

**Refugee Crisis: The Plight of Haitian Refugees**  
**Victims of U.S. Foreign Policy**  
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Oct. 29 , 2002 — About 200 Haitian refugees jumped off a stranded wooden freighter this afternoon into the shallows off Key Biscayne, lunging through chest-deep water in a scramble to evade the Coast Guard and the police and to complete their desperate journey to Miami. The immigrants' advocates said the events were powerful evidence of just how dire life in Haiti had become. "Haitians will still risk their lives to make it here because things out there are so bad," said Cheryl Little, executive director of the Florida Immigrant Advocacy Center. "It's very difficult for them to apply for political asylum, and it's very unfair (Canedy)."

U.S. immigration policy towards Haitians provoked a group of Haitian refugees detained in Puerto Rico to write a letter to the Immigration and Naturalization Services asking "why are you letting us suffer this way, America?....Haven't you thought we were humans, that we had a heart to suffer with and a soul that could be wounded? Give us back our freedom. Why among all the nations that emigrate [from other nations] to the United States have only the Haitians known such suffering? (Walker, 15)"

This paper seeks to answer these questions as well as provide possible solutions to the problem. The paper will cover several areas beginning with the UNCHR's definition of refugee and the role of international refugee law, a description of the conditions faced by the typical Haitian refugee, followed by

the history of U.S. policy towards Haitian refugees, perceptions of Haitian refugees in the U.S., the conflict between U.S. policy and international law and finally possible solutions to ease the plight of the Haitian refugees attempting to resettle to the U.S.

### **Who is a refugee?**

According to the 1951 Convention and subsequent 1967 Protocol Relating to the Status of Refugees, under Article 33, a refugee is defined as *“any person 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, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it ( UNHCR).”*

As members of one of the most vulnerable groups in the world, the only thing refugees can rely upon as they flee their countries is the effectiveness and broad application of international law. The states that accede to the 1951 Convention and subsequent 1967 Protocol make a binding commitment to the protection of the internationally recognized minimum standard of the rights of refugees that their governments are failing to meet.

### ***Role of UNHCR***

Individuals fitting the definition above fall under the protection of the office of the United Nations High Commissioner for Refugees. The UNHCR is

guided by the United Nations Convention of 1951 and the subsequent 1967 Protocol which serve as the most comprehensive instruments at the international level for the safeguard of the fundamental rights of refugees ( UNHCR).” Their mandate is to ensure the protection of displaced peoples until a long-term solution to their plight can be found.

The solutions boil down to two options -resettlement in a third country or repatriation to their home country. Repatriation is the preferred option with the UNCHR monitoring the treatment and reintegration of returnees for an extended period of time in order to ensure the basic rights of the returnees are respected. Sadly, repatriation is not always a possibility and the resettlement of refugees to a third country, beyond the one of asylum becomes the difficult task facing the UNCHR. A key component of its protection strategy, the UNCHR’s efforts are aimed at diversifying the number of resettlement countries and strengthening the existing programs in order to provide the most durable solutions to the refugees.

### **Resettlement**

These solutions only become a possibility when the burden of the refugee crisis is equally distributed and shared by the world governments. Through the coordinated efforts of the UNCHR, NGOs and state governments the peaceful resettlement of refugees into several countries is achieved. Upon resettlement to a country a refugee is according to the stipulations laid out in the 1951 Convention guaranteed all the rights afforded any other immigrant. Rights

listed in the Convention include property, religion, non-discrimination, employment, access to courts, public education, housing, relief, and most important the principle of non-refoulement or the returning of refugees to the land from which they fled. The Convention determines the minimum standard but it in no way prevents states such as the U.S. from extending favor to refugees beyond these laws. Thus the failure to meet these basic rights is a violation of both international law establishing refugee rights as well as U.S. domestic laws.

Through resettlement, refugees gain legal protection - residency and often eventually citizenship - from governments who agree, on a case-by-case basis, to open up their communities to new members. The task of receiving and settling refugees requires that UNHCR works closely with central and local authorities, non-governmental organizations (NGOs) and religious and social welfare groups to ensure that the basic human rights of refugees are respected. While the criteria which States use to determine eligibility for resettlement vary, like the numbers of refugees they accept, all programs recognize the range of compelling circumstances, including protection cases, family reunification, refugees with special needs such as women at-risk, handicapped refugees or serious medical cases. The resettlement procedure generally occurs as follows: a refugee enters a country of asylum, status is to be determined-you are either considered an individual refugee or as a member of a displaced group subject to the same conditions ,prima facie, or in the absence of evidence to the contrary of deserving refugee status. Your status is either granted or denied. If denied your case can

be reviewed for a brief window of time. If you are granted refugee status resettlement to a third country is considered only if local integration into the country of first asylum and voluntary repatriation are out of the question. The procedure then takes on the unique characteristics of the resettlement state.

