

HAITIANS IN LIMBO

A JOINT REPORT BY
THE UNITED STATES COMMITTEE FOR REFUGEES
AND
THE AMERICAN FREEDOM FROM HUNGER FOUNDATION

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Introduction

The United States Committee for Refugees and the American Freedom From Hunger Foundation are greatly distressed by U. S. treatment of some 1,700 Haitians who have entered this country since 1972 ^{1/} without proper documentation. Many have requested asylum and risked their lives piloting small boats across 800 miles of ocean to escape poverty and oppression in their homeland. Asylum has been granted to only a small number of the refugees. ^{2/} The others remain in limbo awaiting judicial review of their orders of deportation or exclusion. Seventy Haitians have been detained in Florida or Texas jails for over a year and those who are out on bond have been denied permission to work while their cases are pending. ^{3/}

If church and civic groups had not taken a compassionate interest in their plight by providing food and shelter, the refugees would have had little means of survival. In this country, which has traditionally welcomed the poor and the oppressed, the Haitians find themselves unwanted and as destitute as they were in their own country.

In a letter to Congressman Eilberg, Chairman of the House Judiciary Subcommittee on Immigration, Citizenship and International Law, the U. S. Committee for Refugees urged that Congressional hearings be held to investigate the situation, particularly immigration procedures affecting these Haitians. The Committee in no way wished to presume the outcome of such hearings nor

^{1/} "Haitian Emigration," Subcommittee on Immigration, Citizenship and International Law of the Committee on the Judiciary, House of Representatives, Ninety-Fourth Congress, 2nd session, July 1976, p.1.

^{2/} The most recent cumulative figure available at the time of the report is: 35. This covers the period between December 1972 and August 30, 1974. One of the procedural recommendations of the House Judiciary Committee is to create a central registry of the persons who have sought and who have been granted or denied asylum.

^{3/} "Haitian Emigration," op. cit. page 34.

does it advocate political asylum for all claimants. It does, however, seek assurance that all asylum claimants have equal access to legal procedures necessary to present their claim and that no refugee is returned to a territory where his life, liberty or physical integrity may be in jeopardy.

Haiti - A portrait of poverty and oppression

During a hearing before the House Subcommittee on International Organizations in November of 1975, Mr. William Luers, Deputy Assistant Secretary for Inter-American Affairs of the State Department, aptly described the present situation:

"If Haiti is poor, it has also had a reputation for political repression. The story of Haiti is, for the most part, a history of authoritarian leadership punctured by frequent coups. Only 6 of the 34 chief executives completed their terms of office. Under the late President Francois Duvalier, the political situation within Haiti was epitomized by the Tonton Macoutes, a much feared and very arbitrary security organization.

"It is a melancholy fact that poverty and repression are often found together. But they are not synonymous and our laws require that we separate the two categories in the case of illegal aliens in our country. With our increasing concern for human rights, the question is frequently raised as to why we make such distinctions, how they are made and what is the result." ^{4/}

Haiti has a population of 4.6 million and a per capita GNP of \$130.00, making it one of the lowest income nations in the world. The average life expectancy of the Haitian is below 50 and the infant mortality rate is 150/1000 live births. In 1972, Haiti, a country with a literacy rate of 10 per cent spent only \$1.00 per person on education. ^{5/} The per capita caloric

^{4/} "Human Rights in Haiti," Hearings before the Subcommittee on International Organizations of the Committee on International Relations, House of Representatives, Ninety-fourth Congress, 1st session, November 18, 1975. p. 3.

^{5/} Overseas Development Council, Agenda for Action, 1976.

intake is the second lowest in the world, lower even than Bangladesh.^{6/} Over 69 percent of all pre-school age children suffer from some degree of protein-calorie malnutrition.^{7/}

In a 1974 report entitled "United States Foreign Assistance for Haiti," Senator Edward Brooke states that "while the Haitian government has shown an increasing desire to better the lot of its people, its main concern continues to be the perpetuation of the political apparatus that has evolved over the years."^{8/} After Francois (Papa Doc) Duvalier became President-for-Life in 1956, he imposed severe repression of dissent and denial of fundamental human rights. This oppression was carried out by the Tonton Macoutes, a terrorist volunteer security force that practiced confiscation of property, arbitrary arrest, detention without bail, torture and assassination.

