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Addendum

Forced returns of Haitians from third states*

Summary

Established by the Commission on Human Rights in its resolution 1995/70 and with Presidential Statement PRST/15/1, the Independent Expert on the situation of human rights in Haiti submits this Addendum to his annual report to the Council at its twentieth session.

Since the 12 January 2010 earthquake, several international bodies, including the Independent Expert, have urged UN member states to suspend forced returns to Haiti because of the ongoing humanitarian crisis. Despite the international community's appeals, several UN member States have forcibly returned Haitian nationals to Haiti since the earthquake, placing these individuals in a vulnerable, life-threatening position and placing additional burden on Haiti. Due to the government's instability, the shortage of resources in Haiti, the conditions under which forcibly-returned individuals are detained, and the severe humanitarian consequences – including separation of family members and exposure to deadly diseases – the Independent Expert is deeply concerned that the forced return of these individuals may constitute human rights violations.

In light of these concerns, the Independent Expert renews his call upon UN member States to suspend all forced returns to Haiti. In the event that States decide to forcibly return Haitian nationals to Haiti, they should, at a minimum, and in accordance with their international legal obligations, 1) take humanitarian factors into consideration when making decisions concerning forced returns, and 2) ensure adequate reintegration and support services for individuals forcibly returned to Haiti. The Independent Expert has learned that some member States that are forcibly returning individuals to Haiti may not be following these obligations, raising serious concerns about the rights to life, health, dignity, family, due process, and access to justice.

* Reproduced as received.

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I. Introduction

1. Since the 12 January 2010 earthquake, several United Nations bodies, including the Independent Expert, have issued joint emergency appeals to States to suspend forced returns to Haiti. On 12 February 2010 and 18 February 2010, the United Nations High Commissioner for Human Rights (OHCHR) and the High Commissioner for Refugees (UNHCR) issued a joint emergency appeal to countries to suspend all forced returns to Haiti because of the ongoing humanitarian crisis: “pending stabilization and until such time as people can return safely and sustainably, HCHR and HCR call on all countries not to return Haitians at this time and to continue granting interim protection measures on humanitarian grounds”.¹

2. In his 31 May 2010 report,² the Independent Expert reported that despite the OHCHR/UNHCR joint appeals, some countries had terminated their reception programmes implemented in the wake of the earthquake, and had begun to send irregular migrants back to Haiti. Additionally, States whose territories lie in geographic proximity to Haiti had resumed interdictions on the high seas of large numbers of migrants and returned these individuals to Haiti. The Independent Expert urged that this was not the right time to inflict on Haiti the burden of the return of so many migrants trying to escape Haiti’s harsh post-earthquake conditions.

3. In his 4 April 2011 report,³ the Independent Expert reiterated his recommendation to suspend forced returns to Haiti in light of the ongoing humanitarian crisis. Additionally, the Independent Expert urged States “to adopt a flexible and generous attitude toward Haitians seeking refuge in other countries”,⁴ and recommended that those States choosing to forcibly return Haitian nationals should ensure that returns comply with States’ international legal obligations.

4. The OHCHR and UNHCR jointly issued an updated return advisory on 9 June 2011 urging States to “refrain from conducting returns to Haiti” on humanitarian grounds. It appeals “to Governments to renew...residence permits and other mechanisms that allow Haitians to remain [outside Haiti]”, and requested that Governments “[g]ive special consideration and refrain from returning to Haiti persons with special protection needs...; [p]revent situations where returns lead to the separation of family members; [v]erify the nationality of persons of Haitian origin when doubts arise to nationality; [e]nsure that forced returns [if they take place] are undertaken in a humane manner, in full respect for human rights and dignity, and with adequate advance notification provided to the competent Haitian authorities....”⁵

5. On 4 February and 11 May 2011, the Inter-American Commission on Human Rights (IACHR) issued similar guidance, “urg[ing] the United States to suspend deportations to Haiti of persons of Haitian origin who are seriously ill or who have family members in the

¹ OHCHR/UNHCR urge extending suspension of returns to Haiti, UNHCR Briefing Notes, 12 February 2010, <http://www.unhcr.org/4b7543026.html>; OHCHR/UNHCR Return Advisory Update on Haiti, United Nations High Commissioner for Refugees and Office of the High Commissioner for Human Rights, 9 June 2011, <http://www.unhcr.org/4e0071429.html>.

² A/HRC/14/44/Add.1.

³ A/HRC/17/42.

⁴ *Id.* ¶ 37.

⁵ Joint HCHR/UNHCR Return Advisory Update on Haiti, *supra* note 1.

United States.” The Commission issued precautionary measures on behalf of named Haitian nationals subject to immediate deportation by the United States.⁶

6. The Independent Expert has conducted site visits to Haiti from 28 August to 9 September 2011 and from 31 January to 8 February 2012, during which time he investigated the issue of forced returns of Haitian nationals to Haiti from third States. On 11 November 2011, the Independent Expert sent a questionnaire requesting information from UN member States concerning forced returns to Haiti.

7. In the present Addendum, the Independent Expert reports on measures taken by States regarding forced returns of Haitians and the effect of these returns on Haiti. This Addendum synthesizes and analyses information from site visits, State responses to the questionnaire, and independent research concerning forced returns from third States.⁷

The severe and ongoing humanitarian crisis in Haiti

8. As described in the Independent Expert’s 2012 main report⁸, the humanitarian crisis following the 12 January 2010 earthquake is severe and ongoing, placing a great burden on Haiti. There are significant health and other issues: a continued cholera outbreak and insufficient access to food, water, housing, medicine, and medical treatment for the general population. Poverty and increasing violent crime exacerbate the deplorable conditions in Haiti. Gender-based violence is of particular concern, especially in tent camps. Like others, deportees face these conditions. Many confront additional barriers, such as language and cultural barriers, social stigma, and little or no family support in Haiti.

9. Displacement and safety is a continuing grave concern. In recent months violent crime in Haitian shantytowns has been on the rise; February 2012 had the highest murder per capita since 2006⁹. As of February 2012, more than 500,000 individuals are still living in tent camps,¹⁰ presenting serious sanitary and safety concerns. While this number is a decrease from the peak of 1.5 million tent camp inhabitants following the earthquake, it does not adequately describe the housing crisis, which is compounded by a wave of illegal and often violent evictions which are forcing people out of camps and communities, and into conditions that are potentially even worse.

10. Gender-based violence was a serious problem prior to the earthquake and has remained a serious problem subsequently, particularly in tent camps. The already-limited

⁶ See *IACHR Urges United States to Suspend Deportations to Haiti*, Organization of American States, 4 February 2011, http://www.osouas.org/en/iachr/media_center/PReleases/2011/006.asp; see also <http://www.cidh.org/medidas/2011.eng.htm>.

⁷ The Independent Expert would like to acknowledge the University of Miami School of Law Human Human Clinic for its role in research and documentation for this report. Thank you to Professors Caroline Bettinger-López and Christina Zampas, Students Drew Aiken, Erin Lewis, Justin Ortiz, Shelly Pessa, and Michael Stevenson and to Lea Dartevelle. The Independent Expert would also like to acknowledge the numerous civil society organizations that provided invaluable assistance in this process.

⁸ A/HRC/20/35

⁹ *Violent Crime has Spiked in Haiti's Cities*, TIME World, 4 March 2012, <http://www.time.com/time/world/article/0,8599,2108272,00.html>.

¹⁰ International Organization for Migration, 28 February 2012, [http://www.iom.int/jahia/Jahia/media/press-briefing notes/pbnAM/cache/offonce/lang/en?entryId=31347](http://www.iom.int/jahia/Jahia/media/press-briefing-notes/pbnAM/cache/offonce/lang/en?entryId=31347).

prevention and response mechanisms in place before January 2010 were greatly undermined by the earthquake¹¹.

11. Persons forcibly returned to Haiti face the prospect of living in camps – especially those with little or no family in Haiti. These individuals also face other barriers: they have difficulty finding employment due to stigma and inability to quickly access national identity cards; many do not speak Haitian Creole and have lived the vast majority of their lives in the sending country; and many have little or no family support system in Haiti. Some of those returned or deported to Haiti have never been to Haiti because they were born in other countries.