### ***Resettlement to the United States***

The U.S. resettlement programs date back to World War II. Special statutory programs admitted 400,000 displaced persons following the Holocaust. It was not until 1965 that the United States Congress established a quota regarding annual refugee admissions. Historically, refugees of special humanitarian concern and those attempting to reunify with their families received special consideration under the U.S. resettlement program. The Refugee Act of 1980 required the Attorney General to establish a procedure by which an alien could apply for asylum within the U.S. Presently, criteria for refugee admission to the U.S. are as follows:

- a) meet the definition of a refugee stipulated in Section 101 a) (42) of the Immigration and Naturalization Act based on the definition used in the 1951 Convention and 1967 Protocol.
- b) be among the refugees identified by the President to be of special humanitarian concern to the United States.
- c) be admissible under U.S. law
- d) not be resettled in any other third country

Following 1980, according to the Refugee Act , U.S. refugee admissions were based on the refugee admissions ceiling determined by the President after consulting with Congress, the Department of State, and the Department of Justice on areas of special humanitarian concern to the U.S. and those refugees who should receive special priority processing.

The U.S. priority system currently assigns individuals to one of five different levels of priority to be used in processing refugee admission.

They are as follows:

*Priority One:* reserved for compelling protection cases such as danger of refoulement, long term residence in country of asylum is not a durable solution, fear of danger or armed attack remains in the country of asylum and necessary medical treatment is not available (generally referred by U.S. embassies or UNCHR)

*Priority Two:* applied to groups of special humanitarian concern to the U.S. These groups include certain nationalities within Africa, Iran, Cuba, Vietnam, and the former Soviet Union.

*Priority Three:* eligibility extended to spouses, unmarried sons, and daughters and parents of U.S. citizens , dependents who can be classified under the family unification program.

*Priority Four:* grandparents, grandchildren, married sons and daughters, and siblings of U.S. citizens and persons lawfully admitted to the United States as

permanent resident aliens, refugees, asylees, conditional residents, and certain parolees.

*Priority Five:* Uncles, aunts, nieces, nephews, and first cousins of U.S. citizens and persons lawfully admitted to the United States as permanent resident aliens, refugees, asylees, conditional residents, and certain parolees ( U.S. Committee for Refugees).

The assignment of a classification is followed by an overseas processing pre-screening interview. This interview prepares potential entrants for the eligibility determination interview performed face to face with an official Immigration and Naturalization Services interviewer who assesses the credibility of the applicant's claim of persecution. Additional case processing upon approval of an applicant's admission into the United States includes a medical exam, fingerprinting, a clear security name check and sponsorship assurance. Transportation to resettlement location is provided in the form a loan to the refugee that they must begin repaying 6 months after their arrival in the U.S. In addition to transportation needs, the State Department in cooperation with other agencies provides resettlement services to refugees such as cultural orientation, housing, furnishing, clothing, food, and medical referrals.

### **The Haitian Refugee**

Migration has long been an important safety net for many Haitian refugees. Most have to flee their homes in response to both Haiti's severe

economic problems and political instability. Thousands of boat people, like the group on October 29, would rather risk death trying to reach the U.S rather than remain in Haiti.

With eighty percent of the people living below the poverty line, Haiti's 1997 HDI rank of 156 out of 175 countries it is not surprising that so many Haitians seek a better way of life beyond their borders. As one of the poorest countries in the Western Hemisphere Haiti serves as a constant reminder to the developing world of the potential political, social, and economic devastation that can occur. Plagued by issues such as the AIDS crisis due to the high rates of infection among heterosexuals- a stigma that continues to be associated with Haitians presently residing in the U.S., political instability, and the shortage of good arable land Haiti presents a bleak existence to its poor inhabitants with little hope for any sort of economic recovery. (United Nations Development Programme).