In 1971, Jean-Claude Duvalier was named President-for-Life by his father, and although oppression has not been as overt as under the "Papa Doc" regime, some say it has been replaced by a more subtle systematic form of suppression. Recently a senior Tonton Macoute, Pierre Biamby, became the interior and defense minister. He is known as the Butcher of Jeremie for the massacre of a hundred townspeople in 1964.^{9/}

Amnesty International has denounced prison conditions in Haiti as among

6/ "Human Rights in Haiti," pp. 2-3.

7/ "The Grim Facts of Life on Haiti", UNICEF News, Fighting Child Malnutrition, Part 7, Issue 85/1975/3 - p. 21.

8/ For the text of this report, see "Human Rights in Haiti", Appendix, pp. 75-120.

9/ "Haiti back from the graveyard," Latin America, 9 April, 1976, volume X, no. 15, p. 118.

the "most inhuman in the world."^{10/} Prisons are filled with people who have spent years in detention without ever being charged or brought to trial.

According to the 1975/76 Annual Report of Amnesty International prisoners in Haiti are not allowed lawyers or contact with their families after arrest or, with few exceptions, are they ever brought to trial. "Such conditions of isolation and the general fear of arbitrary arrest make it difficult to obtain personal data on the prisoners and to establish their status as prisoners of conscience... The prisoners, who are peasant farmers, workers, teachers, students and other intellectuals, have been detained for between 2 and 12 years. It is possible that some of these prisoners are no longer alive, but, as the prison authorities do not inform even families of a prisoner's death, such facts cannot be established."^{11/}

A Washington Post article of August 3, 1976, entitled "A View of the Dark Side of Haiti" tells of a Haitian reporter, Gassner Raymond, who dared to write a story criticizing the government. His body was found in a ditch two weeks later.

Interviews with Haitians in the U. S. claiming asylum conducted by trained church and civic volunteers, have revealed that the Tonton Macoutes continue to suppress political opposition by alleged beatings, imprisonment, and torture:

"I was a member of the group 'Les Jeunes Revolutionnaires'. We organized in September 1974. Our purpose was to write and distribute literature against the Duvalier Government. There are 17 members in our group. In March of 1975 two members of our group Rosante Metalus and Euler Alexandre were shot while putting up signs against the government. Before they died, they were forced to give the names of the other members of the group. That same day the Tonton Macoutes came to my house and arrested me. They also arrested my Mother and Father. While searching the house the Macoute threw things around and my sister's baby was knocked out of his crib and died. I don't know what

10/ "Haiti Prisons". Washington Post, June 23, 1976.

11 "Haitians in Exile - A Case for Asylum," National Council of the Churches of Christ, in the U.S.A., p. 7.

happened to my parents. I was taken to jail at Fort Dimanche, beaten and stabbed with a bayonet in my chest. I was bleeding so badly they decided to take me to the hospital. On the way I broke loose and ran. They shot me in the right arm but I escaped. I went to Legone and my friend Michel Benoit took care of me for 3 weeks. Then we arranged to leave for the U.S. in a boat. There were 21 people in the boat. We stayed in Cuba one day. They gave me medicine for my wounds. We came to the U.S. for life, not for food. I am on hunger strike because I came for political reasons. I have been in jail 6 months and have had plenty of food but this is not enough. If I'm sent back I go back with arms." (Michel, Jean; #A20-211-404; asylum denied, currently in detention, Pt. Isabell, Texas, \$500 bond; awaiting determination of challenge to order of deportation in Federal court.) 12/

Detention

The condition of the Haitians' detention in the U.S. has been deplorable. Most of those held have been detained in county jails in Miami and in Immokalee, Florida. Due to overcrowding of the refugees at Immokalee (78 Haitians in two rooms, each about 35 ft. by 45 ft.), a hunger strike and a suicide, the INS transferred most of the detainees 2000 miles to Port Isabel, Texas, the nearest INS detention facility. 13/ At the present time there are 70 Haitians in Florida and Texas prisons.