12. The ongoing humanitarian crisis raises concern about both the human rights and dignity of those returned as well as the burden that such returns place on the Haitian state to support additional persons, many of whom have little connection (cultural, linguistic, family ties) to Haiti.

II. Questionnaire and terminology

13. The questionnaire sent to UN member states by the Independent Expert asked States to respond to questions (1) concerning the number of returns/deportations of Haitian nationals since 12 January 2010; (2) the legal and administrative framework – including the availability of appeals – that applies to Haitian nationals with irregular migratory status or subject to forced removal; (3) specific legal, administrative or other measures taken to address the specific circumstances of Haitians – especially those belonging to vulnerable groups; and (4) follow-up measures to ensure returnees' adequate reintegration in Haiti.

14. UN member states have used varying language in their responses to the questionnaire with regard to characterizing such forced returns, including “deportation,” “return,” “repatriation,” and/or “removal.” Similarly, as described below, the various UN treaty monitoring bodies, UNHCR, and OHCHR have used this varying terminology to refer to the same phenomenon.

15. For this report, the term “forced returns” will primarily be employed to refer to the practice of a State expelling individuals from that country, against their will, whom are lawfully or unlawfully present there, regardless of grounds for their return. The terms “deportee” and “returnee” – individuals who were forcibly returned to Haiti – are used interchangeably.

III. State responses to the questionnaire

16. The Independent Expert thanks those UN member states that responded to the questionnaire on the issue of forced returns of Haitians from third States: Brazil, Costa Rica, Denmark, France, Germany, Lebanon, Mexico, Paraguay, Romania, Slovenia, the Slovak Republic, the United Kingdom, and the United States of America. The information from these responses is incorporated in this report. Unfortunately, some States did not include information on the situation in their overseas territories, and others – including States that regularly forcibly return Haitian nationals – did not respond to the questionnaire altogether. States' failure to respond leaves the Independent Expert with an incomplete data set that must be filled in with secondary source research.

¹¹ *Aftershocks: Women Speak Out Against Sexual Violence in Haiti's Camps*, Amnesty International 2011, at 15, <http://www.amnesty.org/en/library/asset/AMR36/001/2011/en/57237fad-f97b-45ce-8fdb-68cb457a304c/amr360012011en.pdf>.

17. Some States do not keep adequate records of individuals removed to Haiti. It is important that UN member States keep records of the number of individuals removed to Haiti and disaggregate data based on sex, age, date of removal, medical conditions, country of birth and ties to Haiti to ensure these individuals are guaranteed adequate protections and human rights safeguards.

IV. Forced returns and deportations to Haiti after 12 January 2010

A. Specific legislative and administrative frameworks concerning forced return of Haitian nationals by states immediately following the 12 January 2010 earthquake

18. According to responses to the questionnaire and information gathered from other sources, following the 12 January 2010 earthquake, some States – including Canada, France, Mexico, and the United States – halted all forced returns to Haiti for humanitarian reasons.

19. Other countries relaxed their policies and/or practices of forced returns for a limited period of time. The Bahamas temporarily suspended for a “short period” the forced returns of Haitian nationals,¹² announcing that Haitians without legal status would be released from detention centers and given temporary legal status.¹³ Likewise, the Dominican Republic announced it would stop deporting Haitians who entered the country illegally, and for the year following the earthquake, forced returns appear to have reduced.¹⁴ Jamaica indicated that Haitians arriving on Jamaican shores would not be turned away.¹⁵ Turks and Caicos, a British overseas territory, also temporarily suspended forced returns of Haitian nationals, following the same policy as the United States and the Bahamas of not deporting people who were already in the country on 12 January 2010 but returning those who arrived after that date.¹⁶ However, none of these States/territories responded to the questionnaire of the Independent Expert, so it is either unclear whether returns were halted in practice or whether returns continued, as independent reports indicate.

20. On 13 January 2010, France suspended removals to Haiti.¹⁷ According to the French response to the questionnaire, family reunification requests have been granted, without delay and without a temporary visa, allowing family members to come to France. Haitian

¹² *Prime Minister’s Press Statement*, The Bahamas Weekly, 26 August 2010, http://www.thebahamasweekly.com/publish/bis-news-updates/illegal_immigrants_from_the_Republic_of_Haiti12111.shtml.

¹³ *Bahamas Suspends Repatriation of Illegal Haitians*, BBC Worldwide Monitoring, 16 Jan. 2010.

¹⁴ Randal C. Archibold, *As Refugees From Haiti Linger, Dominicans’ Good Will Fades*, New York Times, Aug. 30, 2011, http://www.nytimes.com/2011/08/31/world/americas/31haitians.html?_r=1&ref=dominicanrepublic

¹⁵ Kathy Barrett, *JAMAICA: Haitian Refugees Sent Home*, Inter-Press Service, 1 April 2010, <http://ipsnews.net/2010/04/jamaica-haitian-refugees-sent-home/>.

¹⁶ Richard Green, *UN refugee agency “concerned” with Haitian repatriation*, Turks and Caicos Free Press, 12 Jan. 2011 http://www.fptci.com/index.php?option=com_content&view=article&id=2114:un-refugee-agency-concerned-with-haitian-repatriation&catid=18:local&Itemid=26.drew

¹⁷ France response to UN Independent Expert Questionnaire [hereinafter “France Response”]. The French métropole refers to continental France.

nationals in a regular situation in France whose visas and permits to stay have expired after 12 January 2010, have received new temporary residency permits.

21. Canada refrained from forcibly returning individuals to Haiti before the January 2010 earthquake: in 2004, Canada imposed a Temporary Suspension of Removals (TSR) on Haitian nationals.¹⁸ The TSR program, which allows the government to interrupt removals to a country when the general conditions could seriously endanger the lives or safety of the entire population, remains in effect as of the date of publication of this report.¹⁹ TSR does not apply to individuals who choose to voluntarily return, those who are viewed as a security threat, or those who have a criminal record or conviction.²⁰ Canada halted all removals to Haiti on January 13, 2010, including for individuals who do not qualify for TSR.²¹

22. On 3 March 2010, Mexico reiterated its pledge to halt deportations and its commitment to expediting humanitarian visas for Haitians with family ties to Mexico.²² As of 27 April 2010, 324 Haitians had relocated to Mexico.²³

23. In January 2010, the United States designated Haiti for temporary protected status (TPS), allowing temporary immigration relief for eligible Haitian nationals who were physically present in the United States as of 12 January 2010. Countries are designated for TPS “due to conditions in the country that temporarily prevent the country’s nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately.”²⁴ Additionally, the United States temporarily suspended certain regulatory requirements, permitting qualifying nonimmigrant Haitian students to obtain employment authorization, granted humanitarian parole to Haitian orphans, and released and granted discretionary stays of removal to Haitians with final removal orders. The TPS program has been extended through 22 January 2013, and also applies to eligible Haitians who arrived in the United States before 12 January 2011. TPS does not apply to Haitian nationals with convictions in U.S. courts for at least two misdemeanors or one felony.²⁵ Currently 55,604 Haitians hold TPS benefits and are not subject to removal.²⁶

24. In response to the questionnaire, several states – including Costa Rica, Denmark, Germany, Paraguay, Romania, Lebanon, the Slovak Republic, and Slovenia – reported not conducting forced returns to Haiti since the earthquake.²⁷ It is unclear however, if any of

¹⁸ Canada Response to the UN Independent Expert Questionnaire [hereinafter “Canada Response”]

¹⁹ Id.

²⁰ Id.

²¹ Id.

²² Suaviza INM medidas para Haitianos [INM soften measures for Haitians], 21 January 2010 (Mex.), http://www.matt.org/espanol/blog/2675/suaviza_inm_medidas_para_haitianos.html; Nadia Sanders, *Un pasaporte obstaculiza reunificación de familias haitianas en México* [A passport obstacle for the reunification of Haitian families in Mexico], CNN México, 17 March 2010, <http://mexico.cnn.com/nacional/2010/03/17/un-pasaporte-obstaculiza-reunificacion-de-familias-haitianas-en-mexico>; Daniel Hernandez, *Haitians reunite with families in Mexico*, Los Angeles Times|World, 27 April 2010, <http://latimesblogs.latimes.com/laplaza/2010/04/haitians-arrive-mexico.html>.