Haiti's economic stagnation is the result of earlier inappropriate economic policies, as well as political instability, a shortage of good arable land, environmental deterioration, continued use of traditional technologies, under-capitalization and lack of public investment in human resources, migration of large portions of the skilled population, a weak national savings rate, and the lack of a functioning judicial system. In 1999, Haiti's economy began to falter after about 4 years of positive, though modest growth. Real GDP growth fell in 2001 by 1.2%. These social and economic indicators show Haiti falling behind



other low-income developing countries (particularly in the hemisphere) since the 1980s. Frightening statistics such as an illiteracy rate of fifty-two percent, an infant mortality rate of 71 deaths per 1000 births, only thirty-nine percent of the people having access to safe water, and a life expectancy of 54 years coupled with a GNP per capita of \$460 and GDP growth between 1991 and 1999 of -1.2% will require significant external aid in order to even begin to remedy these devastating conditions. The U.S. policy towards Haitian refugees ignores the how dire conditions in Haiti that are forcing people to take drastic measures to attain freedom on America's shores. The oppressive conditions created by the political and economic instability leaves many Haitians no other choice but to seek the freedom that their government cannot provide outside of their homeland.

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### **U.S. policy towards Haitian Refugees**

The U.S. policy towards Haitian refugees is not simply a problem of the last decade but dates back to the early seventies. Under the Carter administration's "Haitian program" thousands of Haitians in South Florida were denied the opportunity to apply for asylum by deporting the fleeing Haitians back to their homeland.

In 1981, the Reagan administration established a preemptive interdiction program applicable only to Haiti as well as a detention policy targeting those Haitians who were able to make across the dangerous seas. By executive order from Reagan, the Haitian Interdiction Operation authorized the Coast Guard to

intercept Haitian boat peoples at seas and returned to Haiti any undocumented aliens aboard foreign vessels. This agreement had been worked out between the U.S. and Haitian government to prevent a large influx of Haitians migrating to the U.S. to pursue greater economic benefits. Haitian policy regarding leaving the state disapproves of any unauthorized travel and thus many Haitians refouled by the U.S. were turned over to corrupt military authorities who punished violators as they saw fit (Simmons 278).

In light of the U.S. international legal obligation to uphold the principles of the UNCHR Convention of 1951 which explicitly prohibits the involuntary repatriation of political refugees against their will the Reagan administration implemented a screening process to more fairly determine the eligibility of Haitian refugees. This procedure permitted asylum seekers entrance to the United States only if they demonstrated to the interviewer that they truly had a credible fear of persecution. Despite the indisputable human rights violations occurring in Haiti during the ten years that the procedure was practiced only 28 out of approximately 25,000 Haitians were granted asylum or screened in (Simmons 279).

The Bush administration continued the process of interdiction at sea but met some legal resistance when the Haitian Refugee Center in Miami filed a suit, *Haitian Refugee Center v. Baker*, challenging the procedure. They claimed that the process was inadequate and biased. The interviews were obviously not sufficient as many refugees were being returned to Haiti in direct violation of the U.N

Refugee Convention and the U.S. Refugee Act. The suit came to no avail as *Haiti Refugee Center v. Baker* case was dismissed in 1992 on the grounds that Haitians outside of the U.S. were not protected by domestic or international refugee law. Moreover, the Refugee Convention was not a self-executing international agreement; thus its implementation was subject to the will of the member state. Despite its failure the law suit did result in the elimination the screening process from the decks of the Coast Guard cutters. They were replaced however at the U.S. base at Guantanamo Bay, Cuba where interdictions and involuntary repatriation continued to occur at a high frequency (Simmons 279).

The practice of the processing of screened-in Haitians at Guantanamo Bay soon became subject of a legal suit as well. *Haitian Centers Council v. McNary* challenged the government policy that detained HIV- infected Haitians and required them to apply for asylum while incarcerated at Guantanamo Bay. The suit claimed that the practice was unlawful, without statutory authority since no law required the process and finally discriminatory with HIV testing solely being performed on Haitian refugees since no other groups of refugees were being placed through the same rigorous testing. (Simmons 278).

The U.S. government response was that Haitians outside of the U.S. had no legal claim to the jurisdiction of the federal courts, the U.S. Constitution, or the Immigration and Nationality Act. In addition to the practice of detaining HIV-infected Haitians the deplorable conditions at the Guantanamo Bay camp

also received national attention. The Center for Disease Control doctors condemned the “suppressing of so many immune deficient people as a public health disaster (Simmons 279).”

After numerous setbacks the trial concluded with the court’s condemnation of the detainment of Haitian refugees at Guantanamo Bay as a HIV prison camp. Following the courts decision the camp was closed and all the Haitians held there were transported to the U.S. to the care of friends or relatives.