Church and civic leaders came to the defense of the Haitians early in 1973. Led by the Greater Miami Ministerial Alliance, they formed the Haitian Refugee Information Center. This center provides sustenance, legal counsel, bail and language education for the refugees. In February of 1974, the National Council of Churches (NCC) established a fact-finding task force to investigate treatment of the Haitians and called upon member churches to pro-

12/ "Human Rights in Haiti," op. cit., p. 42.

13/ "Report on the Haitian Refugee Situation, prepared in February 1976, by Dr. Byron L. Schmid, Consultant for Immigration Policy and Law, Lutheran Immigration and Refugee Service, Lutheran Council in the U.S.A., p. 7-8.

vide financial and legal assistance. The NCC has given over \$200,000 (exclusive of bond) to the Haitian Refugee Information Center and with the assistance of local volunteers under the supervision of counsel, it has prepared affidavits in support of claims to political asylum by more than 200 persons.^{14/} The NCC maintains an Office of Haitian Refugee Concerns in Washington, D. C. to coordinate efforts safeguarding the rights of these people.

Immigration Procedure

The U. S. Immigration and Naturalization Service deals with illegal aliens under deportation or exclusion proceedings. Currently there are over 500 Haitians seeking judicial review of their final orders of deportation or exclusion.^{15/} All have requested asylum.

Many of the asylum claimants have been considered under exclusion proceedings because they were apprehended offshore and technically have never entered the U.S. Therefore, they are not entitled to the same proceedings on an asylum claim granted to the deportation cases, those who were apprehended inland.

Deportation proceedings entitle the alien to a full hearing on an asylum claim with counsel. Under exclusion proceedings, the only opportunity for an alien to present an asylum claim is during the initial interview process, which lasts 20 minutes, including time for translation.^{16/}

^{14/} "Report on the Haitian Refugee Situation, prepared in February 1976, by Dr. Byron L. Schmid, Consultant for Immigration Policy and Law, Lutheran Immigration and Refugee Service, Lutheran Council in the U.S.A. pp. 6-7.

^{15/} "Haitian Immigration," op. cit., p. 7.

^{16/} For a detailed description of exclusion proceedings see the appendix of "Haitian Emigration," p. 28.

Such cursory interviews presuppose the alien's familiarity with international law and an openness with authorities which cannot be expected in such a short period of time. At the time of the interview the alien is informed of his right to counsel at his own expense. Thereafter initiative for obtaining counsel rests with the alien.

Article 31 of the United Nations Protocol Relating to the Status of Refugees, adopted by the U.S. Congress in 1968, makes no distinction between exclusion and ^{17/}deportation cases in dealing with refugees unlawfully in the country of refuge. The distinction is based on a technicality which denies the exclusion cases important rights and procedures necessary to substantiate an asylum claim. Where there is doubt concerning refugee status, the INS requests an advisory opinion from the Department of State, which holds the general view that the Haitians have come to the U.S. for economic reasons. Most of the claims it receives are rejected. The U.S. only grants asylum to persons who flee from some form of persecution and not to those who only flee from poverty. Even though there is evidence of oppression in Haiti, each person claiming asylum must show specific instances of persecution as defined by the United Nations Protocol Governing ^{18/}the Status of Refugees.

The lead paragraph of the State Department's General Policy for Dealing with Requests for Asylum by Foreign Nationals states that "... Because of the wide variety of circumstances which may be involved, each request must be dealt with on an individual basis, taking into account humanitarian principles, appli-

^{17/} Article 31 states: "The contracting States shall not impose penalties on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

^{18/} Article 7 of the Protocol defines a refugee as a person who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable, or owing to such fear, unwilling to avail himself of the protection of that country."

cable laws and other factors." Haiti is a country where poverty and oppression are inextricably linked. Voluntary agencies, lawyers and Congressmen have criticized the INS for not giving the large number of exclusion cases enough individual attention to make the distinction between a "political" and an "economic" refugee - a distinction which could mean life or death for the asylum claimant.

