* on behalf of Senator Edward Kennedy and former Representative Elizabeth Holtzman and other Members of Congress (hereinafter Members of Congress Amicus), "(T)he language, structure and legislative history of the Act, as well as years of executive application of the Act, demonstrate that Congress intended that the Act's three separate but concurrent forms of refugee protection comprise a comprehensive scheme." (p. 5)

<sup>21</sup> For example, Inzunza writes, "Although the statutory definition of refugee changed in 1980, until August 1988, all Soviet and some Indochinese refugee resettlement applications...were being found eligible for refugee status under what amounted to a presumption of eligibility..." (Inzunza, "The Refugee Act of 1980...", p. 418.)

<sup>22</sup> See, for example, Members of Congress Amicus p. 10: "The government's conduct in forcing Haitians back to Haiti and funneling them through section 207 overseas refugee processing violates the purpose of the Act to make these protections comprehensive and to reaffirm the principle of *non-refoulement*."

<sup>23</sup> "[A] similar in-country procedure for processing refugees was created at the height of the Vietnamese boat exodus. However, those who decided to flee by boat were never turned back because such a program existed. And the United States was vigilant in seeing that other governments would not summarily push back the boat people, demanding that they be given temporary asylum in



Furthermore, in other countries where ICP became part of a U.S. strategy for resettling refugees, the period of acute political upheaval was over, human rights problems were chronic and predictable and government policies were solidified. In this context, agreements were reached with the respective governments to facilitate the orderly processing of selected groups of people. In Haiti, political turmoil is at its height and more complicated yet, the U.S. does not even recognize the de facto government, much less enter into agreements with it. These factors effectively remove the safeguards which define the logic and efficiency of ICP in other countries. The driving force behind this plan seems to be the historically unshakable U.S. decision not to become a country of first asylum for Haitian refugees.

## **B. Operational Structure**

By definition, overseas refugee processing depends heavily upon executive discretion, and foreign policy considerations are part of the decision on what groups are considered of special humanitarian interest to the U.S.<sup>24</sup> In Haiti the State Department is the principal policy-making bureau behind ICP and directly manages it. It has been responsible for setting up the program, providing services to INS officers and contracting with the International Organization for Migration (IOM) and more recently with two non-governmental organizations.<sup>25</sup> A Refugee Coordinator manages the program under the auspices of the U.S. Consulate.

Operationally, the State Department's role encompasses all activities except for specific case adjudication. It is responsible for initial "vetting" or grading applications into priority categories for consideration by INS. It has contracted the IOM in Port-au-Prince to receive applicants, prepare asylum claims for adjudication and handle all out-processing. More recently, two non-governmental organizations (called Joint Voluntary Agencies, or JVs), World Relief (WR) and the United States Catholic Conference (USCC), have been contracted to run the newly opened regional centers in Les Cayes and Cap Haitien respectively.<sup>26</sup> The U.S. Embassy also serves as the main resource on country conditions, social and political organization and human rights data for the program, providing briefing materials and expert opinions.

The IOM staff of forty includes five caseworkers: three Haitian-Americans and two U.S. citizens of non-Haitian background. Caseworkers must be fluent in English, Creole and French and have a university degree. The other staff are form-fillers to assist with completion of standard INS forms, interpreters and administrative staff.

The INS has assigned an Officer in Charge (OIC) and an Assistant Officer in Charge (AOIC), both with one-year contracts. The eight interviewing officers responsible for adjudication are drawn from a pool of primarily examiners and inspectors who have received a three-week asylum training course and are on sixty-day rotations. A quality

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the region. Bill Frelick, "Clinton's Haitian Policy: Same Old Story," *St. Louis Post-Dispatch*, January 19, 1993.(Reprinted by U.S. Committee for Refugees.)

<sup>24</sup> Section 207 of the Immigration and Nationality Act "enumerates several factors that may be considered during the consultative process, including the impact on the "foreign policy interests of the United States." The statute, however, does not identify numerical limits, special humanitarian concern or a foreign policy impact for consideration in section 208 (a) asylum or section 243 (h) withholding decisions..." as cited in *Members of Congress Amicus*, p. 16.

<sup>25</sup> The International Organization for Migration is an intergovernmental organization that implements various programs worldwide for migrants and refugees.

<sup>26</sup> In other examples of overseas refugee processing, JVs work closely with the State Department and the INS to facilitate the orderly resettlement of refugees.

assurance team comprising an asylum corps officer and a legal advisor from the INS General Counsel's office are assigned on a thirty-day rotation and are responsible for case review of all decisions. The rest of the staff is administrative.

### **C. Recent Expansion**

A technical team including representatives from the State Department, the INS and the Congress traveled to Haiti last January to make recommendations for improving and expanding the program. These included measures to increase capacity and efficiency and the opening of two regional centers.

After a separate review of the program, the INS installed the quality assurance team described above. Another INS change was to draw on a pool of officers who had been through a three-week asylum law training course. According to the State Department and the INS, all of the recommendations were approved and have been implemented.<sup>27</sup>

### **D. Current Functioning**

The following is a brief outline of the process itself.

1. The applicant picks up a preliminary questionnaire from IOM, which is filled out and returned. (Questionnaires can also be obtained by requesting one by telephone or mail or by sending a friend.) If an applicant is illiterate or otherwise needs assistance, an IOM employee can help fill out the form. Unfortunately, this happens in a public and quite crowded reception area in full hearing of others present. Some people hire strangers to fill out the forms for them, while others seek help from family members. The first page of the questionnaire is biographical information. The second page requests information on organizational and political affiliations, government posts held and any arrests or problems with the authorities.

2. The application is vetted (prioritized) into an A, B or C category for adjudication by the Refugee Coordinator's staff.<sup>28</sup> Vetting is carried out based solely on the contents of the questionnaire. A vetting supervisor, who has been with the program since the beginning, reviews all vetting decisions.

"A" cases are described as high-profile, often involving an official of the Aristide government, a member of a targeted profession such as journalists, or a grassroots organization leader. The case is considered extremely urgent, and most involve past persecution.<sup>29</sup> These make up about five percent of the total vetted applications. "C" cases, about ten to fifteen percent of the total, are those in which (according to the questionnaire) the applicant has made no claim to asylum. The vast majority, over eighty percent of all cases, are "Bs". In many cases, the applicant has articulated some fear of persecution but the case may need to be developed or is not considered top priority.<sup>30</sup>

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<sup>27</sup> Unfortunately, the technical team's report and the follow-up report on the implementation of the recommendations have been classified.

<sup>28</sup> The vetting staff is generally composed of part-time contract employees, often relatives of U.S. Embassy personnel.

<sup>29</sup> Interview with Refugee Coordinator Luis Moreno, Port-au-Prince, June 14, 1993.

<sup>30</sup> The approval rate is thirty-three percent for A cases and five percent for B cases. This means that B cases account for a higher number of actual cases approvals.

All "A" cases are reviewed by the Refugee Coordinator, who will follow particularly sensitive ones. He will also occasionally glance through "B" and "C" cases. "A" cases are scheduled for an IOM and an INS interview the same day or the following day. Currently, "B" cases are receiving interview dates for between January and March, 1994. "C" cases are not scheduled for interviews.

3. At the time of the IOM appointment, the necessary forms are filled out and the applicant is interviewed. The purpose of the interview is to review the questionnaire with the applicant and elicit further information relevant to the application. The caseworker writes up the interview and prepares the file for INS.

4. The same day or the following day, the INS reviews the file, interviews the applicant through an interpreter, and makes a provisional decision. This decision is based upon whether the applicant has met the burden of proof and whether the applicant is considered credible.<sup>31</sup> The INS interviewer's notes are incorporated into the file along with the recommended decision. Cases are reviewed by the Assistant Officer in Charge and by the quality assurance team, which assesses whether the facts provided are consistent with the decision, whether a credibility judgement is adequately supported and whether legal issues raised by the case have been correctly resolved. A U.S. Embassy political officer and an ethnic affairs expert on the IOM staff are on site and serve as the principal resources on local conditions. The INS Resource Information Center (RIC) provides country condition information from a variety of governmental and non-governmental sources, including church, refugee and human rights groups.<sup>32</sup>

5. Out-processing: All approvals are considered conditional until out-processing has been completed. This includes a medical examination, obtainment of a passport (passports are required by the Haitian authorities in order to leave the country) and securing sponsorship by an individual or organization in the United States. For the passports, fingerprints must be obtained at the police station. Obtaining passports for all individuals included on an application may require getting a birth or marriage certificate for the first time.<sup>33</sup>

6. Motions to reconsider: If a case is denied, the IOM (or the JVA) receives a form letter indicating the category of the reason for denial. These letters are not case-specific. The applicant is then notified. The denial includes notice

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<sup>31</sup> The standard for asylum under the Refugee Act of 1980 is a "well founded fear of persecution...on account of race, religion, nationality, membership in a particular social group or political opinion." This includes, but is not limited to, past persecution. The adoption of this definition brought the U.S. into compliance with the international definition of refugee.

Regarding credibility, the INS "Basic Law Manual: Asylum" (from the Asylum Branch of the Office of the General Counsel, March 1991) states: "IAIn alien's own testimony may be sufficient, without corroborative evidence, to prove an asylum claim if that testimony is believable, consistent and sufficiently detailed to provide a plausible and coherent account of the basis of the claim." According to the UNHCR, "The applicant's statement must be coherent and plausible and not run counter to generally known facts." *Handbook on Procedures and Criteria for Determining Refugee Status*, January 1988, p. 48.

<sup>32</sup> A U.S. Embassy political officer in charge of refugee and migration affairs (and deputy refugee coordinator) has travelled extensively in Haiti following up on repatriates. To date, over 4,000 have been interviewed. See also, News From Americas Watch and National Coalition for Haitian Refugees, "Half the Story: The Skewed U.S. Monitoring of Repatriated Haitian Refugees," June 30, 1992. The human rights liaison, born in Haiti, is an IOM employee who works closely with the Refugee Coordinator and the INS. He is responsible for contacts with local organizations and handles off-site interviews. He is often consulted on sensitive cases as the resident expert on Haitian matters. He also informs ICP personnel through translation and summary of local press.

<sup>33</sup> Marriage certificates cost about fifty gourde or US\$4.17. The birth certificates vary between fifteen and sixty gourde or \$1.25 to 5.00. The required photographs cost seventy-five gourde or \$6.25 a set. The minimum and standard wage for a factory worker wage is fifteen G/day or \$1.25. (Based on an exchange rate of twelve gourde = U.S. \$1.00.) IOM, if asked, will defray some of the cost. World Relief said they would help pay if asked, but do not tell applicants about this service.

of the right to file a motion to reconsider. To file the motion the applicant writes a letter to the District Director of INS in Mexico explaining the reasons why the case should be reexamined. These letters can be translated by the IOM (or the JVA in the regional centers). More recently, a notice that the letter must be in English has been included on the denial letter. In general, the letter must present new information; few cases are overturned based on the premise that the original decision was faulty.<sup>34</sup> Approximately twenty motions to reconsider are received daily. The decisions are made in Haiti and signed by the INS Officer in Charge on behalf of the District Director. There is a delay of several months in most cases.