During the litigation of the Guantanamo Bay, President Bush further compounded the U.S. policy of interdiction against Haitian refugees. On May 23, 1992, President Bush issued the Kennebunkport Order authorizing the Coast Guard’s immediate repatriation of all Haitians intercepted at sea. Repatriation would occur without any screening whatsoever or inquiry regarding their fear or risk of persecution. Plaintiffs on behalf of the Haitian refugees claimed that the policy violated Article 33 or the non-refouler principle of the 1951 Refugee Convention that was subsequently incorporated into U.S. domestic law by the Refugee Act of 1980. An amended Refugee Act, however, grants the Attorney General the authority of determining refugee status. The U.S. government asserted that it had a right to control immigration by preventing refugees from reaching their borders. Therefore their duty to protect human rights was only applicable to those who reached their shores. After a number of decisions going both ways the program of interdiction was upheld by the Supreme Court. They

determined on June 21, 1993 that Article 33 of the Refugee Convention did not apply outside of the territorial limits of the United States ( Simmons 284).

Justice Blackmun, the lone dissenter, refuted the majority decision. He pointed out that the Refugee Act of 1980 was developed to conform U.S. law to Article 33 of the Refugee Convention. Through careful analysis he distinguished between the right of a country to prevent the admission of an alien or refugee from the internationally prohibited forcible return of refugees to persecution. He addressed the presumption of extraterritorial interdiction and reasoned the drafters of the 1951 Convention had not explicitly prohibited this act because it was so contrary to the non-refoulement principle. He further stated that the U.S. government was violating basic human right to flee persecution by reaching into international waters, seizing aliens, and returning them to the land from which they fled.

### **Perception of Haitian Refugees**

The history of U.S. policy towards Haitian refugees is long and sordid one that consistently sought to prevent the influx of large numbers of Haitian refugees to the U.S. Why such a concerted effort to prevent the entrance of Haitian refugees? Some people like former Congressman Bruce Morrison of Connecticut believe that the discriminatory U.S. policy towards Haitians is based on the fact that they are black, they are fleeing a pro-Western government with friendly ties to the U.S., and their country is not Communist which previously

had being a major factor weighing heavily in favor of those seeking to enter the U.S (Walker 14). Additionally there is the perception of Haitian refugees as economic migrants as opposed to political refugees combined with the stigma stemming from their early association with the AIDS virus.

From its inception, U.S. immigration policy, viewed immigrants from certain countries more favorably than others. Currently refugee admissions are allocated geographically with Africa with 20,000, East Asia with 4,000, Eastern Europe with 2500, the former Soviet Union with 14000, Latin America and the Caribbean with 2500, the Near East and South Asia with 7000 and an unallocated reserve of 20, 000. These allocations however do not reflect the varying rates of approval of refugee status for seekers from different countries. The vast differences in approval rates among those applying for refugee status according to national origin indicates that U.S. foreign policy interests play a major role in determining who will be permitted to cross U.S. borders.

The type of government a refugee is fleeing, as well as its relationship to the U. S. plays a significant role in determining how dire his situation will be considered. This practice officially established in 1965 was called the “seventh preference” which accommodated those refugees fleeing Communist regimes or countries in the Middle East but severely overlooked the needs of other refugees (Simmons 245). Although U.S. refugee criteria has been designed to make the refugee screening process fair and just for all the practice still exists. Repeatedly Haitian boat peoples such as those introduced at the outset are detained

extensively without any knowledge of the status of their cases or are denied refugee status and refouled. Similarly situated Cuban refugees, however, easily gain admittance to the U.S. due to anti-Castro sentiments.

The U.S. justifies its admittance of Cuban refugees from a Communist government as opposed to Haitian refugees from a pro-Western government by classifying Haitian refugees as economic migrants simply seeking a better way of life. Ironically, the U.S. does not consider similarly motivated Cuban refugees fleeing their socialist based system in exchange for a capitalist system economic migrants instead they are deemed true political refugees according to ideologically biased U.S. immigration policy. The narrow-minded perception of Haitians as economic migrants does not consider the fact that is difficult to separate political and economic motivations for migration. Often economic migrants are forced to seek work opportunities outside their homeland as a result of political instability created by their governments.

### **The Conflict between U.S. Policy and International Law**

Despite the United States becoming a signatory of the UNCHR treaties in 1968 and later establishing domestic laws, such as the 1980 Refugee Act in order to have U.S. law comply with international law there exists a major conflict between U.S. immigration policy in practice and international refugee law with regards to Haitian refugees. U.S. policy towards Haitian refugees constantly

defies international refugee law. U.S. policy undermines the authority of international law and makes it a subject to the sovereignty of an all-powerful nation. Repeatedly in defiance of international refugee protection laws U.S. Coast Guards upon encountering Haitian refugees immediately return them without an interview to the deplorable conditions from which they are trying to escape. This act is commonly referred to as refoulement.

