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mediaNET is a network sponsored by the Panos Institute of Washington, DC, U.S.A. and Port-au-Prince, Haiti. It serves to strengthen freedom of expression through cross-border journalist collaboration. This series of media briefings provides information on sustainable development issues in Haiti, placed within a Caribbean context. Briefings are distributed as a free service to the media in Creole, English,
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CRIMINAL DEPORTEES AND RETURNED TEENS
A Migration Phenomenon, A Social Problem

by: Privat Precil, Attorney and Journalist

In recent years, many Caribbean countries, particularly Jamaica, Dominican Republic and Haiti, are facing a phenomenon that becomes more and more worrisome as the United States has greatly changed its criminal and immigration laws. In response to their own social problems, particularly crime and overpopulation, authorities of industrialized countries turn themselves against immigrants who are arrested even for minor, non-violent offenses.

Adjusting the laws on immigration at their ease, these authorities deport, individually or by group, immigrant prisoners after they have finished their prison time. Sometimes this job is facilitated by immigrant parents wishing to protect their kids from the defects of the receiving society. They simply chose the easy way of returning them to their country of origin.

Without supervision and care in the majority of the cases, those returning teenagers often become part of a marginal population in their native country. Criminal deportees and displaced kids are therefore in the middle of a social turbulence, which other than through a law enforcement perspective, is hardly being addressed. The receiving country does not want them and the parents are tired of them.

Very few ask themselves questions about their presence -- why they are there and why are their native countries so quick to hold them responsible for the rise in crime.

The Migration Phenomenon: Grounds for Deportations
The problem of deportation is tied to the migration problem. The irregular development process of the Caribbean countries for the last few years has caused a non-stop exodus of migrants looking for economic opportunities. In addition to the large population shifts provoked by economic inadequacy, most of these countries are facing migration due to political reasons.

This unverifiable exodus of populations from one country to another often creates a regional instability, and in some cases, friction among neighbouring states. To correct the situation, some adopt a restrictive migration policy.

The world population has increased from 3 billion in 1960 to 5.7 billion in 1992. By the year 2002 the world population will reach 8 million and 10 billion by 2100. Approximately 85% of the people living on the earth are in the less developed countries (1) and while some countries pay close attention to population control, others pay little attention to such a problem or are unable to address it.

Migration Policy Changes

Changes in immigration laws to allow foreigners in are sometimes sponsored by governments of developed countries to attract nationalities of poor countries in order to raise their labour force. In this case, they reduce traveling restrictions and migration rises. At other times, when there is no immediate need for an immigrant labour force, the migration become restrictive and all means are used to complicate the life of the immigrant. These barriers and obstacles become evident in difficulties obtaining visas, high surveillance at the borders, mass deportation without apparent reasons, as well as countless other techniques employed.

One of the new barriers of the developed countries is the deportation of legal residents who are convicted of either a felony or a misdemeanor of any nature. The most alarming and questionable new legislation used is the U.S. 1996 Anti-Terrorist Act under which persons who commit a crime of any nature in the past -- even twenty years prior -- and although they satisfied their sentence, and may have been living productive, outstanding lives, must, by law, be deported. Additionally, the new laws stripped judges at all levels from using discretion in individual cases where mitigating circumstances may be present.

Larry Rohter, of the New York Times, in discussing the harshness of these new policies commented that, "Inflexibilities built in the law have trapped and marked for deportation a small but significant number of people who under other circumstances would be considered good candidates to becoming law abiding and productive". (2)

Troublemakers or Victims of the New World Order

A criminal deportee is not an extradited wanted for crime in his country, nor a repatriated pushed back because of his irregular status in a foreign country, nor an international undesirable wanted for terrorist actions. In the majority of the cases, he is a legal resident who left his country as a child and is adapted to the new country, having grown up as if a citizen there.

Apprehended, his status of immigrant will be grounds for deportation. In some instances, he is cleared of charges, although most of the time immigrants are bullied or tricked into making admissions of guilt thereby forcing mandatory deportation. But once deported, he has very
little chance to enjoy any reversal that may be decided on appeal, and more than likely will never be able to return to the deporting country.

A "returned teen", on the other hand, is displaced by his immigrant parents, who may have many reasons to justify their action. At best, they send material support to the returned teen; at worse they abandon them to the receiving relatives or friends for whom life is already difficult enough. Often loosing their residency, returned teens may eventually regain access to the country where they grew up.

Criminal deportees and displaced teens share many of the same problems: no stable family, nostalgia for the life of the big cities and the families left behind. Recognizing each other easily by their dress style or by their unique behaviour, criminal deportees and displaced teens often "hang" together forming a recognizable minority. This phenomenon has become of great concern for Caribbean countries.

A Means to Clear the Biggest Penitentiary of the World

The case of the United States deserves special attention. In the U.S., every 20 seconds someone is arrested for an offense related to drugs and every week a new prison is built to house more and more people. The U.S. now has the largest prison population in the world, far surpassing the numbers of prisoners that previously alarmed the world under apartheid South Africa or communist Soviet Union.