**7. Regional centers:** A regional ICP center opened in Les Cayes on April 26, 1993. It is run by World Relief under contract to the State Department.<sup>35</sup> Like IOM in Port-au-Prince, World Relief's mandate is to prepare cases for INS adjudication. Their expatriate staff is composed of a director and a deputy director. Four form-fillers, an accountant, a receptionist and four security guards have been hired locally. The centers are set up to prepare forty cases per week for INS adjudication. As currently designed, a team of two INS officers will spend two weeks per month in each regional center. An unfortunate feature of the Les Cayes center is its location just one block from the army garrison, where potential applicants are often held and beaten.

There are certain variations to the procedure in the regional offices. For example, an applicant in Les Cayes has the questionnaire vetted and forms filled out on the same day. Vetting is done by the JVA director. As of late June, "B" cases were being scheduled for interviews for sometime in July. "Cs" were not being scheduled. The director of World Relief told AW and NCHR that mechanisms were in place to transport an urgent case to Port-au-Prince, although no such case had yet occurred.

Two INS officers are scheduled to visit each regional center every two weeks. During those visits they hold interviews for up to 140 applicants. These files are taken back to Port-au-Prince for quality assurance and final adjudication. A decision is communicated to Les Cayes, at which time out-processing is begun for those approved. Medical examinations are completed locally. Fingerprinting, passport obtainment and sponsorship are handled through IOM in Port-au-Prince. Most often the approved applicant waits in Les Cayes for all of this to be completed. Few can afford to stay in Port-au-Prince for that length of time. World Relief says that they pay expenses if asked but do not volunteer such assistance.

In other countries where ICP is used, non-governmental organizations with experience in refugee processing and resettlement have worked closely with the State Department and the INS to prepare and process refugee claims. World Relief and USCC have only recently become involved in ICP in Haiti, taking charge of the two regional centers opened in April and May of this year. According to a USCC official, JVAs are experts on refugee issues and can use that knowledge to help people through the process.<sup>36</sup> However, a State Department official said that the JVA role is to provide "a service to the State Department, not to act as advocates."<sup>37</sup>

Both World Relief and USCC say that as long as ICP is a reality in Haiti, their participation can have a positive effect in the efficient and fair processing of Haitian refugees. However, they share the broader NGO perspective that not even a new and improved ICP is a substitute for the right to seek safe haven. Fr. Rick Ryscavage, Executive Director of the Catholic Bishops' Office of Migration and Refugee Services, recently stated that "[T]he processing center is no substitute for justice either within Haiti, or in the treatment of refugees who try to flee Haiti."<sup>38</sup>

<sup>34</sup> This has occurred, however, particularly when an NGO has gotten involved.

<sup>35</sup> The center in Cap Haitien opened in May and is run by the United States Catholic Conference.

<sup>36</sup> Interview with Shep Lowman, Washington D.C., June 9, 1993.

<sup>37</sup> Interview with Ken Foster, Refugee Program, State Department, Washington D.C., June 9, 1993.

<sup>38</sup> U.S. Catholic Conference, "Church Agency Disappointed at Supreme Court Ruling Upholding Administration's Decision to Return Haitian Refugees," press release, June 22, 1993.

**Available Data on ICP Caseload  
June 1, 1992 - July 30, 1993**

| <b>Dates</b>                              | <b>Cases vetted (#)</b> | <b>Cases adjudicated (#)</b> | <b>Cases approved (#)</b> | <b>Approval rate (%)*<br/>(%)**</b> | <b>Cases entered US (#)</b> |
|---|-------------------------|------------------------------|---------------------------|-------------------------------------|-----------------------------|
| <b>Jun 1-Jul 1, 1992</b>                  | <b>1337</b>             | <b>109</b>                   | <b>12</b>                 | <b>11<br/>0.9</b>                   | <b>2</b>                    |
| <b>Jul 1-Aug 3, 1992</b>                  | <b>898</b>              | <b>394</b>                   | <b>26</b>                 | <b>6.6<br/>2.9</b>                  | <b>7</b>                    |
| <b>Aug 3-Sep 1, 1992</b>                  | <b>727</b>              | <b>575</b>                   | <b>39</b>                 | <b>6.7<br/>5.3</b>                  | <b>1</b>                    |
| <b>Sep 1-Oct 2, 1992</b>                  | <b>666</b>              | <b>557</b>                   | <b>27</b>                 | <b>4.8<br/>4.0</b>                  | <b>11</b>                   |
| <b>Oct 2-Oct 30, 1992</b>                 | <b>423</b>              | <b>331</b>                   | <b>7</b>                  | <b>2.1<br/>1.7</b>                  | <b>0</b>                    |
| <b>Oct 30-Nov 27, 1992</b>                | <b>436</b>              | <b>216</b>                   | <b>12</b>                 | <b>5.5<br/>2.8</b>                  | <b>20</b>                   |
| <b>Nov 27-Jan 1, 1993</b>                 | <b>318</b>              | <b>223</b>                   | <b>26</b>                 | <b>11.6<br/>8.2</b>                 | <b>12</b>                   |
| <b>Jan 1-Jan 31, 1993</b>                 | <b>320</b>              | <b>166</b>                   | <b>16</b>                 | <b>9.6<br/>5.0</b>                  | <b>16</b>                   |
| <b>Jan 31-Mar 28, 1993<br/>(2 months)</b> | <b>4210</b>             | <b>650</b>                   | <b>99</b>                 | <b>15.2<br/>2.4</b>                 | <b>n/a</b>                  |
| <b>Mar 28-Apr 30, 1993</b>                | <b>4315</b>             | <b>1173</b>                  | <b>26</b>                 | <b>2.2<br/>0.6</b>                  | <b>111</b>                  |
| <b>Apr 30-May 27, 1993</b>                | <b>1318</b>             | <b>596</b>                   | <b>39</b>                 | <b>6.5<br/>3.0</b>                  | <b>50</b>                   |
| <b>May 27-Jul 2, 1993</b>                 | <b>2168</b>             | <b>855</b>                   | <b>91</b>                 | <b>10.6<br/>4.2</b>                 | <b>61</b>                   |
| <b>Jul 2-Jul 30, 1993</b>                 | <b>2259</b>             | <b>850</b>                   | <b>35</b>                 | <b>4.1<br/>1.5</b>                  | <b>69</b>                   |
| <b>Total # cases</b>                      | <b>19,395</b>           | <b>6,695</b>                 | <b>455</b>                | <b>6.8<br/>2.3</b>                  | <b>368</b>                  |
| <b>Total # persons</b>                    | <b>34,171</b>           | <b>7,947</b>                 | <b>1,243</b>              | <b>15.7<br/>3.7</b>                 | <b>937</b>                  |

\* Figure represents percentage of adjudicated cases.

\*\*Figure represents percentage of vetted cases.

Source: Compiled from cumulative figures from the State Department. The methodology employed, as well as all findings, should be transparent and open.

#### **IV. A CRITICAL ASSESSMENT OF THE ICP PROGRAM**

Since its inception, ICP in Haiti has come under severe criticism from human rights groups and refugee advocates. In prior reports on Haiti, AW and NCHR have pointed out many inadequacies of the policy in general and of the ICP program specifically.<sup>39</sup> Nevertheless, it is of particular concern that the recent expansion and streamlining of the program under the Clinton Administration has led U.S. officials to tout it as providing "complete coverage" and to see it as a measure which mitigates and justifies the policy of forced return.<sup>40</sup>

The authors recognize the serious efforts made in recent months by individuals involved in the program to make it more efficient and "user-friendly." It does appear that the program has improved in several areas since the technical team visit in January. These include:

- 1. Expedited processing of Priority A cases: Exceptionally urgent cases can now be turned around in approximately two weeks including the out-processing.**
- 2. Quality assurance: By using quality assurance officers, including some with prior experience in Guantánamo, adjudication decisions are being reviewed systematically by a General Counsel's office attorney and a trained asylum officer.**
- 3. Use of interviewing officers who have attended a three-week asylum training program.**
- 4. Training of IOM staff: Attempts have been made to address the complicated problem of staff/applicant interaction and assure quality and standardization of interview write-ups.**
- 5. The recent opening of two regional centers and the use of JVAs to run those centers.**

Nevertheless, these improvements have done little to ameliorate a number of basic shortcomings. These are primarily a result of conceptual inconsistencies, which stem from substituting ICP for traditional self-help remedies such as the ability to flee.

##### **A. The Central Role and Biased View of the State Department**

The ICP program is based on the State Department's premise that the number of genuine asylum seekers is actually quite small. A State Department official involved in setting up the program voiced what seems to be the common belief that "most Haitians are economic migrants; it diminishes our program worldwide if we accept economic migrants."<sup>41</sup> Furthermore, as stated above, the reason that ICP became the antidote for the Haitian refugee problem in the first place was a desire to keep the numbers admitted to the U.S. to a minimum.

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<sup>39</sup> See generally, *Motion for Leave to File Brief Amicus Curiae and Brief of Human Right Watch, Amicus Curiae*, in Support of Respondents, *McNary v. Haitian Centers Council* (later changed to *Sales v. Haitian Centers Council*), October term, 1992 and AW and NCHR, "Half the Story," New York, June 30, 1992.

<sup>40</sup> Interview with Ken Foster. Assistant Attorney General Webster Hubbell is quoted saying, "Interdicted boat migrants who fear political persecution will be afforded meaningful opportunity for refugee processing in Haiti." (Editorial, "Gone Under a Second Time," *Miami Herald*, June 22, 1993.)

<sup>41</sup> Interview with Ken Foster.

