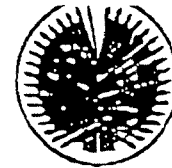


INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINÉ DES DROITS DE L'HOMME



ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 20006 U.S.A.

May 19, 2004

**Ref: Interdiction and Repatriation of Haitian Refugees
Request for Information
United States**

Dear Mr. Cavallaro:

On behalf of the Inter-American Commission on Human Rights, I wish to acknowledge receipt of your communication dated April 27, 2004 responding to the Commission's request for information concerning the matter cited above.

I also wish to inform you that by note of today's date, the Commission transmitted the pertinent parts of your communication to the Government of the United States and addressed the Government in the following terms:

I also wish to inform Your Excellency that, after considering the information presented in respect of this request for precautionary measures, including the original request dated March 16, 2004, the State's response dated April 16, 2004 and the authors' reply dated April 27, 2004, the Commission has decided to address Your Excellency's government in the following terms.

The Commission first observes that its authority to receive and grant requests for precautionary measures under Article 25(1) of its Rules of Procedure¹ is, as with the practice of other international decisional bodies,² a well-established and necessary component of the

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¹ Article 25(1) of the Commission's Rules of Procedure provides: "In serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons."

² See e.g. American Convention on Human Rights, Art. 63(2); Rules of Procedure of the Inter-American Court of Human Rights, Art. 25; Statute of the International Court of Justice, 59 Stat. 1055, Art. 41; Rules of Procedure of the United Nations Human Rights Committee, U.N. Doc. CCPR/C/3/Rev.6, Art. 86; Rules of Procedure of the European Commission of Human Rights, revised Rules updated to 7 May 1983, Art. 36; Rules of Procedure of the African Commission on Human and Peoples' Rights, adopted on 6 October 1998, Art. 111.

Commission's processes.³ The authority to issue measures applies to all OAS member states, including those that have not ratified the American Convention on Human Rights but are subject to the requirements of the OAS Charter, the American Declaration of the Rights and Duties of Man, and the Commission's Statute and Rules of Procedure. Indeed, where such measures are considered essential to preserving the Commission's very mandate under the OAS Charter, the Commission has ruled that OAS member states are subject to an international legal obligation to comply with a request for measures.⁴

Concerning the circumstances raised in the present request, the Commission has been and continues to be troubled by the recent crisis in Haiti. Over the past several months, the Commission has expressed its concern regarding reports of killings and other human rights violations in Haiti and has indicated that it will continue to monitor the situation closely.⁵ The Commission is also concerned for the welfare of individuals who may face persecution as a result of these circumstances and who wish to exercise their right to seek asylum from other states. In this respect, the Commission recalls the findings in its decision in the Haitian Interdiction Case, in which it determined that the right to seek and receive asylum embodied by Article XXVII of the American Declaration applies to individuals interdicted by a Member State of the OAS on the high seas, and that a person seeking refuge has a right to a hearing in order to determine whether he or she meets the criteria for refugee status set out in the 1951 United Nations Convention Relating to the Status of Refugees.⁶

The United States has indicated in its observations that it provides all interdicted migrants with an opportunity to seek and receive protection through interviews with asylum officers, and that it has not repatriated any migrants who were determined to qualify as refugees. The State has not, however, provided information concerning the conditions of the hearings with asylum officers, nor has it indicated how many claimants have and have not been granted refugee status, the grounds for these decisions, or the fates of the individuals concerned.

In light of the above considerations, the uncertain and changeable situation in Haiti, and the importance of respect for the right to seek and receive asylum in circumstances of this nature, the Commission has decided pursuant to Article 18(d) and 20 of its Statute to request that the State facilitate the Commission's follow up on this situation by providing it with information within two months from the date of the present communication, and each two-month period thereafter, concerning the situation of persons who are interdicted by the United States and who raise claims for asylum from the situation in Haiti. This information should include the number of individuals who have been interdicted, the number of individuals who have made refugee claims and the conditions under which those claims were made and considered, the number of claims that have been accepted and rejected and the grounds for those decisions, and the fates of the persons concerned.

³ See IACHR, Precautionary Measures adopted in respect of the Detainees at Guantanamo Bay, Cuba (United States), March 12, 2002, citing Regulations of the Inter-American Commission on Human Rights, approved by the Commission at its 660th Meeting, 49th session held on April 8, 1980, and modified at its 64th, 70th, 90th and 92th sessions, Art. 29; Rules of Procedure of the Inter-American Commission on Human Rights, approved by the Commission at its 109th special session held from December 4 to 8, 2000, Art. 25; Annual Report of the IACHR 1996, Chapter III(4); Annual Report of the IACHR 1997, Chapter III(II)(A); Annual Report of the IACHR 1998, Chapter III(2)(A); Annual Report of the IACHR 1999, Chapter III(C)(1); Annual Report of the IACHR 2000, Chapter III(C)(1).

⁴ See IACHR, Fifth Report on the Situation of Human Rights in Guatemala, OEASer.LV/II.111 doc. 21 rev. (6 April 2001), paras. 71-72; *Juan Raul Garza v. United States*, Case No. 12.243, Report No. 52/01, Annual Report of the IACHR 2000, para. 117.

Finally, the Commission wishes to inform you that its decision to request the above information from the State is without prejudice to the right to lodge a petition provided for under Article 33 of the Commission's Rules of Procedure or to request precautionary measures pursuant to Article 25 of the Commission's Rules where specific information is available concerning a serious and urgent risk of irreparable harm to a particular person or group of persons.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'Arlel Dulitzky', written over a horizontal line. The signature is stylized with a large loop on the left and a vertical stroke on the right.

Arlel Dulitzky
In charge of the Executive Secretary