One of the most frustrating aspects of the Haitian situation is the difficulty in obtaining updated cumulative figures on the status of the Haitians in the United States. A report of the House Judiciary Subcommittee on Immigration, Citizenship, and International Law, dated July 1976, shows that over 500 Haitians are currently seeking judiciary review of their orders of deportation or exclusion and that 70 are imprisoned. It does not clarify, however, the status of the remaining 1,130 nor does it give a breakdown of the number of persons in the deportation and exclusion categories. The difficulty stems from the fact that there is no central register containing this information.

The appendix of the subcommittee report contains additional figures in a letter written by the INS Commissioner, L. F. Chapman.^{19/} Yet these figures only further confuse the issue because their time frame is not consistent. For example, the letter reports 10 deportations "in the period of six months," six grants of asylum "in the early part of this year," and 172 persons who have agreed to voluntary departures "in the past year." It should also be noted, that according to the letter in the appendix, a period of six months elapsed between the time Congressman Eilberg requested a status report and the time Commissioner Chapman responded with the aforementioned figures.^{20/} In order to make an accurate assessment of the status of Haitians in the United States, it is important that accurate cumulative figures be readily available.

^{19/} "Haitian Emigration," op. cit., p. 34.

^{20/} Ibid., p. 33, 34.

Embassy Follow-Up

Considering the recent evidence of oppression in Haiti and the shortcomings of United States immigration procedure, the follow-up of deportees by the U.S. Embassy in Port-au-Prince is important to assure that the U.S. is not jeopardizing the life of the returnee and violating international law. Article 33 of the United Nations Protocol Relating to the Status of Refugees, adopted by Congress in 1968, states that "no Contracting State shall expel or return (refouler) a refugee, in any manner whatsoever to a territory where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion."

In a statement before the House Subcommittee on International Organizations in November of 1975, Mr. William H. Luers, Deputy Assistant Secretary for Inter-American Affairs of the State Department stated: "Because in the case of Haitians, there have been so far very few deportations - in contrast to the large number of cases pending - our efforts to contact returnees and follow-up on their situation has been limited. Until recently our Embassy attempted to contact returned deportees only upon request from an interested party. In some cases the Embassy had no knowledge of the deportation action and therefore was not in a position to do any follow-up work."^{21/} At the same hearing two officials from the State Department Office of Refugee and Migration Affairs confirmed this procedure, noting that the Embassy checks were occasional and not systematic.

Due to the lack of a systematic procedure, it is difficult to determine the status and number of returnees in Haiti. When confronted with the incompleteness of the follow-up procedure by the U.S. Embassy, one State Department official responded "It's only an embassy there, not a detective agency." Yet

^{21/} "Human Rights in Haiti," op. cit., pg. 42.

deportation to Haiti is partially justified by the assurance of the American Embassy in Port-au-Prince that every effort is made to see that no reprisals are taken against the deporters.

Staff members of the House Judiciary Subcommittee on Immigration who traveled to Haiti to investigate the procedure, maintain that the assurances are not warranted: "Little time has been expended by Embassy officials in verifying allegations or in monitoring the safety of the deportee after his arrival in Haiti. In fact, with the assistance of an embassy official an attempt was made by staff to locate several deportees, including 25 who returned from Guantanamo Naval Base. It was unsuccessful. Apparently assurances relating to the well being of these deportees are based entirely upon the receiving by Embassy officials of the deplaning and deprocessing of deportees."^{22/}

In this connection, the Subcommittee noted the case of a deportee who, upon return to Haiti, was incarcerated for one month according to a U.S. Embassy estimate and for eight months according to the deportee.^{23/} In light of the large number of cases facing deportation, it is imperative that a more rigorous procedure be developed to safeguard the human rights of the deportees.