**Ceiling determinations are limits on refugee admittance, made by the Executive branch. They are often made independently of specific country conditions and do not lend themselves to responding to crises. The ceiling for Latin America for fiscal year 1993 was 3,500, of which 500 were allocated to Haiti. This decision was made in August 1992, in the midst of widespread human rights abuses and three months after the Kennebunkport Order made ICP the only option available for Haitians.<sup>42</sup>**

**Furthermore, refugees outside the United States in general have far fewer due-process rights than asylum seekers who have made it to U.S. shores, and admission is much more discretionary. Although U.S. refugee law, in contrast to international refugee law, does include the concept of a refugee still in his or her own country, there is an increased sense that any approvals are tantamount to altruism. In refugee processing the officer makes a final decision, there is no judicial or administrative review and the applicant bears a greater burden of proof.**

**U.S. Embassy personnel or IOM contract employees are the principal resources for IOM and INS interviewers.<sup>43</sup> The State Department official interviewed warned that one should not "take people's statements at face value. Past reports such as those put out by the American Immigration Lawyers Association, the Lawyers Committee for Human Rights, Amnesty International etc. contain lots of hearsay. We investigate the cases."<sup>44</sup> The fact that this view is being conveyed within the program, certainly undermines the value of having non-governmental human rights material made available to ICP staff. For example, an asylum officer recently assigned to the quality assurance team told AW and NCHR in Haiti that at least some INS personnel consider reports from human rights NGOs and the United Nations/Organization of American States International Civilian Mission (UN/OAS Mission) totally unreliable.<sup>45</sup>**

**Furthermore, the State Department view of the human rights situation in Haiti seems to vary depending on who is asking. The most recent State Department report on country conditions in Haiti stated:**

**Haitians suffered frequent human rights abuses throughout 1992 including extrajudicial killings by security forces, disappearances, beatings and other mistreatment of detainees and prisoners, arbitrary arrest and detention, and executive interference with the judicial process...<sup>46</sup>**

**However, a May 7, 1993 State Department advisory opinion in the case of a Haitian popular-movement activist applying for asylum in the U.S. gave quite a different analysis of the situation:**

**During 1992, the level of political violence has been considerably reduced...Despite Haiti's violent reputation, it is possible for many people to find safe residence in another part of the country...We do not believe the fact that an ordinary citizen is known to support or to have supported President Aristide by itself puts that person at particular risk of mistreatment or abuse.**

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<sup>42</sup> There is no ceiling for asylum seekers in the U.S. The ceiling for overseas refugee admissions from Haiti for fiscal year 1993 was 500. Although that number has been surpassed and 1,000 unallocated slots were assigned to Haiti, the fact remains that a ceiling is in place affecting the number of Haitians who will eventually be admitted.

<sup>43</sup> A review of asylum claims in the U.S. by Harvard University's National Asylum Study Project shows a heavy reliance by INS asylum officers on State Department resources, according to the Study Coordinator.

<sup>44</sup> Interview with Ken Foster.

<sup>45</sup> The officer, T.J. Mills, was later suspended from the program.

<sup>46</sup> Department of State, *Country Reports* (for 1992), p. 421.

**Under the heading "False and Exaggerated Claims by Previous Returnees," the opinion goes on to say:**

**...[I]nvestigations made by U.S. Embassy officers there indicate that many of the reports made by asylum applicants of arrests, killings and intimidation are exaggerated, unconfirmable or false...<sup>47</sup>**

**This view suggests a bias against Haitian asylum seekers by implying that if some have lied, then many probably lie.**

**In contrast, the June 3, 1993 report by the UN/OAS Mission stated as follows:**

**The most serious and numerous human rights violations...involved arbitrary detentions, systematic beatings and torture perpetrated by members of the armed forces or persons operating at their instigation or with their tolerance. The Mission has also been informed of cases of arbitrary executions and deaths following torture inflicted while in detention.**

**As indicated below, these violations of the right to life and integrity and security of person are intended primarily to restrict or prohibit the exercise of the freedoms of opinion and expression, assembly and peaceful association. Unfortunately [the report] provides only a partial picture of the extent to which human rights violations in Haiti are widespread and systematic.<sup>48</sup>**

**More recently, in an August 11, 1993 press release, the UN/OAS Mission expresses its grave preoccupation at the numerous violations of human rights in Haiti. In particular, the Mission condemns the arbitrary executions and suspicious deaths which have reached alarming levels in the area of Port-au-Prince, where 36 cases have been identified since July 1st.**

**The targets of these grave human rights violations are members of popular organizations and neighborhood associations, but also simple citizens who had the misfortune to find themselves in the path of the killers.**

**...Attacks on freedom of association and expression continue, as well as violations against personal security and physical integrity.<sup>49</sup>**

**The U.S. Embassy's political officer in charge of human rights was reluctant to talk on the record to AW and NCHR about human rights issues. However, she painted a picture of random, undirected violence and general lawlessness merely tolerated from above, as opposed to the targeted, patterned and strategic repression, which includes a sense of chaos and lawlessness, that is reported by both local and international human rights groups.<sup>50</sup>**

## **B. Political Isolation Weakens the Program**

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<sup>47</sup> According to the Harvard National Asylum Study Project, this kind of opinion is typical of Haitian cases.

<sup>48</sup> As of May 1993, the UN/OAS Mission had 141 international staff members of which eighty-six were deployed in regional teams around the country and twenty were in training.

<sup>49</sup> As translated by the Washington Office on Latin America.

<sup>50</sup> Interview with Ellen Cosgrove, U.S. Embassy, Port-au-Prince, June 16, 1993.



The ICP program is isolated from organizations that could strengthen it by serving as resources. The U.S. policy of forcibly returning Haitian refugees is widely considered to be discriminatory and ultimately in violation of principles of international law. As a centerpiece of this policy, the program has had little contact with the UN/OAS Mission, the UNHCR or local human rights groups which are the real experts on local conditions. A UN/OAS Mission official said, "The Embassy had, until recently, not sought out contact with the Mission. Contact has been minimal."<sup>51</sup> While some private human rights groups assist individuals applying to the program on an *ad hoc* basis, they do not encourage it. Furthermore, they distrust the program's motives and are quick to point out its inadequacies.

### **C. No Safe Haven Component is Available**

The most obvious weakness of the ICP program is that there is no safe haven component for asylum seekers. This means that they do not enjoy even the temporary protections and security to which asylum seekers are entitled under international law.<sup>52</sup> The State Department official interviewed told the authors, "We don't provide safe haven...So far it hasn't been an issue because people can call, send letters, access a church group."<sup>53</sup> Nevertheless, ICP applicants have been persecuted while awaiting final resolution of their cases. The Refugee Coordinator stated, "No cases tie in harassment, beatings or killings to the refugee program."<sup>54</sup> However, that distinction is quickly blurred, since applicants with genuine claims apply to the program precisely because they are at risk.

The authors were able to document several cases of persecution during early June 1993, involving ICP applicants.<sup>55</sup>

One case reported confidentially occurred some time during the first two weeks of June. It involved a young man who had filled out a preliminary questionnaire to apply for asylum, but never made it back to his interview. When he left the ICP locale he was arrested and taken to a Port-au-Prince police station. He was kicked and beaten. Someone who knew him helped him get released after at least one day and night in prison.<sup>56</sup>

In Les Cayes, the problem is magnified by the small-town, everyone-knows-everyone atmosphere: "Claude" is an Aristide supporter and activist. He was president of an election bureau during the 1990 presidential elections, and he collaborates with grass-roots organizations. He volunteers with the local Institute for Social Welfare and Research doing AIDS education. He has a long history of problems with the local authorities, particularly with one government delegate, which he says began due to his work during the

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<sup>51</sup> Interview, Port-au-Prince, July 1993.

<sup>52</sup> For example, the UNHCR states that in cases of mass influx, temporary refuge should always be provided. See "Conclusions of the International Protection of Refugees" adopted by the Executive Committee of the UNHCR Programme, Office of the UNHCR (Geneva: 1980), p. 49.

<sup>53</sup> Interview with Ken Foster.

<sup>54</sup> Interview with Louis Moreno, Port-au-Prince, June 14, 1993.

<sup>55</sup> Real names are not used in the following testimonies except where stipulated, in order to protect the sensitive situations of our informants. In some cases, specific dates and places have been eliminated for the same reason. All interviews were carried out in Port-au-Prince during the week of June 13-20, 1993.

<sup>56</sup> Interview with a Haitian source close to the ICP program on the condition of confidentiality, Port-au-Prince, June 17, 1993. Hereinafter referred to as a confidential Haitian source.

1990 elections. He was first arrested in August 1992 and briefly detained. On November 27, 1992, he was harassed, threatened and chased by the same delegate and two armed men in civilian clothes. A few days later, on December 1, he was detained again and jailed for six days for being Lavalas.<sup>57</sup> On December 31, the delegate threatened him with arrest in the street. When passersby protested, he was left alone. On January 6, 1993, the delegate arrested him, and he was taken to the police station. He was threatened with death, accused of being Lavalas, anti-army and a thief. On January 7 his captors decided to make a formal complaint on charges of theft, criminality and morally assaulting the authorities. He was imprisoned at the Les Cayes military headquarters. The public prosecutor ordered him released after six days under "provisional liberty" status. He stopped living in town and lived hiding from then on. On April 27 the delegate saw him again and said "It's you; you're under arrest." He jumped in a taxi and went to the office of the UN/OAS Mission. The World Relief office for ICP had opened that same day in Les Cayes. He went there to apply and was given a questionnaire. He was interviewed on May 4 and received notice of conditional approval on May 21. On June 1 he was arrested by the military at the request of the same government delegate, who said he was going to have him shot. He was released on June 4 after U.S. Embassy intervention. As of June 20, he was still in Les Cayes waiting for out-processing to be completed. He asked the AW and NCHR to intervene to expedite his case. He said he was afraid and living in hiding.<sup>58</sup>

"Jean" is a thirty-eight-year-old carpenter and furniture maker from Les Cayes. He has been a member of a number of local popular organizations, among them the Assemblée Populaire Nationale and the Union for Change. Prior to the coup he had been arrested and tortured in 1988 under General Henri Namphy's regime. He has been tracked and harassed by the army since the coup because he was a known activist and because he filed a complaint against the official responsible for his torture in 1988. His most recent problems have been with a local government delegate. On several occasions in December 1992 and January 1993 he was threatened and harassed by the delegate. Beginning in January, police and soldiers began arriving at his house. At that time, he moved to another neighborhood, only visiting his home in the daytime. He knows that military auxiliaries known as *attachés* frequently come to his house at night. After receiving encouragement from a friend, he decided to apply for political asylum. He was hesitant to go since the office was located just up the street from the military headquarters, but his friend explained how to check out the area and then go in. He applied on May 20, was interviewed by World Relief on June 3 and was scheduled for an INS interview on July 1. Two weeks before that interview, at about 7:30 p.m. on June 18, two soldiers in civilian dress came to his house just as he was arriving. He went inside, and they told him to come out and talk to them. He responded that he was in his own house. They yelled that he was Lavalas and he responded, "Yes I am, and I have a right to be." They told him that they were going to find a way to finish him off. Among other things, they said that when his "Papa Aristide" came back they were going to leave a lot of people "on the ground." They left saying they were coming back with the police. He immediately called the UN/OAS Mission, and two representatives went to his house. The men did not come back, but his wife reported that the same two men had been to the house on two occasions earlier that day and seemed to be waiting for him to show up. The next day, he told AW and NCHR that his wife was packing up the house, now too afraid to continue living there herself.<sup>59</sup>

If a conditionally approved individual is found to be HIV-positive, the question of protection becomes even

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<sup>57</sup> *Lavalas* is the Creole word meaning "landslide"; as used colloquially, it refers to the broad-based popular movement that elected President Aristide.