²³ Hernandez, *Haitians reunite with families in Mexico*, Id..

²⁴ *Temporary Protected Status*, U.S. Citizenship and Immigration Services, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=848f7f2ef0745210VgnVCM100000082ca60aRCRD&vgnnextchannel=848f7f2ef0745210VgnVCM10000082ca60aRCRD> (last visited 7 March 2012).

²⁵ Id. United States Response to Independent Expert Questionnaire [hereinafter “U.S. Response”].

²⁶ U.S. Response.

²⁷ State Responses to Independent Expert Questionnaire. Independent research corroborates these States’ responses.

these countries had in their jurisdiction Haitian nationals subject to deportation. There have been no forced returns from the mainland United Kingdom,²⁸ though independent reports indicate that there have been returns from Turks and Caicos, an overseas territory.²⁹

25. The Independent Expert commends all member states that have halted returns to Haiti and taken measures to provide relief to Haiti, given the dire situation there.

B. Despite the humanitarian crisis, several states resumed forced removals to Haiti in 2010 and 2011: Legal framework and state practice

26. Some States/territories that returned individuals to Haiti since 12 January 2010 had previously halted or decreased forced returns for humanitarian reasons, including the Bahamas, Canada, the Dominican Republic, France, Jamaica, Mexico, and the United States.³⁰

27. Media reports indicate that the Bahamas forcibly returned approximately 906 Haitians between mid-February 2010 and mid-September 2010,³¹ indicating that forced returns were resumed as early as one month following the earthquake. In this same time period, 102 Haitians were given permits “to reside” in the Bahamas.³² From January 2011 to November 2011, 2,117 Haitians were returned,³³ bringing the total of forced returns to at least 3,023 in the two years since the earthquake.

28. Canada resumed removals to Haiti on May 4, 2011; however, TSR remains in effect.³⁴ Canada reports deporting 90 individuals to Haiti between 12 January 2010 and December 2011.³⁵ Canada’s Regulation 230(1) provides that the Minister of Citizenship and Immigration may impose a stay of removal orders to a country or place if the circumstances in that country or place pose a generalized risk to the entire population as a result of, inter alia, an environmental disaster resulting in a substantial temporary disruption of living conditions or any situation that is temporary and generalized.³⁶ However, some individuals may qualify for exceptions to the stay, for instance, “on the grounds of serious criminality...”³⁷

29. Generally, all those subject to removal in Canada may apply for a Pre-Removal Risk Assessment, which examines whether the individual would be at risk of persecution and/or cruel and unusual punishment or a risk to their life before they are returned. Humanitarian factors cannot be considered unless the person has filed an application for permanent residence on humanitarian grounds. According to civil society organizations, there is no

²⁸ United Kingdom response to Independent Expert Questionnaire [hereinafter “U.K. Response”].

²⁹ *Repatriating illegal Haitians costing TCI millions of dollars*, Turks and Caicos Sun, 9 Jan. 2012, <http://www.suntci.com/index.php?p=story&id=2223>.

³⁰ State Responses to Independent Expert Questionnaire. Note: the Independent Expert did not receive responses to the questionnaire from several countries where there have been reports of forced returns, including the Bahamas, the Dominican Republic, Jamaica, or Turks and Caicos (a UK territory), requiring the Independent Expert to rely solely on information provided by other sources, such as non-governmental organizations (NGOs) and the media.

³¹ *Bahamas to Deport More Than 100 Illegal Haitians*, BBC Worldwide Monitoring, 8 Sept. 2010.

³² *Bahamas to Deport Illegal Haitian Migrants*, BBC Worldwide Monitoring, 16 Aug. 2010.

³³ *Immigration Figures Revealed*, The Tribune, 11 Nov. 2011, http://www.tribune242.com/news/11112011_cn-DPM-Immigration_news_pg1.

³⁴ Canada Response.

³⁵ *Id.*

³⁶ Immigration and Refugee Protection Regulations (SOR/2002-227) §230(3)(c).

³⁷ *Id.*

guarantee that a humanitarian application will be considered prior to a removal from Canada. Persons who are found to be inadmissible, for instance, for "serious criminality" are barred from having the grounds of risk of persecution considered.³⁸ Civil society organizations report that the removal of persons to Haiti can include persons who have committed minor crimes; those who have family, including children, in Canada; those who have lived in Canada most of their lives; those who have no family in Haiti nor any knowledge of the country; and those who face health and other risks.

30. With regard to the Dominican Republic, according to NGO documentation,³⁹ between January and December 2011, approximately 9,700 individuals were documented as removed to Haiti across the border in the Belladere/Elias Piña and Malpasse/Jimani regions;⁴⁰ many more undocumented forced removals are suspected. While there is no clear data on the number of forced removals from the northern region of the Dominican Republic in this period, NGOs estimate at least 20,000 individuals were forcibly removed – a similar number to forced removals that occurred prior to the earthquake.⁴¹ As described below, many of those who are forcibly returned by the Dominican Republic to Haiti are Dominican nationals of Haitian descent. Commentators have noted that the Dominican Republic has “tak[en] its cue” from the United States, resuming forced removals of Haitians shortly following the resumption of U.S. forced returns in January 2011.⁴²

31. The Dominican Republic regularly subjects Haitians and Dominicans of Haitian descent to expulsions and forced removals without due process of law, the opportunity to collect and present identity documents, obtain or communicate with counsel, and/or appear before a judge or magistrate prior to their forced return across the border to Haiti.⁴³ The New York Times reported that since the earthquake, “[t]he [Dominican] police and military near the border, with little more to go on than darker skin color and a failure to produce identification, have stopped cars and buses and forced them to Haiti.”⁴⁴ These individuals are generally detained and then taken by bus across the border to Haiti, without the opportunity to contact family members or gather their possessions or money.⁴⁵ Frequently, multiple homes in a given Haitian community will be robbed en masse immediately following these roundups, leading many NGOs to suspect a coordinated effort on the part of the Dominican militias to deport and plunder homes simultaneously.⁴⁶

32. Forcible returns without the opportunity to gather possessions or money causes additional problems for vulnerable persons, especially women. For example, one young woman was forcibly returned to Haiti and dropped off in a region a great distance from her previous residence.⁴⁷ She was not permitted to gather any belongings or money in the Dominican Republic before being forcibly returned, and her only way to get money for bus

³⁸ The Immigration and Refugee Protection Act §§112 and 113 (S.C. 2001, c. 27).

³⁹ GARR, Port-au Prince, Haiti.

⁴⁰ *Id.*

⁴¹ Meeting with Colette Lespinasse of GARR, 7 Feb. 2012, Port-au-Prince.

⁴² Michelle Karshan, *Continue to Suspend Deportation to Haiti*, Op-Ed, Sun Sentinel, 19 Jan. 2011, <http://www.alternativechance.org/Continue-to-Suspend-Deportation-to-Haiti-by-Michelle-Karshan>.

⁴³ Dominican Republic Submission to the UN Human Rights Committee 104th Session of the Human Rights Committee 12-30 March 2012, Amnesty International, February 2012, AMR 27/001/2012 [hereinafter “Amnesty D.R. Submission”].

⁴⁴ Randal C. Archibold, *As Refugees From Haiti Linger, Dominicans’ Good Will Fades*, New York Times, 30 Aug. 2011, http://www.nytimes.com/2011/08/31/world/americas/31haitians.html?_r=1&ref=dominicanrepublic.

⁴⁵ *Id.*; Meeting with Colette Lespinasse, *supra* note 36.

⁴⁶ *Id.*

⁴⁷ Interview of individual forcibly returned from the Dominican Republic, 6-8 Feb. 2012.

fare was to have sex with two Dominican officials.⁴⁸ If she had not gotten to a safe place before nightfall, she would have been alone in an unfamiliar place and in a highly vulnerable position.