According to Goldberg and Evans in Turning the Tide, "The number of people in US prisons has more than tripled in the past 17 years, from 500,000 in 1980 to 1.8 million in 1997. Today, more than five million people are behind bars, on parole, probation, or under other supervision by the criminal justice system."

Goldberg and Evans further explain, "The monumental commitment to lock up a sizable percentage of the population is an integral part of the globalization of capital. Several strands converge -- the end of the Cold War, changing relations between labour and capital on an international scale, domestic economic decline, racism, the US role as policeman of the world, and growth of the international drug economy -- creating a booming prison/industrial complex. And the prison industrial complex is rapidly becoming an essential component of the US economy."

Deep cuts in social service budgets in recent years have left the U.S. youth without sufficient support services. Direct correlations have been drawn between these budget cuts and the rise in crime committed by youth. With new laws which broaden and enlarge categories of crimes and mandatory sentences carrying lengthy prison stays, the U.S. is eager to deport immigrants to make space for new prisoners.

The Immigration and Naturalization Service: A Super-equipped Institution

The new tools put at the disposal of the Immigration and Naturalization Service (INS) are extraordinary. This is the most equipped law enforcement institution in the U.S. They have more weapons than any other institution. Even the Customs Service is overpowered by the INS armada. While the budget of other agencies is cut, the one for INS has been raised. Recently, 128.7 million dollars were added to the regular allocation and 1,400 new employees were assigned to detention and deportation services.
The Caribbean: An Affected Area

Against this backdrop, many Caribbean countries such as the Dominican Republic, El Salvador, Jamaica and Haiti have been negatively impacted by the U.S. social problems.

According to the New York Times (*5) nearly 300,000 immigrants were expelled from the U.S. to countries around the world for various reasons (criminal and non-criminal) in the two-year period following legislation in 1996. Of that figure, 106,000 immigrants with criminal convictions were deported in 1998, a 52 percent increase over the previous two years. The countries receiving the majority of those expelled are Mexico, El Salvador, Guatemala, Honduras, Dominican Republic, Jamaica, Colombia, Canada and Ecuador.

Angry at the large numbers of criminal deportees being dumped at their ports, many Caribbean nations raised their objections to the U.S. through Caribbean Community (CARICOM) meetings. The Foreign Affairs Minister of Trinidad and Tobago, Ralph Maraj, told Caribbean Week (*6) that there was "no forewarning about the repatriation," which were instead done in a "rather sudden and ad hoc manner." Maraj declared that, "We consider it a very, very serious (problem), because deportation is now being executed at the discretion of the US, and it is unplanned and uncoordinated with the particular CARICOM governments." An aid to Maraj stated that "The law is that if you commit a crime in the US and if you are a legal resident, once you have served time you are deported, and that is the problem we are facing."

Questioning the CARICOM nations' abilities to cope with this new dynamic, Maraj asked "If these people are uncontrollable in the large US system, with its level of resources and sophistication, are they likely to be controlled by small Caribbean States?"

These protests by CARICOM member nations led to an agreement (*7) between those nations and the U.S., made during the CARICOM meeting in Barbados attended by President Clinton (See Box: Barbados Declaration). However, to date, those member countries claim that little if anything has been done by the U.S. to follow through on their agreement. Such lack of coordination and disregard for security and social concerns of Caribbean nations who have little resources, in turn forces these small countries to take measures that often violate the human rights of the deportees.
Haiti: A Special Case

Although Haiti receives a very small number of criminal deportees in comparison with its neighbouring countries (See bar graph of Criminal Alien Deportations from the U.S.), it is still of grave concern to those responsible for public security. Haiti, still a young democracy, is battling insecurity on many fronts through a 3-year old civilian police force and a dysfunctional justice system still to be overhauled. Additionally, Haiti is overwhelmed by the challenges of combating drug trafficking, which is a major contributing factor in recent violence and instability.

A breakdown of the crimes committed by those deported to Haiti in Fiscal year 1998 (See pie chart: Criminal Alien Deportations from U.S. to Haiti, Breakdown by Criminal Charge) reveals that half of the crimes were drug-related despite the general perception that all criminal deportees are "killers." Homicide, in fact, only accounted for 3 out of the total 202 for that year.

Criminal Alien Deportations from U.S. to Haiti
Breakdown by Criminal Charge

Total deportations to Haiti in Fiscal Year 1998: 202 (192 men and 10 women). Statistics provided by: Office of Policy and Planning, INS.

As to the question of the amount of crime or "insecurity" the criminal deportees are responsible for in Haiti, Donna DeCesare in researching her article for the NACLA Report on the Americas, spoke with a police inspector in Cité Soleil, a large slum on the north side of Port-au-Prince, who said that, "Base Big Up, our largest gang, existed here in the Cité when I was a child growing up... None of these guys has ever been to the United States... They operate in Cité Soleil and hide out in Delmas. Their connections are to Haitian criminal elites, not American jails."