<sup>58</sup> Interview, Les Cayes, June 19, 1993. Americas Watch and NCHR expressed concern about this case to the Refugee Coordinator and World Relief. The delay was due to the fact that the required passport had not yet been issued.

<sup>59</sup> Interview, Les Cayes, June 19, 1993.

more serious. These applicants must file a waiver which is granted at the discretion of the Attorney General, in order to be allowed admission into the United States.<sup>60</sup> The added aggravation with ICP is that the person must wait, like a sitting duck, in Haiti, even though he or she has been officially recognized as having a well-founded fear of persecution (or indeed of having suffered persecution). According to IOM, several waivers had been filed in 1993 but were still pending as of June. However, in September, the INS office in Washington reported being unaware of any waivers pending.

AW and NCHR are greatly concerned about one particular case. The applicant was kidnapped at gunpoint and detained for several days at an unknown site, tortured and found dumped on the street days later. His application for political asylum was conditionally approved rapidly, given the gravity of his situation. He was then found to be HIV-positive. In April, he applied for a waiver through the ICP program. Five months later, in September, it was discovered that his application had never left Port-au-Prince due to an administrative delay over a form. AW and NCHR brought the case to the attention of the ICP staff. Meanwhile, the conditionally-approved applicant and his family remain in Haiti at serious personal risk.

#### **D. Operational Deficiencies**

By nature and by design, the number and type of people receiving the reasonably expedited processing that asylum seekers require are drastically reduced, and the fair and consistent adjudication of claims is sabotaged. There are examples of this at every stage of the process.

**The system is overloaded.** This is perhaps unavoidable, given the desperate need of so many Haitians and the fact that all avenues of non-immigrant entry to the U.S. are closed to most people. Those who wish and need to leave for a variety of reasons try the program. This "magnet effect" can impede genuine asylum seekers from receiving a fair hearing and many might be getting lost in the crowd. One international refugee expert said, "It becomes seen as an immigration office, which limits refugee access."<sup>61</sup> Large numbers of economically motivated applicants may also contribute to the perception, held by some U.S. officials, that most Haitians are economic migrants. The opinion of the Haitian source close to the program was that "INS's first impression of people is that they are garbage, beggars. They are seen as economic refugees from the start."<sup>62</sup> The quality assurance officer recently expelled from the program reported that a prevalent view among INS personnel is that most applicants are lying.

**The use of local Haitian staff is problematic.** Early criticism of the program focused on the use of Haitian staff in all stages of processing. All of the IOM reception, interpreter and form-filling staff are Haitian. (Three caseworkers are Haitian-Americans.) Problems such as disrespectful treatment of applicants from a different social class and political perspective have been reported. The confidential Haitian source told AW and NCHR of an applicant who apparently recognized one interpreter as having been involved in killings in his home town. "Haitians have learned not to trust Haitians," said this source, "and Haitians have learned not to talk politics."<sup>63</sup>

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<sup>60</sup> According to experts at the Centers for Disease Control, all refugee applicants are screened for HIV and other diseases such as tuberculosis. HIV-positive approved asylum applicants must obtain a waiver, and these can delay an inordinately long time. An applicant must show, among other things, that his or her medical expenses will be covered at no cost to the government.

<sup>61</sup> Interview, Port-au-Prince, June 15, 1993. The official spoke on the condition that he not be identified.

<sup>62</sup> Confidential Haitian source, interview in Port-au-Prince, June 17, 1993 (See note 49).

<sup>63</sup> Ibid.

The State Department and IOM recognize and have made efforts to overcome this problem through training, including a recent weekend seminar which provided pointers on how to interview an applicant and sensitivity training. Nevertheless, this dynamic continues to make it difficult to create an atmosphere of trust necessary to ensure fairness in access and adjudication of claims.<sup>64</sup>

**The vetting process is inadequate.** Screening based solely on a written questionnaire, without guidance about the process and without the opportunity to see or speak with a U.S. official, is blatantly unfair given the nature of the information involved and the characteristics of Haitian culture.<sup>65</sup> A State Department official interviewed felt that "Haitians are very open people." On the contrary, the confidential Haitian source interviewed said, "You really have to dig to get information from a Haitian. The burden of proof is heavily on the applicant." If an applicant needs help in filling out the application, an IOM staff person may assist. However, the NCHR observed this taking place in the waiting area, with no privacy, and conversations can be easily overheard. Some applicants pay someone to fill out the form for them. In those cases they may not even know what has ended up on the application. Thus, some asylum seekers may be unable or unwilling to articulate their case adequately, before being vetted into a B category that will mean an impossibly long wait or the C category which is tantamount to being ineligible to continue the process.

The B category itself is used as a catch-all between cases which are urgent or high-profile and cases where no claim to asylum is apparent from the questionnaire. Logically, the well-founded fear standard also falls between those two extremes, since the A category requirements are much higher than the asylum standard.<sup>66</sup> For example, according to the Refugee Coordinator, "Most A cases are past persecution."<sup>67</sup> While it is reasonable to assign priority to urgent or high-profile cases for expedited treatment, a large number of others with potentially solid, albeit less dramatic, claims end up being deferred for an inordinately long time. Assuming that these applicants can wait for six months before they even see a U.S. official makes a mockery of their situation. The fact that delays are common to the program in other countries, far from a justification, is further proof of ICP's inadequacy in the context of Haiti.<sup>68</sup> The following case is illustrative:

Rodrigue Normil is a thirty-three-year-old artist and activist who was arrested on January 20, 1992 in Grande Goave, his hometown. He believes that the reason for arrest was his brother's involvement in an organization accused by the army of involvement in the September 30, 1991 burning of an army post there. His brother was in hiding, and Normil was arrested in his place. He was severely beaten during his time in prison. He was released after twenty-two days without any legal process having taken place. He went into hiding, eventually moving to Port-au-Prince. On May 6, 1993 he approached IOM to apply for political asylum. He was given an initial interview date of December 3, 1993, a typical time lapse for a B case. On June 4, 1993 he decided to try to return to Grand Goave. He arrived there and was on his way to his house when three men in civilian dress stopped him and told him to hand over his weapon. He said he didn't carry a weapon. Two of the men were armed. They took the letter from IOM and said they were going to send it to Port-au-Prince police chief Michel François so that he would know that Roland was trying to leave the country after

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<sup>64</sup> JVA's are concerned that in the regional centers this problem may be even more acute because of the small-town dynamics. For example, USCC wanted to use expatriate staff but found the cost prohibitive.

<sup>65</sup> For example, Burmese refugee applications are vetted only after an interview carried out by a JVA.

<sup>66</sup> This is also the case with the lower, credible-fear standard which was used in Guantánamo to "screen in" Haitian refugees to the U.S. to pursue their asylum claims.

<sup>67</sup> Interview with Luis Moreno.

<sup>68</sup> In general, see Inzunza, "Refugee Act of 1980."

having burned down the military post. He was forced into their pickup, blindfolded and beaten, then taken to a cell where he spent three days. On the third day he was taken somewhere else, where he was held for eight days, constantly blindfolded. He was given a piece of bread with sugar on it once a day. Once he was brought a drink which turned out to be urine. After eight days he was taken out and abandoned, still blindfolded. He still has health problems including pain in his ears and the chest where he was beaten many times.<sup>69</sup>

It must also be noted that both IOM and INS staff processing a particular applicant know the vetting category from the start, as it is prominently featured in the file. Furthermore, in C cases the State Department is, in practice, making a final decision, based on a written questionnaire. Consequently, a considerable amount of screening is taking place before a face-to-face interview of any sort and before an INS official steps into the picture.

### **E. Inconsistency in Adjudication**

The two key elements of asylum adjudication are the correct application of the standard and a credibility determination. The creation in 1990 of a special INS asylum corps responsible for adjudication is tribute to the difficulty involved in the fair and equitable processing of claims. The difficult question in the Haitian context becomes, What is the sieve through which you sift thousands of people with potentially worthy claims?

**Applying the standard for asylum and determining credibility.** The human rights director for the UN/OAS Civil Mission said, "Obviously there is a huge number of people in fear of persecution--people are living in hiding at different levels."<sup>70</sup> An INS quality assurance official interviewed said, "Everyone has a well-founded fear -- maybe not on account of [the reasons stipulated in the asylum regulations]. It is very troublesome to get at people who fit; there are many people at risk. If a person is just scared but nothing has happened to them, that's the first cut. We look for persistence in the persecution, someone who has had a problem over time." The confidential Haitian source interviewed said, "There is a category of people who use ICP as a way out, but I think real cases are being bypassed. If you don't have proof, you most likely will be denied. It sometimes seems set up to make even good cases have a hard time getting asylum."

In Haiti, this challenge is magnified considerably by the following factors:

- 1. Interviewing officers are not drawn from the specially trained asylum corps and often have no prior experience with interviewing techniques, asylum law and case adjudication.**
- 2. Interviewing officers are on sixty-day rotations, during which time they are under strong pressure to complete at least eight cases per day including interviews with interpreters and case writeups, among other tasks.**
- 3. The above serve to limit officers' ability to familiarize themselves with country conditions and Haitian culture and to research individual cases.**

In a study of adjudication of asylum claims in the U.S., the Harvard Law School National Asylum Project found a high degree of variance from officer to officer. Furthermore, in half of the asylum decisions reviewed, errors in law or analysis were detected. This is among a well-trained asylum corps whose sole task is asylum adjudication. In Haiti, where no asylum corps officers are directly involved in adjudication, inconsistency is a logical result.<sup>71</sup>

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<sup>69</sup> Interview with NCHR, June 22, 1993, summarized from interview in French.

<sup>70</sup> Interview with Ian Martin, Port-au-Prince, June 15, 1993.

<sup>71</sup> Telephone interview with Sarah Ignatius, Study Coordinator, National Asylum Project, September 16, 1993. According to Ignatius,

An important concern voiced by several sources close to the program was the difficulty of making a credibility determination under the current circumstances. One INS official estimated that a negative credibility assessment could account for perhaps up to thirty to thirty-five percent of denials.<sup>72</sup> A government official close to the program said, "Credibility is so much harder than principles. My biggest concern is that someone will tell a true story and will be found to lack credibility. How much you know the system in Haiti is key to a credibility determination."<sup>73</sup> The confidential Haitian source interviewed, as well as others close to the program, generally felt that it was difficult for INS officers to acquire the local expertise necessary to assess credibility and apply the standards fairly.