33. Documented examples of expulsions from the Dominican Republic abound. On 8 February 2012, 94 individuals of Haitian descent, including 62 men, 14 women, and 18 children were forcibly removed from the Dominican Republic to Haiti.⁴⁹ Similarly, Amnesty International reports that on 20 September 2011, Dominican authorities drove 80 Haitian migrants across the border to Haiti from the Dominican Republic without having their cases individually examined and without the opportunity to appeal against the decision to return them to Haiti.⁵⁰ Some of these individuals were beaten and children were separated from their parents.⁵¹

34. France reports forcibly returning 5 individuals to Haiti from the French “métropole” between January 2010 and November 2011. In total there were 55 returns to Haiti from the métropole, 31 of which were voluntary, 18 of which were aided by the French, and the remaining 5 of which were forced and 1 of which was a readmission to one of the European States. Deportations from French overseas territories Martinique and Guadeloupe resumed following the January 2010 moratorium.⁵² The French Government noted, that “[i]t has been decided to allow the Governors of the two Departments [Martinique, Guadeloupe] and Guyana to remove Haitians in irregular situations [illegals] to their country, giving as instructed, accordance [to the recognized standard] of the Office of the High Commissioner for Human Rights and the High Commissioner for Refugees, to not apply these laws to the weak, while also considering the state of health, age, and the eventual isolation from one’s country.”⁵³ The French Government justifies the end of the moratorium, which occurred in June 2011, on the grounds that “the migratory situation in the Departments of Martinique and Guadeloupe has degraded because of the arrival of many clandestine Haitians.”⁵⁴

35. From the French overseas departments, Martinique, Guadeloupe, and French Guyana, France reports that 455 individuals have been returned to Haiti. From the French response, it is unclear how many individuals were removed from each territory, and whether these removals were voluntary. NGOs report, however, that 50 individuals have been forcibly removed from Guadeloupe between June 2011 and 15 February 2012. In the same period, 78 individuals have had “the obligation to leave Guadeloupe.”

36. It is unclear how many individuals have been returned from Jamaica during this time period. News sources report 67 Haitian asylum seekers were returned in March 2010,⁵⁵ indicating that returns from Jamaica began as little as six weeks after the earthquake. Jamaica also planned to deport 30 Haitians, 10 of whom were children, in May 2010 after they had all arrived about a month earlier by boat and landed without documentation.⁵⁶ This group included a new mother, who had given birth to her baby in Jamaica, and ten of

⁴⁸ *Id.*

⁴⁹ Human Rights Section, Weekly Report 4 to 10 February 2012, United Nations Stabilization Mission in Haiti.

⁵⁰ Amnesty D.R. Submission, *supra* note 38.

⁵¹ *Id.*

⁵² France Response.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *67 Haitian asylum seekers sent home*, Jamaica Observer, 31 March 2010, http://www.jamaicaobserver.com/news/Haitians-sent-home_7515358; BBC Article, Jamaica to deport illegal Haitian immigrants, BBC WORLDWIDE MONITORING (May 8, 2010).

⁵⁶ BBC Article, *Jamaica to deport illegal Haitian immigrants*, BBC WORLDWIDE MONITORING, 8 May 2010.

her family members.⁵⁷ Despite noting that there were humanitarian and health factors to be considered, the Jamaican Information Minister suggested that the deportations were occurring because funding to host the Haitians was depleted.⁵⁸

37. Mexico reports forcibly returning three individuals in 2010 and six between January and October 2011.

38. The United Kingdom reports that there have been no forced returns or voluntary departures from the United Kingdom during this period. However, news reports indicate that there have been returns from the Turks and Caicos, an overseas territory of the United Kingdom, explaining the relevant Ministry could not provide a breakdown by year over the past five years of the total number of Haitians who were returned.⁵⁹ The report also indicates that there have been interdictions at sea near Turks and Caicos.⁶⁰

39. Some countries, in response to increasing political pressures to address illegal immigration, have forcibly returned certain lawful permanent residents and lawful immigrants to Haiti on the grounds that they pose a security threat due to prior criminal records. This has occurred in the United States and Canada since 12 January 2010, where, despite their TPS and TSR programs, individuals with convictions for minor crimes who have already served their sentences are being deported.⁶¹

40. The United States announced its decision to resume deportations to Haiti in December 2011. On 20 January 2011, 26 deportees were sent on a plane to Haiti. The deportees reported being detained in police station holding cells for nearly two weeks upon arrival in Haiti. Advocates reported this detention was “pursuant to the Haitian government’s longstanding policy of detaining deportees from the U.S. for indefinite periods of time in unsanitary and abusive conditions in which they are deprived of food, water, medical and psychological care, and medicine.”⁶² One 34-year old deportee, Wildrick Guerrier, who became violently ill and weakened while detained in a police station holding cell, died of cholera-like symptoms shortly after his detention and exposure to these life-threatening conditions.⁶³ In the wake of Guerrier’s death, the United States briefly suspended deportations to Haiti again.

41. On 1 April 2011, despite conditions in Haiti, the United States formally implemented a “Policy for Resumed Removals to Haiti.”⁶⁴ Under this policy (“April 1st Policy”), individuals convicted of crimes in the United States can be deported to Haiti.⁶⁵ The policy states that it balances “the severity, number of convictions, and dates since convictions...against any equities of the Haitian national, such as duration of residence in

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Repatriating illegal Haitians costing TCI millions of dollars*, Turks and Caicos Sun, 9 January 2012, <http://www.suntci.com/index.php?p=story&id=2223>.

⁶⁰ *Id.*

⁶¹ Interviews of U.S. deportees, 6-8 Feb 2011.

⁶² Comments Submitted to ICE re Haiti Deportations Policy, 18 March 2011, Letter to ICE, http://www.law.miami.edu/clinics/pdf/2011/Annex_A_Comments_ICE_Haiti_Deportation_Policy.pdf.

⁶³ *Deported Haitian Man Dies in Jail*, CBS-Miami, 1 Feb. 2011, <http://miami.cbslocal.com/2011/02/01/deported-haitian-man-dies-in-jail/>.

⁶⁴ *Policy for Resumed Removals to Haiti*, U.S. Immigration and Customs Enforcement, 1 April 2011, <http://www.ice.gov/news/releases/1104/110401washingtondc2.htm>.

⁶⁵ *Id.*

the United States, family ties, or significant medical issues.”⁶⁶ Under this policy, the United States continues to deport approximately 40-50 persons to Haiti each month.

42. There are serious concerns from U.S. civil society with the application of the April 1st Policy. For example, individuals with severe, life-threatening medical conditions – including HIV, schizophrenia, diabetes, asthma, high blood pressure, severe injuries, and bleeding ulcers – have been deported to Haiti without or with limited supply of medicine.⁶⁷ Since access to medical care and medicine is a serious problem in Haiti, these individuals are at severe risk.

43. Under the Policy, individuals with U.S. citizen and legal permanent resident children and spouses have been deported to Haiti. In many cases, the individual economically supports the family, and his/her removal creates financial and emotional burdens on all involved. One deportee, for instance, had served his sentence over 10 years ago. He was forcibly returned to Haiti, despite the fact that he had been living lawfully in the United States for 36 years, and was the primary source of support for his U.S. citizen wife and daughter.⁶⁸ Another individual was forcibly returned to Haiti, despite being the only financial support for five U.S. citizen children and his wife, also a U.S. citizen.⁶⁹

44. The policy does not adequately consider how long individuals have been in the United States or other humanitarian factors. Many individuals deported have been legally in the United States for most of their lives. For example, one individual who was a veteran of the United States military had been living in the United States as a legal permanent resident for 40 years.

45. Under the Policy, many deported individuals were convicted of minor, non-violent crimes, for which they have served a full prison/jail sentence.⁷⁰ One individual, whose only criminal convictions were from when he was a minor, was deported to Haiti in July 2011.⁷¹ The individual was born in the Bahamas to Haitian parents but had never even been to Haiti before his forced return there. He speaks little Haitian Creole or French and has only distant relatives in Haiti, with whom he has not had contact.⁷²

46. The United States reports that it forcibly returned 376 individuals to Haiti between January and December 2011.⁷³ While the United States has a written policy that takes humanitarian factors into account, it appears that this policy is not being fully implemented.