Refoulement is a direct violation of one of the fundamental principles of refugee protection; which as explicitly stated in the UNHCR Convention prohibits the return of refugees to the land of persecution from which they fled. The U.S. justifies its actions by asserting the claim that more international refugee burden sharing is needed as well as the fact that it does not and cannot have a obligation to all people in need attempting to enter its borders.

The influx of large numbers of refugees places a huge economic burden to states such as Florida that serve as main ports of entrance. The excessively large number of Haitians seeking refuge within the U.S. in the eyes of many U.S. officials is too great of a burden. The U.S. therefore allows national interests to override its international obligation to Haitian refugees.

The strength of refugee law suffers from the fact that it has no true teeth to back it up. Beyond statutes, resolutions and articles refugee and international law on a whole is simply writing on paper that states are bound to only by their signatures. With no true threat as punishment for violating the 1951 Convention and other pertinent materials member states feel no compulsion to abide by the



principles set forth by the Convention when refugee resettlement conflicts with national interests or becomes burdensome.

What then should serve as the compelling force behind international refugee law? - Shue's basic rights philosophy. According to his theory of duties, under duty three, to avoid deprivation of basic rights to anyone regardless of borders should override national interests. Therefore U.S. policy towards Haitian refugees must end the refoulement of Haitian refugees in order to avoid depriving these refugees of their basic right to survive.

### **What can be done to resolve this problem?**

U.S. immigration policy can be reformed and practiced in accordance with international law. She must recognize first and foremost that the size, wealth, and diversity of the United States places a greater responsibility on the U.S. government to aid in the international burdening sharing of protecting the world's refugees within its borders.

Therefore a uniform nondiscrimination policy regarding the evaluation of applications of people from both friendly and adversarial countries must be implemented to combat the predilection to base refugee admissions on foreign policy interests.

Another possible solution is the creation of separate Asylum Admissions board separate from the jurisdiction of the State Department to avoid the conflict of politically motivated refugee policy.

Additionally, the aforementioned U.S. processing priorities should be revised in order to make the process fairer and more effective. The proposed processing changes are as follows:

*Priority One:* The most urgent protection cases in countries of first asylum. Refugees facing security concerns, in need of legal protection or urgent medical attention fall into this category. Any refugee falling into one of the aforementioned categories could be referred by UNHCR, U.S. diplomatic posts abroad, and NGOs working with refugee populations.

*Priority Two:* any refugees whose persecution is based on association with the U.S. government or agency.

*Priority Three:* A special category for refugee women at risk. Especially those considered vulnerable in the country of first asylum to exploitation or abuse.

These women would include heads of households, widows, and elderly women.

*Priority Four:* physically or mentally disabled refugees and survivors of torture or violence.

*Priority Five:* specific U.S. State Department refugee identified groups (nationalities) based on individual circumstances.

*Priority Six:* Open reunification of immediate family members. This includes refugee spouses, unmarried refugee children of any age, and refugee parents of persons lawfully admitted to the U.S. as permanent resident aliens, refugees, asylees, conditional residents, and certain parolees.

*Priority Seven:* Longer-stayer refugees for who voluntary repatriation or local integration are not feasible and whose place of asylum is not considered a durable solution ( U.S. Committee for Refugees, USCR).

The aforementioned proposed priority processing changes represent comprehensive solutions designed to strategically address the resettlement needs of the refugee population. While the protection of the most urgent cases remains the highest priority thoughtful consideration and prioritizing of other situations serves as a vital resource to be used in determining refugee admissions.

Finally, as a great power, the U.S. must accept the refugee-producing consequences of economic and military actions in countries. Thus in order to act in their long term national interests perhaps the U.S. should seek to reduce or eliminate actions that provoke massive migration. These actions can include closing or opening of factories that result in a fear of perishing due to the loss of the ability to sustain oneself or the threat of the loss of life from waging war.

## **Conclusion**

The international community, including the U.S., must commit to state accession and good faith application of international refugee law in order to ensure that the basic interests of all refugees are met (U.S. Committee for Refugees, USCR). If a commitment is not made to abide by this system in which the burden and responsibility of refugees are shared among the states the protection of refugees is in great danger.

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