**Quality assurance mechanisms.** Quality assurance officers (a legal advisor from the General Counsel's office and an asylum corps officer) are on only thirty-day tours of duty, and their role is primarily limited to case review. They do not play a role in training, nor do they routinely participate in interviews. In addition, quality assurance personnel report that they have not been well received by the core INS staff in Haiti.<sup>74</sup>

In an internal INS memorandum to the District Director in Mexico City dated April 20, 1993, obtained by AW and NCHR, the Officer in Charge in Port-au-Prince requested that the legal advisor and asylum officer of the quality assurance team be removed. "The presence of a 'legal advisor' here reporting to the General Counsel independent of operations reporting undermines my authority and disrupts the traditional chain of command." He added, "We do not at this time need the quality control officer...since my Assistant OIC...is now here and performing quality control...[R]eplacing [the previous officer] was entirely unnecessary and never discussed with either you or me."

The following excerpt from the memorandum raises serious concerns regarding the emphasis on production over quality and the attitude of INS officers toward Haitian applicants:

The on-site presence of a legal advisor places a hardship upon the interviewing officers in that they see the legal advisor as reviewing their work, looking for completeness, thoroughness, and in-depth questioning, while the Officer-in-Charge is pressing for production. Traditionally, refugee processing teams work hard all day and let off steam after work by gathering for a beer and laughing and joking about cases interviewed during the day. I might add that this is also good training. The seriousness of the asylum training, coupled with the watchdog style of certain Headquarters personnel, coupled with the on-site (even after hours) presence of a General Counsel representative has combined to hold such activity to a minimum.

In the same memo, the Officer in Charge emphasized the importance of the production requirement in refugee processing and indicated that the asylum training course required for all interviewing officers was good, but "focused too heavily on asylum and for the most part ignored refugee processing." The officers "have the perception that [1] the cases are so difficult and the quality requirements so strong that more than five cases per day per officer is

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asylum corps officers in the U.S. have a goal of adjudicating twelve cases per week, spending an average of three hours on each case. In Haiti, in addition to eight cases daily, INS officers must handle motions to reconsider, unscheduled cases such as "walk-ins," as well as other administrative tasks.

<sup>72</sup> The authors were unable to obtain data on specifics of the Haitian caseload from either INS or the State Department.

<sup>73</sup> Interview with a U.S. government official on condition of confidentiality, Washington D.C., June 8, 1993.

<sup>74</sup> Several U.S. officials privately confirmed the existence of strong tensions between quality assurance personnel and the INS adjudicating staff. The continuation of quality assurance is currently under evaluation by the INS.

impossible; (2) that every question, answer, hesitation, and body gesture must be thoroughly documented in a written decision; and (3) that failure to sufficiently document a written decision in accordance with the quality requirements would subject the interviewing officer to dire consequences of one kind or another."

More recently, T.J. Mills, a political asylum officer assigned to the quality assurance team in August, was suspended from the program after less than a week. He told AW and NCHR in Haiti that the reason for his suspension was that he questioned how case decisions were being made. Mills was very concerned about the basis upon which credibility determinations were being taken and believes that people truly fearing persecution were being denied. In a telling case he reviewed, a negative credibility determination was based on an applicant's use of the term *Ton Ton Macoutes*, since this paramilitary structure had been previously abolished. Mills said that he reviewed 120 cases during his short stay in Haiti, of which only two had been recommended for approval. He discussed several cases with an INS supervisory officer who, in his view, was uniformly hostile to his questions regarding some decisions. According to the INS Refugee Asylum and Parole Division, Mills's tour of duty was curtailed because it was discovered he lacked prior experience in case review at Guantánamo. The INS is investigating the matter.

There is a prevalent sense that the standard actually being applied is closer to the A category vetting requirements than the "well-founded fear" standard. Human rights groups reported that most applications eventually approved are either high-profile cases or victims of past persecution that is documented and often has been publicized. A staff person of the Centre Oecuménique des Droits Humains, a Haitian human rights group that provides assistance to victims of repression, said that sometimes people are persecuted but can't prove it. "This person would be arrested again or go into hiding. We can't help them because ICP won't accept them anyway."<sup>75</sup> A spokesperson of the Plateforme Haitienne des Droits Humains, a national coalition of nine human rights groups, expressed similar concerns. "Many people with real problems of persecution have been refused. We wonder if the real objective is to accept refugees. It seems they are accepting only those most close to the Aristide government or most vocal in denouncing the violence."<sup>76</sup>

Motions to reconsider do not constitute adequate administrative review of claims. They are lengthy letters written by the applicant, outlining the entire case. Letters of denial of asylum include notice that the applicant may file such a letter. However, according to the text, "The request to have a case reconsidered or a file reopened must be written (*doit être écrit*) in English or accompanied by an English translation." This is a patently unreasonable expectation in Haiti. The NCHR has received numerous requests to help translate letters, most of which they cannot accept.

The following two cases provide a stark illustration of the concerns outlined herein. They involve local popular organization leaders, both musicians, who fought to get political asylum. The first was successful after his case was widely publicized, and is now in the U.S. The other was not so lucky, and was killed weeks after his latest attempt to receive political asylum through ICP.

Ferleau Nordé, a twenty-seven-year-old musician and activist from the southern town of Dame-Marie, applied for political asylum in November 1992 when he fled his home after being arrested and tortured. His case was still pending in February 1993 when a story about him appeared in *The New York Times*. A short time later, his case was denied. It took a second article in *The New York Times* in March, as well as the intervention of organizations including

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<sup>75</sup> Interview in Port-au-Prince, June 16, 1993.

<sup>76</sup> Interview, Port-au-Prince, June 17, 1993. The Human Rights Platform researches and documents human rights abuses and disseminates reports nationally and internationally.

the NCHR, before his motion to reconsider was finally granted.<sup>77</sup>

Andrel Fortune was a twenty-nine-year-old local popular movement leader in Lascahobas. Like other activists, he had a history of harassment and problems, particularly because he was very outspoken at a time when freedom of expression is routinely punished. According to testimony he gave to the UN/OAS Mission prior to his death, he was arrested in May 1992 in Port-au-Prince with a companion, Roland David. Both were beaten, and the latter later died of his injuries. Since then, Fortune had lived in different levels of hiding. He applied for political asylum in Port-au-Prince in June 1992, one month after his detention. He was denied in July. In August he filed a motion to reconsider, which was also denied. In June 1993, three local activists were briefly arrested following an incident where the bridge to Lascahobas had been closed off and tires burned by demonstrators. Others, including Fortune, went into hiding. Fortune's mother feared he was on an army list to be arrested, and contacted the UN/OAS Mission, whose staff interviewed him at that time. In July, Fortune re-applied for political asylum. Soon after, his case was denied for the third time. The refugee coordinator for ICP told AW and NCHR that Fortune's asylum claims had been denied based on a negative credibility determination due to false statements he had reportedly made in his applications. Weeks later, on August 16, 1993, several Haitian soldiers went to his home and one of them shot Fortune in the back, killing him. Since then, his colleagues have gone into deeper hiding, and several have fled the area. The UN/OAS Mission considers the case a clear example of a politically motivated killing, and issued a press communiqué condemning this violation of the right to life, demanding a thorough investigation by the authorities.<sup>78</sup>

The difficulty in determining how cases are adjudicated and decisions are made is due in part to an unwillingness to open the process to evaluation. For example, neither the INS nor the State Department was able to make available specific data on applicants which would be helpful in evaluating the process. Information requested included demographic and geographical information on applicants as well as detailed monthly case statistics for each vetting category, reasons for denial, etc.<sup>79</sup>

Experienced non-governmental organizations find the program in Haiti less accessible than similar programs they are familiar with elsewhere. For example, they say that access to denied cases is important in order effectively to assist Haitians in applying through the program. According to several NGOs involved in refugee processing elsewhere, such access is (informally) standard procedure in Southeast Asia. An official at World Relief reported that they had requested, and were denied, permission to observe INS interviews, a privilege they had exercised while processing refugees from the former Soviet Union in Rome.<sup>80</sup> While such access seems to depend on the discretion of the INS Officer in Charge, the NGO view is that, given the difficulty and sensitivity of refugee processing in Haiti, they should have at least as much access as they enjoy elsewhere. So far this has not been the case.

**Out-processing creates delays and risks.** Out-processing of approved applicants prior to departure can involve delays as long as several months. According to the IOM director in Port-au-Prince, exceptionally urgent cases take one week to adjudicate and one week for out-processing. The majority of approved cases, however, are delayed four or more weeks, and AW and NCHR know of cases that have delayed months. The departure of "Claude," whose case is

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<sup>77</sup> Howard French, "In Hiding in Haiti, Dissident Despairs of U.S. Help," *The New York Times*, February 1, 1993 and French, "Haitian Dissident Loses Plea for U.S. Refugee Visa," *The New York Times*, March 4, 1993.

<sup>78</sup> UN/OAS Civilian Mission, Communiqué de Presse, Ref:/CP/93/30.

<sup>79</sup> It is not even clear exactly what information on applicants is being kept. However, it seems logical that a detailed data base would serve as an excellent source of information on patterns of repression in Haiti.

<sup>80</sup> This is ironic given that the filling-out of the initial questionnaire, which includes sensitive questions, is done in a crowded room.



described above, had been delayed nearly a month when he was interviewed in Les Cayes in June, even though in the interim he had been arrested, threatened with death, and released. According to World Relief, he was still waiting for his passport.

The fact that approved applicants must be fingerprinted and obtain a passport from the de facto authorities in order to leave the country is of great concern. At the very least, obtaining a passport can delay out-processing considerably. It is tantamount to requiring permission from your persecutor in order to flee the country. Two sources familiar with the program reported that since January, when a Haitian army deserter who had been approved for asylum was arrested at the airport by the de facto authorities, the U.S. Embassy has been "clearing" at least some cases with the authorities prior to departure. AW and NCHR were unable to get official confirmation of this. But the January incident raises important concerns related to ICP in the Haitian context.

According to testimony given to NCHR, Coracélin Williams deserted the Haitian armed forces and went into hiding in December, 1991 after helping two people escape instead of arresting them as ordered. He fled the country on May 24, 1992 and was returned by the United States. The second time, he made it to Cuba but voluntarily repatriated in January, 1993. He then applied for refugee status through ICP and was approved. On the day of his departure, he was arrested at the airport and held for three days. He was released after the U.S. government intervened in his behalf, and is currently residing in the U.S.

In a March 15, 1993 press release regarding the case, the Haitian Armed Forces claimed that Williams had been court-martialed *in absentia* for desertion.