47. Additionally, some States have conducted interdictions at sea of Haitian nationals. News reports indicate that in December 2011, there were interdictions at sea of Haitian nationals by the Bahamas, Turks and Caicos, and the United States. In December 2011, 244 Haitians were found on a boat off the coast of the Bahamas and returned to Haiti.⁷⁴ On 27 January 2010, 122 Haitians were intercepted at sea by officials from Turks and Caicos.⁷⁵

⁶⁶ *Id.*; see also U.S. Response.

⁶⁷ Michelle Karshan, *Alternative Chance*, 5 Mar. 2012, Correspondence on file with the Independent Expert.

⁶⁸ Interviews of U.S. deportees, 6-8 Feb 2012.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ U.S. Response.

⁷⁴ *More Haitian Migrants Repatriated from the Bahamas*, *Caribbean 360*, 28 Dec. 2011, http://www.caribbean360.com/news/haiti_news/543190.html#axzz1jO35bg3R.

⁷⁵ *Haitian boat refugees captured off Turks and Caicos*, *Reuters*, 30 Jan. 2010, <http://in.reuters.com/article/2010/01/29/idINIndia-45817820100129>.

According to the U.S. Coast Guard, from 2010 through 3 April 2012, there were 3,299 interdictions of Haitians at sea⁷⁶

48. All U.N. member states, regardless of whether there are Haitian nationals currently in their territory, should adopt appropriate legal and administrative frameworks that give legal status to Haitian nationals living abroad and implement other measures to prevent forced returns of Haitian nationals during the ongoing humanitarian crisis in Haiti.

C. Appeal procedures pertaining to final orders of removal by states

49. Appeal procedures pertaining to final orders of removal vary significantly between States. In the Bahamas, an individual has seven days to appeal a removal order only if he or she previously had legal status; those without legal status appear not to have access to any appeal mechanism.⁷⁷ Individuals in the Bahamas cannot be detained during their appeals.⁷⁸ In Canada, the right to appeal a removal order depends on whether an individual has immigration status.⁷⁹ Permanent residents in Canada who are inadmissible cannot appeal their loss of residence unless they received a jail/prison sentence of less than two years.⁸⁰ An appeal means the individual can ask that the Immigration Appeal Division consider and weigh humanitarian factors.⁸¹

50. There appears to be no appeals procedure in the Dominican Republic. As discussed above, most returns happen in the context of roundups in the Dominican Republic and drop-offs across the border in Haiti.

51. In France, the Haitian nationals against whom removal procedures have been initiated can appeal the decision before the Administrative Court and the Administrative Court of Appeal. In French overseas territories, Guyana, Guadeloupe, Martinique, Mayotte, Saint Barthelemy and Saint Martin, Haitians and other foreign nationals can be forcibly returned before the appeal is considered by the courts. While in theory, there is an emergency appeal – a motion for a protective order – such appeals are generally heard after one month, and aliens are generally returned after 48 hours.

52. In the United Kingdom, if an application for protection or leave to remain is refused, the individual has a right of appeal to the Immigration and Asylum Appeal Court,⁸² ensuring that all foreign nationals, including Haitians, are guaranteed due process before being forcibly returned to their home country.

53. In the United States, an immigration judge's removal order may be appealed by the individual or the immigration prosecutor to the administrative Board of Immigration Appeals. Decisions of the Board of Immigration Appeals may be appealed to a federal Court of Appeals only in limited circumstances; decisions that fall within an immigration judge's discretion generally may not be appealed to the federal court unless the appeal involves questions of law or constitutional claims.⁸³ People who are removable due to

⁷⁶ U.S. Coast Guard, Alien Migrant Interdiction, Total Interdictions - Fiscal Year 1982 to Present, <http://www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/FY.asp>.

⁷⁷ Bahamian Immigration Act of 1967, Section 40(2) http://laws.bahamas.gov.bs/cms/legislation/consolidated-laws/index.php?option=com_legislation&view=current%20categories.

⁷⁸ *Id.* Section 40(5).

⁷⁹ Comité d'aide aux réfugiés (Canadian NGO).

⁸⁰ The Immigration and Refugee Protection Act § 64 (S.C. 2001, c. 27).

⁸¹ *Id.* § 67.

⁸² U.K. Response.

⁸³ 8 U.S.C. § 1252(a)(2)(B) and (a)(2)(D).

criminal convictions cannot get federal court review of even non-discretionary issues unless their appeals involve questions of law or constitutional claims.⁸⁴ Decisions involving U.S. Immigration and Customs Enforcement's prosecutorial discretion, such as those under the April 1st Policy are not subject to any judicial review.

54. While all forced returns to Haiti should be indefinitely halted, when member states forcibly return Haitian nationals, they should ensure the existence of appeal procedures, the guarantee of due process of law, and the consideration of family and other humanitarian factors prior to deportation and removal proceedings for all Haitian nationals to safeguard human rights, especially for the most vulnerable groups, which include individuals with medical conditions, mental health conditions, and disabilities.

V. Specific measures taken with regard to groups of Haitian nationals

55. While member states should refrain from any and all forced returns to Haiti, member states that nevertheless forcibly return individuals to Haiti should implement specific measures to protect the most vulnerable groups of Haitian nationals who have high susceptibility to illness, violence, or other serious threats to their human rights if removed to Haiti. The OHCHR/UNHCR joint advisory issued June 2011 stated that specific measures should be taken with regard to the following groups of Haitian nationals subject to forced return:

- Unaccompanied or separated minors
- Persons living with disabilities or suffering from severe medical condition
- Victims of human trafficking
- Victims of sexual or gender based violence
- Persons whose deportation would lead to the separation of family members
- Persons not born in Haiti
- Persons with no known family members in Haiti

56. Those specifically named in the OHCHR/UNHCR joint advisory are particularly vulnerable to human rights violations in Haiti. For example, unaccompanied and separated minors do not have access to the protections and assistance provided by family members. They are especially vulnerable to generalized and targeted violence; inadequate food, housing and medical care; and are unable to protect themselves from the harsh environment of Haiti. Persons with disabilities and medical conditions are vulnerable due to insufficient access to medicine and medical care in Haiti.

57. However, those UN member States that continue to forcibly remove Haitian nationals have generally not implemented specific measures to protect these vulnerable groups.

58. For example, France refers to the OHCHR/UNCHR advisory to justify returning Haitians who are not in these categories while instruction have been given by the French authorities not to forcibly deport vulnerable persons taking into account the state of health, the age and eventually the possible isolation in Haiti. Nonetheless, a French NGO reports that several individuals have been returned to Haiti from Guadeloupe, which leads to the

⁸⁴ Id. § 1252(a)(2)(C), (D).

separation of family members, including minor children. Multiple individuals with serious health conditions have also been removed. In January 2012, one woman who was raped in Haiti when she was 18, was forcibly returned to Haiti from Guadeloupe. Although aware of this, the French office for refugee status concluded that it was a previous event, hence justifying her forcible return despite her vulnerability as a victim of rape. The woman was afraid to return to Haiti and has no family there.

59. As discussed above, the United States' April 1st Policy considers certain humanitarian factors, including medical conditions and family ties in the United States, before sending an individual to Haiti, and provides that in such cases, supervision or other programs may be appropriate. But the Policy does not explicitly consider before removal whether individuals were born in Haiti and whether there are known family members in Haiti. For deportees who have never been to Haiti, who have not been to Haiti for many years, and who have no family members in Haiti, communication and integration into Haitian society is immensely difficult.

60. NGOs report that individuals are being deported to Haiti from Guadeloupe and Martinique are in particularly vulnerable situations, with fragile medical conditions, including a man whom the official medical service of the detention center had recommended not to be returned.

61. The removal of political refugees is also a concern. According to an interview, the Dominican Republic removed one individual who was a political refugee and had been living legally in the Dominican Republic since 2006 but was rounded up and returned to Haiti after the earthquake.⁸⁵

62. Additionally, NGOs have described the separation of family members resulting from forcible returns to Haiti. For instance, NGOs have documented returns of a father of a French citizen child, a single mother, and several fathers whose children and families were residents in Guadeloupe and the United States.

63. The Independent Expert strongly urges States to consider the separation of family members before forcibly removing anyone to Haiti. More generally, States should refrain from all deportations and special measures should be in place for the vulnerable groups set forth in the 9 June 2011 OHCHR/UNHCR joint advisory.

