

**Mandates of the Independent Expert on the situation of human rights in Haiti; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment**

REFERENCE: AL  
USA 15/2015:

10 July 2015

Excellency,

We have the honour to address you in our capacities as Independent Expert on the situation of human rights in Haiti; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the human rights of migrants; and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to Human Rights Council resolutions PRST/28/3, 24/6, 26/19, and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the forcible returns to post-earthquake Haiti of individuals of Haitian descent with criminal convictions and serious mental and physical illnesses requiring appropriated specialized psychological and medical attention. Furthermore, these individuals have either had long-time lawful permanent resident status in the U.S. or have deep family ties to the U.S. and little, to no family in Haiti. As a result of Haiti's continuing humanitarian situation, the poor conditions in detention centres and prisons are likely to disproportionately affect the lives of those who are already seriously ill persons.

According to the information received:

The U.S. government suspended the deportation of Haitians with criminal convictions or charges following Haiti's earthquake of 12 January 2010. On 9 December 2010, the Government lifted the moratorium on deportations and resumed deportations of Haitians with criminal records on 20 January 2011.

During the past five years, U.S. Immigration and Customs Enforcement (ICE) is reported to have deported about 1,500 persons to Haiti on the basis of not qualifying for the immigration relief "Temporary Protected Status" due to a criminal record, which in the majority of the cases is the result of minor offenses

or misdemeanour convictions. Deportations allegedly include individuals with chronic and terminal illnesses as well as people who were born in a third country and had never set foot in Haiti. On just one flight to Haiti in 2014, ICE was reported to deport two individuals with HIV, six with mental illness, nine with hypertension, five with diabetes, and one who had polio.

It is reported that according to ICE Policy for Resumed Removals to Haiti, U.S. Immigration and Customs Enforcement (April 2011), deportation officers are to weigh adverse factors of a potential deportee's case against humanitarian factors, including severe medical conditions. However, determination on whether a potential deportee's physical or mental health conditions can be adequately treated in Haiti is reported to consider solely whether a person is medically stable at the time of deportation. It does not consider the near-certain deterioration of such condition in Haiti as a result of a lack of adequate specialized medical care, medications, nutrition, and stable and safe living conditions. In addition, in determining whether needed medicines are available in Haiti, ICE allegedly disregard that even if available, many of them are in short supply or otherwise too expensive for most deportees. As a result, deportations of individuals with severe mental and physical conditions that are effectively untreatable in Haiti have taken place, and continue to take place, throughout these five years.

When deportees arrive in Haiti, they face the stigma attached to being a deportee with a criminal history and are reported to become an easy target for violence, harassment, and extortion by the police and society at large. Moreover, they risk to be approached by criminal networks and be recruited into gangs. They also become target for severe discrimination and attacks in their communities, including alleged arbitrary arrest and abuse by Haitian authorities. In addition, with no family connections, many of them become homeless and are unable to find an employment. Female deportees are reported to be disproportionately vulnerable to sexual assault while those who face discrimination on the basis of their sexual orientation, gender identity and expression are particularly at high risk of this and other gender-based violence in a country which does not provide them with any legal protection.

Other deportees, notably with mental illnesses, end up in the prison system or are institutionalized at jail-like public mental health facilities. Allegedly, detention centres in Haiti continue to be overcrowded with insufficient access to drinking water and adequate sanitation or toilets. These conditions facilitate the transmission of cholera, tuberculosis, and other diseases. Reportedly, when seriously ill persons arrive in Haiti, they can remain in detention without access to food, drinking water, and adequate medical treatment. Persons of Haitian origin have died in prison due to unsanitary conditions such as the case of an individual who was deported on 20 January 2011 and died in a Haitian prison shortly later after showing symptoms of cholera.

The families of the deportees that remain in the United States are also reported to face financial and emotional harm. Deportees are often the main source of income and their families not only lose this avenue of revenue but also have to cope with the burden of providing financial support to the deportee in Haiti.

While the Inter American Commission on Human Rights (IACHR) has issued formal precautionary measures to certain individuals facing deportations to Haiti, the United States has reportedly ignored these measures in at least 19 cases.

While we do not wish to prejudge the accuracy of this information, we wish to express serious concern at the alleged forcible returns of medically vulnerable individuals of Haitian descent with long-time lawful U.S. permanent resident status and criminal convictions to post-earthquake Haiti. Further concern is expressed at the manner in which the United States determines whether a potential deportee's physical or mental health condition can be adequately treated in Haiti when considering whether to deport him or her to Haiti which may result in a lack of respect for the principle of non-refoulement for those who risk torture if returned to their home countries on account of their sexual orientation, gender identity or HIV status.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide information on measures taken to ensure the principle of non-refoulement as well as the right to life, physical, and mental integrity of deportees, in particular of those medically vulnerable.
3. Please explain how the implementation of the Policy for Resumed Removals to Haiti, U.S. Immigration and Customs Enforcement (April 2011) weights access to medical care, including specialized treatment, medicines, nutrition and stable living when determining deportations.
4. Please explain how the implementation of above mentioned Policy assesses detention conditions and the overall situation in Haiti to determine that a potential deportee's physical or mental health conditions can be adequately treated in Haiti over time.

5. Please explain how the implementation of the same above mentioned Policy assesses the near-certain deterioration of the physical and mental integrity of a potential deportee to Haiti when determining deportations.

6. Please provide information about the manner in which deportation procedures assess that Haiti is able to guarantee that detention conditions and access to adequate medical care, including specialized treatment, in compliance with applicable minimum standards.

7. Please describe legislative or other measures that have been put in place to guarantee the realization of the right to the highest attainable standard of physical and mental health of medically vulnerable individuals with criminal convictions that are returned to Haiti.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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Dainius Puras  
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standard of physical and mental health

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punishment

## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to refer your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We wish to draw the attention of your Excellency's Government to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – signed by the United States of America on 5 October 1977 – which recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. While your Excellency's Government has not ratified ICESCR, the United States Government agreed to bind itself in good faith to ensure that nothing is done that would defeat the object and purpose of the international instrument, pending a decision on ratification.

We would also like to draw the attention of your Government to Article 7 of the International Covenant on Civil and Political Rights (ICCPR) ratified by the U.S. on 8 June 1992. The article prohibits the deportation of a person where he or she faces a risk of torture, inhumane or degrading treatment or punishment, as may be the case regarding poor conditions of Haitian detention centres. In addition, article 17 refers to the protection from undue invasion into family life and has also been applied to halt deportations. According to the Human Rights 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. The Committee, in numerous cases, 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.

In addition, we would like to draw your attention to article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, ratified by the U.S. in October 1994 which indicates that no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

Moreover, 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.

In particular, the Inter-American Commission on Human Rights has addressed the issue of forced returns to Haiti through precautionary measure orders and has further

asked the U.S. 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.