No coordination has been made with the Haitian authorities, who were totally ignored. After the unfortunate and lamentable incident, the Immigration and Naturalization Service representative in Haiti, Mr. Sam Martin, visited General Headquarters, at which time he was informed of the potential implications...The Armed Forces of Haiti reaffirm to the American administration their will to cooperate within the parameters set down by our constitution, the laws of Haiti. The Armed Forces of Haiti hope representatives of the INS in Haiti will be more vigilant in their handling certain files in the future.<sup>81</sup>

#### **F. Representative Cases**

During the course of the present research, AW and NCHR interviewed a number of people whose cases indicate chronic deficiencies in asylum claims adjudication as described herein, including an improper emphasis on past persecution. In some cases, an initial denial was overturned later, when the applicants' worst (well-founded) fears became a reality.

In one case assisted by the NCHR, a denied applicant filed a motion to reconsider in August. The applicant was a member of a popular organization and had suffered a series of arrests and beatings since the September 1991 coup. The following is a summary of information submitted in the applicant's motion:

In October 1991 his house was shot at and his father and brother were savagely beaten and imprisoned by the army. The next day the applicant was arrested with two friends. He was badly beaten and imprisoned for nine days. He has lived in hiding in the mountains since January 1992. In April 1992 he was arrested again with other activists and forced to paint over slogans and graffiti throughout the town. He tried to leave Haiti in a small fishing boat in May, and was forced to return because of rough seas. Since he could not safely go home, he went to Port-au-Prince. He applied for asylum in June 1992. Less than two weeks later, one of his brothers was arrested and imprisoned for one day. In August, the applicant's request for asylum was denied. He tried to return home but left soon after when he found out the army was looking for him. He was arrested in September in a small town where he was staying. He was again

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<sup>81</sup> Press Release (in English), Grand Quartier Général, Forces Armées d'Haiti, Port-au-Prince, Haiti, March 15, 1993.

brutally beaten, tied, threatened with death. He was held for eighteen days and upon his release immediately left for Port-au-Prince. In October he wrote a letter of reconsideration to the ICP program. In April 1993 he received a refusal letter.

In addition to the four-page letter in his second, August motion to reconsider, the applicant submitted a newspaper article and a letter from the Ministry of Justice attesting to one of his arrests. This motion is still pending.

"Pierre" is a twenty-three-year-old student from Port-au-Prince. He is a member of a student organization known as the the Zafe Elev Lekol (ZEL). He was forced to leave his family home, stop attending school, live in hiding in another town since December 1992. On November 27, 1992, at 2:00 a.m., agents of the Service de Investigation et Antigang (known as Antigang -- a division of the Haitian militarized police) came to his home. He was there with his friend, "René," the latter's cousin, and other family members. Twenty men, some in uniform and others in civilian dress, surrounded the house and knocked on the door. They called Pierre by name, and he responded that he didn't have any reason to talk to the police. He finally went outside with the two friends, at which time the police started to beat him. They asked about René, not knowing that he was one of the two there with him. They asked him about other ZEL members while beating him. They searched every room in the house, finding photographs of Aristide and spray paint for graffiti. They tied his hands behind his back and did the same with his two friends and took them to the Antigang headquarters. During his incarceration, Pierre was beaten, taken to a known dumping ground to scare him, threatened with death and interrogated about ZEL activities organizing student demonstrations and so forth. Both Pierre and René spent a total of twenty-five days in prison, including seventeen in the Antigang headquarters and eight days in the National Penitentiary. They were released December 22 based on a December 18 court order. The charges, according to Pierre, were disturbing the peace, being Lavalas fanatics and criminal association. Both young men applied for asylum.<sup>82</sup> Pierre applied on March 2, 1993 and received a letter of denial on March 25. Point 10 on his denial letter was checked off, stipulating that "your testimony concerning the facts, actions and circumstances is inconsistent on important points and is deemed to be inadmissible." René's application was approved. Pierre was amazed because he said they had mistreated him even more than his friend. He wondered if it could have been because of the interpreter. In April, he wrote a letter asking for his case to be reconsidered. As of late June, no response had been received.

Hilton Etienne (his real name) is a thirty-eight-year-old man from Hinche, the capital of the Centre Department. He is a leader of the Ti Legliz or Christian base community, and a member of the Catholic Church's Justice and Peace Commission, a neighborhood committee and a literacy program. He first fled his home on October 6, 1991 when the military came to his house. They were looking for local organizers of a September 30 street demonstration. One entered and warned him that he was going to be arrested. He fled on foot and by bus to Port-au-Prince. In the ensuing months he tried to return to Hinche on two occasions. Both times he was forced to return to Port-au-Prince by continued army harassment. In April 1992, soldiers came to his house, forced the door and pointed a gun at his wife's head and stomach, asking where her husband was. They searched the house, stealing some money and a VCR. They returned later and arrested her. A neighbor was sent to tell him, and he left immediately. His wife spent one day in prison, at one point fainting from the stress. In early May 1992, he went to the U.S. Consulate to apply for asylum after hearing about ICP on the radio. He had several interviews during June and was denied asylum in early July. Between October and December he tried to go back to Hinche twice. Both times, the army came around his house looking for him, the second time searching his house and removing literacy materials. In February 1993, his house was searched by the military again. In March, he asked his wife and mother to talk to the UN/OAS Mission about his case. He then returned to Hinche

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<sup>82</sup> "Pierre" showed the authors a certificate of his ZEL membership and two newspaper articles attesting to the arrest and imprisonment of both young men.

but never slept at home. On April 28 at 2:00 a.m. soldiers forced the door of his house and arrested him. They hit him in the face, and he lost two teeth. He was tied up with a rope and hit around the head and eyes. His ears were boxed. He was taken to the army headquarters where the Djak was performed on him, and he was beaten 200 times with a stick.<sup>83</sup> En route to another location, he was beaten in the street, his left arm was broken and he was made to count as he was hit another hundred times. He briefly lost consciousness and was dragged by his captors before being locked up for one night. He was released on April 29, and went back to Port-au-Prince to a hospital. A priest from Hinche came and warned him to go to a private hospital because they were looking for him. His wife joined him and they lived in hiding in Port-au-Prince. (His case was publicized in several periodicals and on radio; consequently he cannot walk in the streets because he fears he would be recognized.) The NCHR assisted him in writing a letter of reconsideration which was approved in June. Two weeks later he was still waiting for the results of his medical examination and for his passport. His wife must stay behind to care for grandparents and children but she wants to move to Port-au-Prince.<sup>84</sup>

Célor Josephat (his real name), thirty-seven, is from Perodin, Petite Rivière de l'Artibonite. He has a wife and four children. He is a farmer by profession and a member of the Rassemblement Paysan Perodin (RPP), a local farmer organization. He is currently living in hiding in Port-au-Prince. On November 12, 1991 at about 3:00 p.m. soldiers came to his house to arrest him. They burned his house down. They told him it was because he was a member of the RPP and Lavalas. They asked him how many people he had burned, if [President] Aristide was going to come back and about the activities of Lavalas. Fifteen other members of his organization were arrested at the same time. He was not beaten in prison because his family paid money to the army so he wouldn't be mistreated. They paid 360 Haitian gourdes (about US\$30.00) so he wouldn't be beaten and another 360 Haitian gourdes for his release. (Those that didn't have money to give were beaten and didn't get released as quickly.) Upon his release he went to live in his mother's house. On January 16, 1992, he was on his farm when his wife warned him that the army had gone to his mother's house looking for him. He left the area immediately. He found out later that the local section chief (a local rural military authority) had asked the military to arrest all members of his organization. On March 14 he went to Port-au-Prince. He slept in front of St. Joseph's Church and finally worked out room and board with someone in exchange for work. In October he tried to return to his home and was arrested en route. He was beaten, and his ears were boxed. The soldiers walked on him, and he fainted. (He has a medical certificate dated October 27, 1992 which certifies that he was the victim of police brutality.) He went back to Port-au-Prince at the end of November, to a local NGO, the Centre Oecuménique des Droits Humains, and they provided medical referral and financial assistance. He went to NCHR for assistance and then applied for asylum through ICP. After five visits over a three-day period, he received a denial letter. He returned to the NCHR office with the letter. The staff assisted him in writing a motion to reconsider. As of July he was still waiting for a response.

According to Josephat, eleven other members of the RPP have also asked for asylum. One was approved and has left Haiti. Other applications are still pending. Some who were arrested after him and filed later were given January 1994 appointments. Americas Watch and NCHR know of at least one other RPP member who has received asylum after having similar problems and is due to leave Haiti soon.

Fritzion Orius (his real name), is a thirty-year-old journalist from Petite Rivière de l'Artibonite. He is married and has one child. He was a radio correspondent with Radio Haiti-Inter in his area and in Port-au-Prince. He

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<sup>83</sup> The "Djak" is a common form of torture involving tying the victim's arms behind the knees and beating the victim repeatedly. It is also common to make the victim count the blows; a miscount results in more beating.

<sup>84</sup> See also, Harold Maass, "Some repatriated Haitian refugees subjected to arbitrary arrest, torture," *The Miami Herald*, June 18, 1993.

was also a member of the local elections bureau during the September 1991 elections that brought President Aristide to power. After the coup, journalists like himself were seen as "outlaws." When a group of armed thugs went to his house and threatened him, he left town. Since then he has been moving around, living in hiding. While staying with a friend in a town south of the capital he applied for asylum at the U.S. Consulate in May 1992. He was given an appointment for the first week of June. He had several interviews, including form-filling sessions, during eight hours spent there. In a week he had heard nothing and called, only to be told to go pick up his denial letter dated June 15, 1992. He continued to live in hiding. He tried to go back to his home in February but didn't sleep at his own house. A group of police and attachés, two of whom were in uniform, went to his house looking for him. They found and savagely beat his twenty-year-old brother with machetes, sticks and clubs. (His brother had worked with the Information Ministry under the Aristide government.) He went back into hiding, living from town to town, unable to work. During this time, several of his fellow journalists had also had problems. Three had been arrested, severely beaten and spent a month in prison.<sup>85</sup> Friends warned him to leave, believing him to be in danger. He made several more attempts to go home and to visit his family, and each time he was threatened and harassed. After an incident where attachés attempted to detain him during one such visit, he contacted the Committee to Protect Journalists and decided to reapply for asylum. He filed a letter of reconsideration on Thursday June, 17, 1993 with the help of the NCHR.

He asked Americas Watch and NCHR to intervene in his case with the ICP program, and both organizations expressed their concern about his case directly to the Refugee Coordinator. Orius's motion to reconsider was refused in August.