VI. Discrimination against Haitian nationals subject to removal

64. Some States' immigration policies, laws and practices have a disproportionately negative effect on Haitian nationals, as opposed to other groups of foreign nationals. For example, in the Dominican Republic, areas consisting of predominantly Haitian immigrants and their children are targeted by immigration authorities and police. Those with Haitian- or French-sounding names (as opposed to Hispanic-sounding names) or with dark skin are targeted and rounded up by state officials.⁸⁶

65. Advocates have criticized the United States for a long history of targeting Haitian migrants in U.S. immigration policy and practice, specifically with regard to detention and removal procedures, legislation concerning status adjustment and naturalization for various

⁸⁵ Interview of individual forcibly removed from D.R., 6-8 Feb 2012.

⁸⁶ See *UN experts find 'profound and entrenched' racial bias in Dominican Republic*, UN News Center, 30 October 2007, <http://www.un.org/apps/news/story.asp?NewsID=24468&Cr=haiti&Cr1;> *Dominican Republic Human Rights*, Amnesty International, <http://www.amnestyusa.org/our-work/countries/americas/dominican-republic>.

groups of immigrants, and interdictions by the U.S. Coast Guard. Discrimination against Haitian migrants, they argue, occurs through implementation of policies specifically targeting Haitians, neutral policies that leave too much discretion to immigration officials, and preferential treatment for other nationality groups.⁸⁷

66. The Independent Expert is concerned about state action that targets or disproportionately impacts Haitian nationals. States should ensure that their immigration laws and policies are applied without discrimination to particular groups, especially Haitians.

VII. Effects of forced returns on human rights of deportees and on the Haitian state

67. The Independent Expert is concerned about the profound implications that forced returns have on the human rights of deportees and the impact these removals have on the Haitian State during this post-earthquake crisis. The Independent Expert has gathered information from his site-visits to Haiti, interviews with individuals returned from several States, and independent research.

VIII. Effects of removals on individual human rights

68. Individuals returned to Haiti are vulnerable to human rights violations, especially the fundamental rights to life, health, and family.

69. Individuals deported from Canada and the United States, and possibly other countries, are routinely and illegally detained, unjustifiably and without due process, upon arrival in Haiti in unsanitary police stations. According to eyewitness reports by human rights organizations and interviews with the deportees, the cells contain human excrement, blood and vomit, and have few or no working toilets.⁸⁸ Deportees are generally not provided with food, water, medical or mental health care unless family members bring this to the detention center.

70. Deportees routinely fall ill in these unsanitary conditions. One organization in Haiti reports that many deportees detained upon arrival have exhibited cholera-like symptoms but have been denied medical attention.⁸⁹ As described above, one deportee, Wildrick Guerrier, died of cholera-like symptoms. In another instance, the United States deported an individual with a serious head wound, which became infected. He was unable to access medical care or obtain medicine and was living in a tent-camp, further exposing the head wound to unsanitary conditions.⁹⁰ Deportees also face great difficulty in getting released from detention unless a family member signs them out. For instance, one 25-year-old deportee had no family in Haiti, and was able to leave jail only after another deportee's cousin, a tent camp organizer, generously agreed to sign him out and take responsibility for the deportee for the next 18 months.⁹¹

⁸⁷ Convention on the Elimination of all Forms Racial Discrimination (CERD) Shadow Report 2008, US Human Rights Network, <http://www.ijdh.org/pdf/headline1-8-08.pdf>; Cheryl Little, *United States Haitian Policy: A History of Discrimination*, 10 N.Y.L. Sch. J. Hum. Rts. 269, 270 (1993).

⁸⁸ Interviews of U.S. deportees, 6-8 Feb. 2012.

⁸⁹ Information from Alternative Chance, Michelle Karshan.

⁹⁰ Interview of U.S. deportees, 6-8 Feb. 2012.

⁹¹ Interview of U.S. deportees, 13 Feb. 2011

71. Deportees are highly stigmatized in Haitian society. After they are released from detention, deportees have difficulty finding food, employment, housing, and medical care. Some end up living in tent camps, where they struggle to survive. In its 2009 and 2010 human rights reports, the State Department described the situation for deportees arriving in Haiti as follows: “Returnees, some of whom spent substantial portions or most of their lives abroad, alleged corruption, widespread discrimination and social abuse after returning home. Reported discriminatory practices include arbitrary arrests, false accusations about their activities to local police and extortion attempts against them and their families abroad during the initial detention phase, in exchange for quicker release from administrative quarantine.”⁹²

72. Few Haitian nationals forcibly returned from the United States, Canada, or the Dominican Republic have been able to find jobs despite their notable efforts, skills, and levels of education. This is due to high unemployment rates and stigmatization of deportees – particularly those from the United States and Canada – and lack of community and family connections. Deportees stand out in Haitian society by the way they dress, carry themselves, and style their hair. Some had stable jobs or careers in the countries from which they were removed and now face bleak job prospects in Haiti. Without access to work, deportees have difficulty paying for food, clothing, housing and other basic needs and are unable to support dependents.

73. Forced removals to Haiti also threaten the right to private and family life. Many removals to Haiti result in the separation of immediate family members. Interviews with deportees in Haiti revealed that several States conduct removals despite strong family ties and dependency in the departing State. For example, one woman’s forced removal from the Dominican Republic resulted in her separation from her husband and two children.⁹³ One man’s removal from the United States resulted in his separation from his wife and four U.S. citizen and one legal permanent resident child.⁹⁴ One man’s removal from Canada resulted in separation from his wife and daughter.⁹⁵ In January, a father of three children (6 months to 3-years-old) in Guadeloupe was forcibly removed. He used to work and support his family. Without his salary, his family lives in poverty.⁹⁶ There are many more stories like these.

74. Removals to Haiti threaten the rights to life, health, family, equality, and due process. Member states should carefully consider these concerns before forcibly returning any individual to Haiti.

IX. Effects of deportations and removals on the Haitian state

75. The January 2010 earthquake left an already-weak Haitian State further debilitated. Although recovery has been painfully slow, the international community has made notable contributions to help the faltering country in the wake of the devastating earthquake. On the two-year anniversary of the earthquake, international bodies noted the significant improvement of the situation while pointing out obstacles to the recovery process. Efforts to rebuild the Haitian state remain slow and inadequate to the enormity of need. However

⁹² 2009 *Human Rights Report: Haiti*, U.S. Department of State, 11 March 2010, <http://www.state.gov/j/drl/rls/hrrpt/2009/wha/136116.htm>; 2010 *Human Rights Report: Haiti*, U.S. Department of State, 8 April 2011, <http://www.state.gov/j/drl/rls/hrrpt/2010/wha/154509.htm>.

⁹³ Interviews of Dominican Republic deportees, Feb. 6-8, 2012.

⁹⁴ *Id.*

⁹⁵ Interview of Canadian deportee, Feb. 6-8, 2012.

⁹⁶ Céline Aho-Nienne, La Cimade Guadeloupe.

third States counteract these incremental improvements, and instead impose an additional burden on Haiti, when they forcibly return individuals there.

76. Some Haitian State officials have articulated concerns to the Independent Expert that forced removals from the United States could impact Haiti's security. Officials claim that deportees from Canada and the United States have been involved in criminal activities or have joined gangs in Cité Soleil and other areas and have thus increased the level of insecurity in the country.⁹⁷ However, as officials have not shared any data or research done on the subject, questions may be raised on the accuracy of such information and the extent to which this is a serious security threat. The Minister of Justice and Public Security, in a recent meeting, expressed a desire to launch a study on the impact of the return of deportees on the level of security in Port-au-Prince.⁹⁸

X. Follow-up measures should be taken to ensure adequate reintegration and protection measures for persons after return to Haiti, and to monitor their situation

77. While the Independent Expert calls for States to stop forced returns to Haiti, it is critical that those persons who have been removed should benefit from support in Haiti. Reintegration and protection programs for those returned to Haiti are critical because of insufficient food, water, and access to healthcare and housing and widespread violence and instability in Haiti. Some of those sent to Haiti do not have family ties or connections to the community and need assistance to survive.