Recommendations

The United States Committee for Refugees and the American Freedom From Hunger Foundation feel that the documentation of persecution in particular cases, reports from Amnesty International and other sources on human rights violations in Haiti, and the cursory follow-up process on returnees by the U.S. Embassy in Port-au-Prince are sufficient cause for concern about the welfare of asylum claimants deported or pending deportation to Haiti. United States immigration procedure affecting Haitian refugees has drawn

^{22/} "Haitian Emigration," *op. cit.*, p. 9.

^{23/} *Ibid.*, p. 9.

the attention of church and civic groups, practicing attorneys and Congressmen. The U.S. Immigration and Naturalization Service has the sole legal authority over whether or not asylum is granted. Therefore, INS procedures should be thorough enough to safeguard the human rights of asylum claimants, whether they are presumed to have come to the U.S. for fear of persecution upon return to their homeland or as poverty stricken individuals in search of a better life. Each refugee requesting asylum must prove a well-founded fear of persecution. Yet the legal distinction between exclusion and deportation cases is based on a slight technicality which denies exclusion cases important rights necessary to substantiate an asylum claim.

The "bureaucratic indifference" of the United States towards Haitian refugee situation stands in marked contrast to this country's open arms acceptance of Cuban and Indochinese refugees.

In a presentation before a hearing in the Washington Office of the National Council of Churches, Mr. Dale de Haan, Counsel for the Senate Subcommittee on Refugees and Escapees, placed the Haitian refugee issue in the broader context of U.S. world-wide asylum policy.^{24/} He pointed out that the Cold War conception of a refugee continues to prevail and that immigration from Communist countries is easier than from anywhere else. Furthermore, Mr. de Haan urged that asylum policy not be based on political relations with other countries and that advocacy on behalf of the Haitians should continue.^{25/}

Taking into account the various legal, moral and political questions that have been raised concerning U.S. policy towards the Haitians, the United States Committee for Refugees and the American Freedom From Hunger Foundation recommend:

^{24/} It should also be noted that formal State Department guidelines and a general asylum policy were only issued in January of 1972 and a detailed application form was not prepared until September of 1974.

^{25/} "Human Rights in Haiti, op. cit., p. 69.

1) Public hearings by the House Judiciary Subcommittee on Immigration, Citizenship and International Law to examine the questions and allegations underlying the Haitian issue.

2) The release of those Haitians currently under detention and the holding of individual hearings before an immigration judge for all asylum claimants (regardless of exclusion or deportation status).

3) The issuance of temporary work permits for those awaiting hearings and the assurance that normal refugee rights and services will be provided for those who are granted asylum.

4) A thorough review of INS procedures with those seeking asylum.

A joint publication by the U.S. Committee for Refugees and American Freedom From Hunger Foundation.

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APPENDIX

Findings of the House Judiciary Subcommittee on Immigration, Citizenship, and International Law.

A recent report entitled "Haitian Emigration," points to the sporadic nature of U.S. asylum policy and articulates the need to establish a more systematic procedure for dealing with asylum requests.^{26/} In light of its findings in the Haitian situation the Subcommittee recommends:

- 1) Consideration to eliminate the arbitrary legal distinction between exclusion and deportation cases.
- 2) Closer coordination between the Immigration and Naturalization Service and the State Department.
- 3) Careful U.S. embassy follow-up of deportees.

Concerning the present situation of the Haitian refugees in the United States, the Subcommittee proposes the supervised release of the remaining detainees into the custody of the voluntary agencies. Yet the report contains no recommendations to grant a temporary work authorization which would allow the Haitians to support themselves while their cases are pending, rather than depend on handouts from voluntary agencies for survival.

The United States Committee for Refugees and the AFFHF strongly support the recommendations of the House Judiciary Committee on Immigration, Citizenship, and International Law and urge hearings to promote their swift implementation, along with reconsideration of the work authorization issue.

^{26/} "Haitian Emigration," op. cit., pp. 13-14.