On Monday, June 28, 1993 Mr. Vesnel Jean-François (his real name), a literacy worker and coordinator of a coalition of community organizations of Cité Soleil, was arrested and tortured by the Haitian military after they broke up a demonstration of about one hundred supporters of President Aristide. He was hospitalized in military custody, and released on July 1. Jean-François had applied for political asylum through ICP in Port-au-Prince in October 1992. His claim was denied. In March, he sought help from the NCHR to have his claim reconsidered and was again denied. He was finally accepted in August 1993.<sup>86</sup>

In the case of motions to reconsider, past persecution also seems key, as opposed to a "well-founded fear." The following cases are examples:

"Louis," a thirty-four-year-old member of a community association in a Port-au-Prince neighborhood, applied for asylum and was denied in June 1992. In October he filed a motion to reconsider which was rejected on January 12, 1993. On November 25, 1992, during the time his motion was pending, armed men in civilian dress went to his house. He was not home, and they searched the house saying they were looking for weapons. Then on January 31, 1993, little more than two weeks after his motion to reconsider was denied, soldiers from the Cité Soleil army post arrested him for being "pro-Aristide." He spent six days in prison. He filed yet another motion to reconsider on February 7, 1993 and is still waiting for a response.

The *Miami Herald* reported as follows:

Seraphin and his brother Caceus tried to flee by boat seven months after the coup, but were sent back. They then applied for refugee status through the U.S. Consulate in Port-au-Prince, as do about 20% of the refugees

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<sup>85</sup> Journalists have been particularly singled out for repression since the coup. It is one of the professions considered by the State Department to be "at risk" for purposes of placing an applicant in the "A" vetting category.

<sup>86</sup> See Pam Constable, "...and the beatings continue," *The Boston Globe*, July 6, 1993.

returned home. They were rejected. Caceus was badly beaten during his most recent arrest – his third – and grimaced in pain as he lay in his bed after his release. Shortly before his arrest in May, he went to the U.S. refugee application office in Port-au-Prince to ask that his case be reconsidered. Overloaded with applications, employees gave him an appointment. In October.<sup>87</sup>

## **6. Some Asylum Seekers Will Not Risk Applying**

By definition, no matter how well structured and managed, ICP cannot meet the needs of a significant group of asylum seekers who distrust the program or believe that they would put themselves or their loved ones in danger by approaching it in the current political climate. These may not be the highest-profile people, who by definition live more in the public eye. According to the international refugee expert interviewed, "The program lacks credibility, it is seen with suspicion, it is linked with the U.S. government position in general." Staff of local human rights groups claim the program is viewed with great skepticism by their clientele and the relentlessly targeted popular movement organizations. "People are discouraged and reluctant," according to staff of the Catholic Church's Justice and Peace Commission. "They know they are taking a chance. They see it as a waste of time."<sup>88</sup>

An INS asylum officer interviewed in Port-au-Prince said, "I wonder whether we're seeing the people with the best claims. We don't see [those in] deepest hiding. They are so afraid they won't come out. We don't know how bad things are." However, the State Department official interviewed told AW and NCHR that he and his colleagues "believe ICP is safer for real refugees...We think we're getting the most vulnerable."<sup>89</sup> The confidential Haitian source interviewed personally knew people in hiding who are "afraid to go there, afraid that what they say will haunt them."

The IOM and INS are willing to do off-site interviews in Port-au-Prince for those afraid to approach the program. But according to local human rights groups, this can draw dangerous attention to the applicant as well. The Justice and Peace Commission, an NGO in daily contact with people in hiding and victims of persecution, reported that in May, an IOM official went to Cité Soleil with a Haitian guide to conduct an off-site interview that their office had helped arrange. That night, *Zenglendos* (armed thugs) arrived at the house where the interview had taken place, frightening the entire household into hiding. The Justice and Peace staff knew of other individuals in hiding who would not apply.

Similarly, staff of the Centre Oecuménique des Droits Humains say that in their experience, there are many people who will not contact the program. They know of cases of people who "self-vet," even though they have been persecuted, because they know they don't have enough proof. One staff person told the story of two friends in hiding. "They are afraid to go to IOM, they are afraid of the process," he said. "They are two young people from Miragoane who think they must leave. They are members of the Organization to Defend the Interests of Nippé, a local popular organization. They have colleagues who have been arrested and others who have been killed. People in the area see them as 'Aristide fanatics.' They have been living in hiding since attachés broke up a meeting they were attending in a school and threatened them. They fear they will be arrested if caught."

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<sup>87</sup> Maass, "Some repatriated Haitian refugees subjected to arbitrary arrest, torture."

<sup>88</sup> Interview, Port-au-Prince, June 17, 1993.

<sup>89</sup> According to Inzunza, "Unfortunately, in most cases, those most in need of this legal remedy -- those most vulnerable to abuses and with least access to any viable alternatives -- are least likely to be able to take advantage of it. Recognizing the need for this kind of processing, we must also realize its inherent limitations." ("Refugee Act of 1980," p. 421.)

## **V. INTERDICTION, FORCED RETURN AND IN-COUNTRY PROCESSING**

New procedures have been implemented to assure that asylum seekers forcibly returned by U.S. Coast Guard cutters are smoothly incorporated into the ICP program. U.S. Embassy personnel continue to meet the cutters at the dock to monitor the return. Currently, an INS interpreter, explanatory audio cassettes and preliminary questionnaires are available on board the cutter. The questionnaires are vetted by State Department personnel before disembarkation, and asylum seekers are given an interview date.

On July 17, AW and NCHR observed the forced return of eighty-seven refugees by the *U.S.C.G.C. Tahoma*. It was anything but smooth. Present at the dock were the Haitian Red Cross, the U.S. Embassy, the UN/OAS Mission and the press. Haitian police and immigration officials swarmed the area.<sup>90</sup> U.S. Embassy officials initiated on-board vetting of the questionnaires. One official later told AW and NCHR that the cases were "mostly Bs, no As."

After disembarking, the returnees, including eleven children, were hustled into line by police officials. The Embassy had arranged for a woman in labor to be taken directly to a waiting Haitian Red Cross ambulance instead of having to go through the immigration process. She was questioned by police and immigration officials while waiting in the ambulance. Everyone else was taken to an immigration/police post at the pier for processing. Several of the returnees had their heads covered and hid their faces as journalists snapped pictures. A journalist from the government television station and other national and foreign press interviewed a number of the returnees.

Immigration processing included questioning, fingerprinting the adult males and a meticulous search of all of their possessions. The Haitian officials were brusque and insulting. One official held up a bag of diapers and box of feminine napkins and displayed them laughingly to the spectators before tossing them back in the plastic bag. The whole process was, as one foreign official commented, "intimidation par excellence." The Red Cross handed out yellow cards for food aid at their destinations and provided cash for bus fare.

The following case of a young man forcibly returned from the interdicted boat is an alarming example of individuals who are potentially at risk being forcibly returned to Haiti:

"Jacques," a first-year university student with a current identification card from the Faculty of Applied Sciences in Port-au-Prince, had been living in hiding for months when he decided to try to leave Haiti. On December 6, 1992 he had been threatened by a gang of armed thugs who said they were after students from his and other universities. He left his house and moved to Léogâne, south of Port-au-Prince, but was subjected to continued harassment so that by early June he was too afraid to return to school. He lived in hiding and through friends heard that a boat trip was being organized. Once on the U.S. cutter he filled out a questionnaire. He claims he was told only to complete the first page of biographical information. He did not tell anyone on board about his situation. He showed AW and NCHR a card he was given with a March 1, 1994 appointment date with the IOM.

By the end of the process, twenty-two men had been led away for police questioning. Of these, six were arrested and taken by a uniformed police officer and two individuals in civilian dress in a private pickup to the Immigration and Identification Service, housed in the same building as the infamous Antigang headquarters. Those arrested were Lionel Brice, Micot Brice, Jean Arnold Morice, Wisner Julme, Letoine Joseph and Roland Bernard. The U.S. Embassy was informed that they were under arrest as the alleged trip organizers. Three were released after several hours and the others the following day. None was charged.

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<sup>90</sup> A police officer harassed a Haitian NCHR colleague on several occasions, threatening to have him removed. The officer said that they didn't recognize his organization and that such organizations were "crushing the country, always telling lies about the situation." Similar harassment obliged AW's Haitian interpreter to leave the dock area.

On July 5, 1993, the U.S. Coast Guard cutter *Baranhof* repatriated twenty-six people who were aboard a boat intercepted about thirty-five miles southwest of Griffes du Sud. They were afforded the same treatment described above. Eleven were taken for questioning, and five of these were arrested on charges of "illegal departure" and "organization of a clandestine voyage." They spent two nights imprisoned at the Antigang headquarters before being freed on July 7 by a public prosecutor. They later told the UN/OAS Mission observers that they had not been mistreated but had been interrogated about the trip organizer and the owner of the boat.

As this report was being completed, on September 11, 1993, a Haitian boat carrying forty-six people was interdicted. As the passengers were being transferred to the *U.S.C.G.C. Mohawk* rough seas caused the Haitian boat to capsize, and nine Haitians drowned. The rest were summarily returned to Port-au-Prince on September 13.

Among the passengers, who departed from the northern city of Cap-Haitien, were ten members of a local organization, Komite Katye Lavalas. On September 3, 1993, eighteen people, including these ten, had been arrested. "Sean", twenty-three, and two other victims, told NCHR that they were beaten and incarcerated before escaping at night through a prison window. Ten of those who escaped boarded a boat departing the next morning after the boat owner agreed to help them flee. Six of that group were among the drowned, including Sean's wife.

Prior to disembarking at the Port-au-Prince dock, the returnees filled out ICP preliminary questionnaires. Sean and another returnee were given appointments for the following morning. Six other passengers were arrested and briefly detained, including a fourteen-year-old girl and the sympathetic boat owner who had assisted the ten in their escape.

A 1980 Haitian decree regarding "irregular voyages" stipulates (Art. 3) that:

Any organizer of an irregular voyage destined for abroad, any attempt to make a person undertake a voyage abroad from the national territory without the corresponding legal procedures will be punished by a sentence of six months to three years as dictated by the competent correctional court. In case of a repeat offense, the guilty party will receive the maximum sentence and will be fined 10,000 to 50,000 gourdes.<sup>91</sup>

On January 16, 1993, 107 Haitians who were preparing to leave by boat were arrested by soldiers on a beach near Gonaïves. The soldiers fired their guns into the air, tied the men together by their wrists and the women by their dresses. They were taken to the Toussaint L'Ouverture military base, where they were detained. According to the military commander interviewed by NCHR, the refugees were held for violating the 1980 decree. Officials in Gonaïves interpreted the decree as including all those who pay for passage on a boat. Approximately forty-five detainees, mostly women and children, were held for five days and released on January 21. The rest were released on January 22.