78. Of all U.N. member States that have forcibly returned Haitian nationals to Haiti since the earthquake, only the United States has implemented a reintegration program designed to promote successful reintegration of deportees in Haiti. The United States characterizes the program, established in 2006 and reinstated after the earthquake, as providing deportees from the United States with, *inter alia*, job training, cell phones, medical services, and in-kind assistance for start-up businesses.⁹⁹

79. While the reintegration program is a positive and critically important development, it has been subject to criticism by civil society in Haiti and the United States for not providing sufficient services to deportees, particularly for those with serious medical or mental health conditions.¹⁰⁰ Interviews with deportees reveal that many individuals have been unable to access reintegration program resources despite repeated attempts, while those who do gain access are ultimately not provided enough support to start sustainable businesses.¹⁰¹ A reintegration program's success is dependent on comprehensive and consistent services that are offered from the moment deportees arrive in Haiti and that are available until the deportee is well-established in Haiti.¹⁰²

80. Further complicating reintegration, deportees are often unable to obtain national identification cards, in part because the Haitian government holds their documents for 18

⁹⁷ Discussion with Secretary of State for Security and with the Director General of the Haitian National Police.

⁹⁸ Meeting in Geneva, 19 March 2012.

⁹⁹ U.S. Response.

¹⁰⁰ *Haitian Criminal Deportees (Part Two): Reintegration Program*, American Embassy in Port-au-Prince, Haiti (Mar. 31, 2009), <http://dazzlepod.com/cable/09PORTAUPRINCE348/>.

¹⁰¹ Interviews of U.S. deportees, Sept. 13-17, 2011 & Feb. 6-8, 2012.

¹⁰² Meeting with Guy Alexandre, Senior Advisor to the Office of the Chief of Mission, International Organization for Migration, in Pétion-Ville, Haiti (Feb. 6, 2012).

months after arrival.¹⁰³ This makes deportees ineligible for lawful employment. Moreover, because deportees are targets of police harassment, deportees face arrest for failing to produce identification when police frequently stop them on the street.¹⁰⁴ Traveling on weekly trips to check-in at the police station – a requirement for all deportees from the United States and possibly those from Canada – heightens the risk.¹⁰⁵

81. Both sending States and Haiti should provide reintegration and protection assistance to deportees to ensure the protection and promotion of deportees' human rights, and the stability of Haiti.

XI. Forced returns in the context of the humanitarian crisis in Haiti: Relevant international and regional standards

82. The international community has urged States not to return Haitian nationals to Haiti until the situation in Haiti improves.¹⁰⁶ Under international law, states must follow appropriate procedures and are under obligations to consider such human rights principles as prohibition of torture, inhumane and degrading treatment, respect for family life, health protections, non-discrimination, and other human rights grounds, in making this determination.¹⁰⁷

A. The United Nations

83. Article 3 of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) absolutely prohibits sending individuals to a country in which there is risk of torture.¹⁰⁸ Article 7 of the International Covenant on Civil and Political Rights (ICCPR) also prohibits the deportation of a person where he faces a risk of torture, inhumane or degrading treatment or punishment.¹⁰⁹ Article 17 of the ICCPR, the protection from undue invasion of into family life, has also been applied to halt deportations.¹¹⁰

84. According to the Committee, no State may “expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”¹¹¹ Article 7 is an absolute,

¹⁰³ Meeting with the Direction Centrale de la Police Judiciaire, Port-au-Prince, Haiti, (Feb. 7, 2012).

¹⁰⁴ Interviews of U.S. deportees, Feb. 6-8, 2012.

¹⁰⁵ *Id.*

¹⁰⁶ See *supra*, Section *Introduction*.

¹⁰⁷ See e.g. UN Human Rights Committee General Comment 15, The Position of Aliens under the Covenant. Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. Res. 39/46 (Dec. 10, 1984), 189 U.N.T.S. 150 [hereinafter “CAT”]; International Covenant on Civil and Political Rights Mar. 23, 1976, 999 U.N.T.S. 171 art. 7 [hereinafter “ICCPR”]; UN Human Rights Committee General Comment 20, Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment (Art.7).

¹⁰⁸ CAT, 189 U.N.T.S. 150.

¹⁰⁹ ICCPR, *supra* note 102; HRC General Comment 20, *supra* note 102 at ¶ 9; General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13.

¹¹⁰ ICCPR, *supra* note 102.

¹¹¹ The Human Rights Committee, General Comment 20, *supra* note 104..

non-derogable right and no limitation or “justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons.”¹¹²

85. The Human Rights Committee, in numerous cases¹¹³, has found the forced returns of persons to be in violation of Article 17 of the ICCPR, freedom from unlawful interference with privacy, family and home.

86. In a 2008 report, the Special Rapporteur on the Rights of Migrants recommended States to incorporate a human rights framework into their bilateral and regional arrangements in relation to balancing national security interests and managing migration and to review their expulsion procedures and harmonize them with human rights norms.¹¹⁴ Moreover, in a 2011 report to the Human Rights Council, the Special Rapporteur noted that many States suspended deportations of nationals affected by the 2004 tsunami, another devastating natural disaster, and stated that these examples are positive developments. The Rapporteur recommended that States maintain and reinforce the use of a human-rights based approach to protect the rights of migrants.¹¹⁵

87. In specific recommendations to the United States, the Special Rapporteur recommended that “United States immigration laws should be amended to ensure that all non-citizens have access to a hearing before an impartial adjudicator, who will weigh the non-citizen’s interest in remaining in the United States against the Government’s interest in deporting him or her.”¹¹⁶

88. With regard to interdictions at sea, States have international obligations to rescue those found at sea under maritime law.¹¹⁷ UNHCR notes that under the principle of *non-refoulement*, interception measures should not result in asylum-seekers and refugees being denied access to international protection, or returned to the very States from which they seek to flee.¹¹⁸ States should admit asylum-seekers on a temporary basis and provide them with protection—a comprehensive principle to stopping interdictions and providing detainees with humane treatment and sufficient opportunity to seek asylum.¹¹⁹ On this issue, UNHCR considers it is not about admission, but the obligation of States not to return refugees to a place where their freedom or lives may be in danger.¹²⁰ These obligations do not have territorial borders, as State responsibility to uphold these inalienable principles does not diminish outside jurisdictional boundaries.¹²¹

¹¹² *Id.* at ¶ 3.

¹¹³ See *Madafferi v. Australia*, CCPR/C/81/D/1011/2011, 30 July 2004, paras. 1.1, 2.1, 5.1 and *Nystrom v Australia*, CCPR/C/102/D/1557/2007, 18 August 2011 at ¶ 2.2

¹¹⁴ Report on the Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the right to Development, Special Rapporteur on the Human Rights of Migrants, Jorge Bustamante A/HRC/7/12, 25 February 2008 at ¶ 61

¹¹⁵ A/HRC/17/33, 21 March 2011 at ¶ 59.

¹¹⁶ A/HRC/7/12/Add.2, 5 March 2008 at ¶116.

¹¹⁷ Article 98.1, *United Nations Convention on the Law of the Sea*, adopted on 10 December 1982.

¹¹⁸ See, *Conclusion No. 97 (LIV) Protection Safeguards in Interception Measures*, ExCom, UNHCR, 54th Session, ¶ (a)(iv) (2003).

¹¹⁹ *Conclusion No. 23, Problems Related to the Rescue of Asylum-Seekers in Distress at Sea*, ExCom, UNHCR, 32nd Session, 1981, fn 270, para. 3. See also *Protection of Asylum Seekers in Situations of Large-Scale Influx*, Conclusion No. 22 (XXXII) 1981. See also UNHCR Conclusions on the International Protection of Refugees (1991).

¹²⁰ See *amicus curiae* brief submitted by the UNHCR in *Haitian Refugee Center*, page 10, available at: <http://www.unhcr.org/refworld/country,,,AMICUS,HTI,,4b03cd4c2,0.html>.

¹²¹ Brownlie, I., “System of The Law of Nations: State Responsibility, Part I (1983) 150-1.

B. Regional human rights standards

89. At the regional level, the Inter-American Commission and Court of Human Rights, the African Commission on Human Rights, and the European Court of Human Rights have established case law and standards setting forth when the forced return of persons is prohibited on human rights grounds and the factors to consider in evaluating forced return/deportation cases, including harmful country conditions, health of deportee, and deportees' family ties in their resident country and country of origin.

90. The Inter-American Commission on Human Rights has directly addressed the issue of forced returns to Haiti in a recently-granted set of precautionary measure orders in favor of 57 individuals facing deportation to Haiti from the United States.¹²² The Commission stated that, if deported, the lives and health of these individuals would be at "grave risk" as they would probably be detained upon arrival in Haiti and denied access to drinking water, food, and medical treatment. The Commission asked the United States to suspend the deportation process until: "(1) Haiti is able to guarantee that detention conditions and access to medical care for persons in custody comply with applicable minimum standards, and (2) the procedures in places to decide upon and review the deportation of the... beneficiaries adequately take into account their right to family life and their family ties in the United States."¹²³ The Commission also urged the United States to suspend deportations to Haiti, especially in cases of "persons of Haitian origin who are seriously ill or who have family members in the United States."¹²⁴

91. The African Commission on Human Rights also has expressed concern in matters regarding (a) likely discrimination¹²⁵ involved in the decision to deport; (b) separation of a family unit;¹²⁶ (c) poor detention conditions in the country being deported to which constitute torture, cruel, inhuman or degrading treatment or punishment;¹²⁷ and (d) return to a country where the deportee's right to life and integrity of person could be compromised (*non-refoulement*). The African Charter does not allow derogation of these responsibilities, even in times of war.¹²⁸

92. The European Court of Human Rights has noted that States must consider all relevant factors when determining whether deportation is appropriate in any given case. In specific cases, it has noted the importance of the deportee's familial ties (both in the sending state or host state),¹²⁹ sex/age/ethnicity/etc.,¹³⁰ risk of being tortured in receiving

¹²² Precautionary Measures Granted by the Commission during 2011, PM 5/11, *Gary Resil, et al. v United States*, <http://www.cidh.oas.org/medidas/2011.eng.htm>. The Precautionary Measures were extended in 5 communications in 2011: 1 February, 31 May 31, 27 June, 12 July, and 29 September 29.

¹²³ *Id.*

¹²⁴ Press Release, Inter-American Commission on Human Rights, IACHR Urges the United States to Suspend Deportations to Haiti (Feb. 4, 2011).

¹²⁵ African Commission decision regarding Communication 71/92, *Rencontre Africaine pour la Defense des Droits de l'Homme v. Zambia* (1997).

¹²⁶ Union Inter Africaine des Droits de l'Homme, Federation Internationale des Ligues des Droits de l'Homme and Others v. Angola, African Commission on Human and Peoples' Rights, Comm. No. 159/96 (1997).

¹²⁷ Commission Decision regarding Communication 68/92, *Chirwa v. Malawi*, para 8. Cited in Human Rights Watch, "Eritrea & Ethiopia," pg. 60.

¹²⁸ African Commission decision regarding Communication 74/92, "Commission Nationale des Droits de l'Homme et de Libertés/Chad," par. 21. (*cited in* Human Rights Watch, "Eritrea & Ethiopia," vol. 15, no. 3(A), Jan. 2003).

¹²⁹ *Moustaquim v. Belgium*, Feb 2. 1991.

¹³⁰ *Saadi v. Italy*, Judgment of 28 Feb. 2008.

country,¹³¹ both governments' ability to protect against such potential Article 3 (torture and inhuman or degrading treatment or punishment) violations,¹³² and whether due process standards were met.¹³³ The European Court has also found that is a violation of the Convention to conduct mass expulsions, and emphasized that states have an obligation to examine the personal circumstances of each individual before any returns occur.¹³⁴ Finally, in a recent landmark judgment, the European Court held that states had an obligation to uphold their *non-refoulement* obligations on the high seas.¹³⁵

XII. Recommendations

In light of the aforementioned findings, the Independent Expert issues the following recommendations:

93. All U.N. Member States should:

(a) Refrain from forcibly returning individuals to Haiti under any and all circumstances. This includes Haitian nationals currently living in the Member State and those encountered near border zones or through interdictions at sea;

(b) Grant Haitian nationals currently living abroad legal immigration status for the duration of the humanitarian crisis in Haiti;

(c) Initiate and prioritize family reunification programs that grant visas to Haitians to resettle in third States in which their family members legally reside. This may simply mean expediting the issuance of visas that have already been approved but, due to bureaucratic delays, are not issued for years;

(d) Enact laws, procedures, and programs designed to address the particular needs of Haitian nationals. Such laws, procedures, and programs include, but are not limited to, legal and administrative measures that guarantee due process of law and an appropriate balancing of humanitarian factors in forced removal proceedings, especially where States continue to deport persons to Haiti;

(e) Ensure deportees both within and outside of detention centers have access to food, water, housing, medical care, etc., and enact reintegration programs to help deportees integrate into Haitian society. Some components that are necessary to the creation and sustenance of a successful reintegration program include, but are not limited to: (1) providing necessary aid to deportees; (2) improving collaboration between the Haitian government, civil society, and NGOs; (3) financing educational facilities and learning centers; (4) aiding the creation of jobs for deportees; and (5) assisting in the provision of healthcare for deportees. Another necessary component for a successful reintegration program includes an independent body monitoring the reintegration program to ensure that it complies with international human rights standards;

(f) Consider the possibility, on a case-by-case basis, of permitting the return to the deporting country of Haitian nationals who have been forcibly returned to Haiti;

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Chahal v. The United Kingdom*, ECHR, 15 November 1996.

¹³⁴ *Conka v. Belgium*, ECHR, 5 February 2002.

¹³⁵ *Hirsi v. Italy*, Grand Chamber, ECHR, 23 February 2012.

(g) Ensure that immigration law and policies comply with international obligations to ensure that individuals and groups are free from discrimination. Regardless of whether they currently have a substantial Haitian population, all UN member states should follow the recommendations of the OHCHR/UNHCR and the Independent Expert and adopt and implement policies and legal and administrative measures barring returns to Haiti;

(h) States that nevertheless forcibly remove Haitian nationals should enact legal and policy measures to protect vulnerable groups from deportation, in particular:

- Unaccompanied or separated minors
- Persons living with disabilities or suffering from severe medical condition
- Victims of human trafficking
- Victims of sexual or gender based violence
- Persons whose deportation would lead to the separation of family members
- Persons not born in Haiti
- Persons with no known family members in Haiti

(i) Additionally, UN member States that forcibly return Haitian nationals should, in all instances, carefully consider humanitarian factors before deporting or returning anyone to Haiti. These factors should be reflected in laws and policies. Such humanitarian factors include, inter alia:

- Whether the individual is a member of a vulnerable group (articulated in the OHCHR/UNHCR joint advisory)
- Whether the individual has family ties to the deporting State and to Haiti
- Whether the individual has community, work, language, cultural, or other ties to the deporting State and to Haiti
- Whether the individual has medical conditions
- Whether the individual was born in Haiti

(j) If member states do forcibly return Haitian nationals, they should ensure the existence of appeal procedures, the guarantee of due process of law, and the consideration of family and other humanitarian factors prior to deportation and removal proceedings for all Haitian nationals.

94. The United Nations should:

(k) Reissue, through OHCHR and UNHCR, a joint advisory calling upon all UN member states to halt forced returns to Haiti, given the humanitarian situation there;

(l) Issue a general comment, through one of the treaty monitoring bodies, on the duties of UN member states under international human rights law not to engage in forced returns during humanitarian crisis.

95. The Haitian government should:

(m) Stop detentions of individuals forcibly removed to Haiti;

(n) Ensure that detention facilities meet international human rights standards (i.e. safe and sanitary detention conditions (including potable water, eatable food, medical and mental health care, etc);

(o) In the event that the Government continues to detain deportees – which it should not – the Government should eliminate the current requirement that family members or others sign the deportee out and take responsibility for the deportee for the next 18 months;

(p) Facilitate and guarantee the issuance of Haitian national identity cards to deportees upon arrival in Haiti;

(q) Facilitate and guarantee the return of all identity documents upon reaching Haitian soil. Identity documents belong to the individual and should remain in his/her possession at all times;

(r) Take affirmative steps to change negative public perceptions toward deportees and remove any institutionalized forms of stigma against deportees.