The existence of this law makes forcible return of Haitian boat people even more unconscionable under the present circumstances, since it is being enforced by the same regime responsible for innumerable abuses against citizens. Unauthorized departure is a recognized trademark of refugee flight worldwide. In Haiti it is also considered a crime. The U.S. policy of summary return of all Haitians blurs the fundamental distinction between a refugee and a criminal, returning Haitians to face detention and possible prosecution. Not only are Haitians denied the possibility of

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<sup>91</sup> Decree dated November 17, 1980. By contrast, Article 41-1 of the 1987 Haitian Constitution states that, "No Haitian needs a visa to leave the country or return." The Constitution also states (Art. 19) that, "The State has the binding obligation to guarantee all citizens the right to life, to health and respect for the human person without distinction, in conformity with the Universal Declaration of Human Rights." Translations from the French by Americas Watch. Article 14 of the Universal Declaration expressly provides for the right to leave a country and seek asylum.

arriving at a safe port; they are returned to a country where the very fact of their exit puts them in danger. According to officials, the U.S. Embassy has taken great pains to follow up on these cases, even for months, until they are resolved. However, the Embassy has no control over who is detained and why, or how they are treated, physically and legally. Picking up Haitians packed into rickety boats may be termed "rescue at sea." Returning them to Haiti, under these circumstances, clearly cannot.

## **VI. CONCLUSIONS**

The Clinton Administration has contributed to the achievement of an accord which may lead to a settlement of the Haitian political crisis. This is an example of what can be achieved when the U.S. government works cooperatively with the international community. It is a positive initiative that is marred by the blatant mishandling of the refugee crisis.

A fundamental question is whether Haitian refugees are a U.S. "problem" or a regional or international "problem". Logically, many Haitians choose the U.S. as their country of first asylum.<sup>92</sup> While this does not, of course, oblige the U.S. to receive them as asylees, there is an international obligation to respect the principle of non-refoulement and provide at least temporary refuge.<sup>93</sup> By taking the lead in curtailing the legal options of Haitian asylum seekers, by interdicting and forcibly returning them, the U.S. government has not only made the refugee crisis its problem but has, at the same time, sabotaged the possibility for international participation and support. By continuing the blockade, President Clinton effectively eliminated the possibility of a regional approach to the crisis, isolating the U.S. from the very entities, nationally and internationally, that could have contributed to a reasonable regional response. The ICP program is both a product and a victim of this isolation.

Using ICP as the justification for refoulement and the only alternative for asylum seekers is ludicrous and severely abridges the rights of Haitians. Policies should fit and uphold laws. By pretending that ICP is an appropriate response to the Haitian crisis, and that the principle of non-refoulement is not applicable, the U.S. has succeeded in turning the intent of international and domestic refugee law upside down to make it fit a discriminatory policy. The results are easily observable in the practice. Contrary to the assertions of administration officials, Haitians worthy of asylum are indeed "slipping through the cracks."

While the ICP program has improved in recent months, it continues to suffer from the inconsistencies stemming from the flawed rationale behind it and the problems inherent in carrying out such a program in the political context of Haiti. Asylum seekers, above all, need protection and the ability to state their claims in a climate of trust, safety and fairness. As the present research indicates, many have not found these basic needs met by ICP. Furthermore, Haitians are punished for doing what anyone would instinctively do when faced with danger – flee.

Some Haitians who have availed themselves of ICP have been unfairly and indefinitely put on hold. Some have been rejected until their well-founded fears are borne out. Still others have suffered persecution at different stages of the process. Those who reasonably infer that ICP is not a safe option are left with no option. Furthermore, there are indications that the State Department is taking steps toward winding down the program in anticipation of a political settlement.

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<sup>92</sup> Thousands of Haitians have also sought refuge in the Dominican Republic, with mixed results.

<sup>93</sup> See generally UNHCR, *Conclusions on the International Protection of Refugees Adopted by the Executive Committee of the UNHCR Programme* (United Nations: New York), regarding large-scale influx and temporary, refuge. (For example, 30th Session, 1979; 31st Session, 1980.)



INS Commissioner-nominee Doris Meissner recently wrote, "Receiving countries must be attentive to pre-refugee, pre-migration circumstances in sending countries...Thus, migration prevention must become a legitimate objective of international diplomacy and national policy." However, "migration prevention" does not mean establishing blockades and beefing up border patrols to protect U.S. borders from a so-called onslaught of undesirable aliens. It does mean actively engaging in the establishment of lasting solutions to the political crises in countries like Haiti. Contributing to an environment in which citizens are able freely to exercise their rights, including the right to stay, should be a centerpiece of this solution. The U.N. High Commissioner for Refugees, Sadako Ogata, has repeatedly warned that while the right to stay is important, the right to flee must not be forgotten. "[P]revention is not ... a substitute for asylum; the right to seek and enjoy asylum, therefore, must continue to be upheld."<sup>94</sup>

U.S. policy toward Haitians is a case study in the growing tendency worldwide to close the doors on refugees. The harsh consequences of restrictive ICP procedures for some Haitian asylum seekers, suggest that what we can expect if proposed U.S. legislation is passed to curtail the asylum process even further. U.S. policymakers have played on the public's fears of increased immigration and are taking the lead in a worldwide trend toward closing borders and denying asylum to bona fide refugees. Having done that, the U.S. forfeits its ability to encourage other countries to do what's right when faced with large numbers of people fleeing persecution.

The NGO community was prepared to work with the incoming Clinton Administration to establish a fair response to the Haitian refugee crisis. Proposals backed by AW and NCHR and many others were quite conservative and pragmatic. The Administration was asked to do the bare minimum required by law and human decency to respond to Haitian asylum seekers: respect the principle of non-refoulement and give them a fair hearing. Instead, the Clinton Administration opted to continue violating the most basic rights of Haitians and to invest considerable resources and energy into further damaging both domestic and international refugee law, affecting asylum seekers the world over.

As stated in the introduction, progress in the political arena, while cause for hope, does not lessen the need for an adequate policy to address the needs of Haitian refugees, now and in the future. The precedents set by the management of the Haitian refugee crisis have ominous consequences for future refugees fleeing massive human rights violations, in Haiti or elsewhere. The blatant manipulation of U.S. and international law, by two administrations, to further this policy leaves open the question of how the U.S. will handle the next refugee emergency.

Haitians have a right to flee persecution and seek safe haven. The U.S. government has played a central role in the refugee crisis, going out of its way, on the high seas, to actively deny safe haven -- and has called it "rescue." It has further established an in-country processing program that cannot, in and of itself, serve as an adequate response to the needs of Haitian asylum seekers, and has called it "complete coverage."

## **VII. RECOMMENDATIONS**

**1. End refoulement policy:** On January 14, President-elect Clinton announced the temporary continuation of forcibly returning Haitian refugees, saying, "The practice of returning those who flee Haiti by boat will continue, for the time being, after I become President." This "temporary" measure should be ended, Supreme Court decision notwithstanding, and new procedures should be established, in conjunction with the Aristide administration, for handling asylum seekers outside Haiti.

**2. Help to develop alternatives:** The U.S. should work closely with the UN, UNHCR, the NGO community and OAS

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<sup>94</sup> As cited in the *World Refugee Survey*, U.S. Committee for Refugees (Washington, D.C.:1993), p. 7.

member states to devise an acceptable and safe international response to Haitian asylum seekers in which the U.S. would necessarily play a leading role. In December 1992, a broad-based coalition of NGOs supported a series of measures for protection and processing that, consistent with international law and standards, could immediately be implemented. These included:

- ending automatic repatriation;
- expanding in-country processing;
- increasing the number of refugee slots allocated for Haitians;
- opening up a safe-haven enclave in the Caribbean basin;
- settling pending litigation; and
- providing temporary status to Haitians currently in the United States.

The UNHCR has advocated a broad strategy which includes facilitating a regional response consistent with traditional principles of burden sharing so that no one country shoulders the responsibility. The UNHCR has also promoted a comprehensive plan for rescue at sea, screening and non-refoulement, and full and fair procedures for eligibility determinations.

**3. Conduct an independent review of the ICP program:** Given the inconsistencies in asylum claims management and adjudication cited in this report, an independent review of the ICP program including the roles of both the State Department and the INS is called for.

- The U.S. Congress should request an investigation by the General Accounting Office with the objectives of investigating the State Department's approach to and management of the program as well as detecting irregularities in adjudication to ascertain whether Haitian asylum seekers receive a fair and timely hearing through the program.

- The Attorney General should appoint an impartial panel of experts to carry out a thorough review of case decisions for the Justice Department. The methodology employed, as well as all findings, should be transparent and open to public participation and scrutiny. Haitian asylum seekers who believe they have received an unfair decision, or their representatives, should be included in the review process.

**4. Use ICP as part of broader plan:** ICP should be continued as an important additional avenue of protection Haitian asylum seekers. As part of a broader plan of action for Haitian refugees, ICP could be strengthened and supported by a more collegial relationship with various local and international NGOs and international institutions such as the UNHCR. Only in this context could specific recommendations regarding ICP operations in Haiti contribute to improving the program.

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***Americas Watch** was established in 1981 to monitor and promote the observance of internationally recognized human rights. Americas Watch is one of five regional divisions of Human Rights Watch. The Chair of Americas Watch is Peter D. Bell; Vice Chairs, Stephen L. Kass and Marina Pinto Kaufman; Executive Director, Juan E. Méndez.*

***Human Rights Watch** is composed of five regional divisions -- Africa Watch, Americas Watch, Asia Watch, Helsinki Watch and Middle East Watch -- and the Fund for Free Expression. Its Chair is Robert L. Bernstein; Vice Chair, Adrian W. DeWind; Acting Executive Director, Kenneth Roth; Washington Director, Holly J. Burkhalter; California Director, Ellen Lutz; Press Director, Susan Osnos; Counsel, Jemera Rone.*

***National Coalition for Haitian Refugees**, established in 1982, is composed of forty-seven legal, human rights, civil rights, church, labor and Haitian community organizations working together to seek justice for Haitian refugees in the United States and to monitor and promote human rights in Haiti. Its Executive Director is Jocelyn McCalla; Associate Director, Anne Fuller; Research Associate, Ellen Zeisler. In addition to periodic reports on human rights in Haiti, the NCHR publishes a monthly bulletin on human rights and refugee affairs. It is available upon request.*

***Jesuit Refugee Service/USA**, located in Washington, D.C., is the central coordinating office in the United States of the international Jesuit Refugee Service. JRS was founded in Rome in 1981 under the auspices of the Society of Jesus. Regionally organized, JRS operates programs for refugees and internally displaced persons in over twenty-five countries in Asia, Africa, Central and North America, Europe and Australia. Major program foci include pastoral care, legal assistance, research, health education and accompaniment. The Director of JRS/USA is Robert W. McChesney, S.J.; Associate Director, Mary Pack.*