DeCesare writes that he also informed her that, "the leaders of Haiti's most notorious gangs include corrupt cops drummed out of the newly formed Haitian National Police and former Macoutes as well as members of criminal families." (*8)

Ambassador Colin Granderson who heads MICIVIH, a joint civilian UN/OAS human rights observer mission in Haiti, pointed out to Roeland Muskens of onzeWereld (*9) the irony of the situation, "On one hand, the United States is worried about the stability of Haiti, but at the same time they burden the country with derailed people who have no place in Haitian society".

While officially deportees are not jailed in any other country in the region, Haitian authorities,
because of level of "insecurity" and, contrary to all international rules, send the deportees to jail without any regard for their rights.

The history of a group of deportees who arrived on March 24, 1998, is an illustration. On this date, the U.S. prisoner transport system returned 38 Haitian citizens to their homeland. When they arrived at the International Airport of Port-au-Prince, all of them were jailed. The press, the judicial power, the police were invited to attend the "event." For four months, Alternative Chance (a non-governmental organization) appealed to the Haitian judicial authorities for their release. In spite of an extraordinary process of habeas corpus filed on May 11, 1998, none of them were released.

Defenses for the Prisoners Were Around these Points

These prisoners had already served their prison sentences abroad making their detention in Haiti illegal. According to Article 14 of the International Agreement Relative to Political and Civil Rights -- of which Haiti is signed onto and in accordance with the dispositions of its Article 49 "no one can be prosecuted or punished for a violation for which he was cleared or condemned..."

On the other hand, according to Article 5 of the Haitian Criminal Instruction Code, the legal action in Haiti regarding crime committed in foreign countries, is submitted to the following conditions:

1. That the infraction is qualified as a crime
2. That it was committed by a Haitian
3. That it was committed against a Haitian
4. That the accused is back in Haiti
5. That he was not prosecuted and judged in a foreign country
6. Finally that the offended Haitian has filed a complaint

In the case of a crime against the security of the country such as counterfeiting, etc, the Haitian will be charged as soon as he is held.

Additionally, Article 7 of the Code of Criminal Instruction states that "any Haitian national responsible for a crime against another Haitian outside the country, will be, when he returns to Haiti, prosecuted and judged, if he was not convicted outside and if the victim has pressed charges against him.

However, regarding the 38 prisoners, none of these conditions were applicable -- there was no complaint and the prisoners had already paid their time. Indeed, we understand the concern of the Haitian authorities to be concerned about people sent back to the country. Alternative
Chance, in search for a transition from the prison to their families, twice submitted a reinsertion plan to the Ministry of Justice for consideration to no avail. Left with no alternative, Alternative Chance submitted a habeas corpus before the Supreme Court asking for review of the illegal arrests and detentions, and an order for the immediate release of the prisoners without delay.

At mid-July 1998, after four months of custody, the 38 were finally freed. But concern about individual liberties is still at stake. In any case, imprisonment is far from being the ideal solution on this matter. The director of the National Coalition for Haitian Rights (NCHR) office in Haiti, Pierre Esperance, declared in a report of his office on the matter that "With deportees arriving weekly, NCHR encourages the government to develop an appropriate plan of action, one that will facilitate their social reintegration and encourage them to become productive members of Haitian society, rather than violate their human and constitutional liberties."

**Alternative Chance ("Chans Altenativ")**

Alternative Chance was founded in 1996 by Michelle Karshan, an American activist living in Haiti, along with four criminal deportees and one young man returned by his parents. Karshan, the Executive Director, described the programme to The Transformer as, "... an integration program for criminal aliens deported to Haiti from the U.S. and Canada... is the first reintegration program for deportees in the Americas. Providing support services and community to new arrivals, some of whom haven't been to Haiti since they were infants, is a daunting and trail-blazing task!"

Karshan points out that, "Immediate needs range from housing, food, medical care, drug counseling, to learning the language and a marketable skill from which one can earn a living. A critical component of the program is our orientation process during which we talk about the history of Haiti, the transition from army to a civilian police, the government structure and the Constitution. Additionally, peer counselors share vital information on survival, such as why one should not drink the water, and how to live non-violently and create a productive life in Haiti." (*12)
In 1997, MACLEAN'S magazine’s Andrew Phillips exclaimed: "...in Haiti, some deportees are involved in something that hasn't been tried anywhere else: a program designed to help them make new lives and keep away from crime... It's not easy: unemployment in Haiti runs around 80 percent, and the few jobs that exist pay minuscule wages by North American standards..." (*13)

Haitian authorities did not pay much attention to the project at the beginning although some attended the meetings called by Alternative Chance to work through collaboration. Requests to the Haitian government, its Police Chief, and its tax office to find a location to house a centre did not materialize. Ironically, authorities acknowledge that such a project does provide the possibility to give deportees an orientation to help with their new life.

In many cases those sent back to Haiti were not actually born in Haiti. Instead, some were born in the Bahamas or France and being born there does not make one a national of that country without completing an application process. In these cases, it is possible that the deportee has never even visited Haiti before and has no family left in the country.

A most startling case is that of Thomas Christopher O'Toole Sylvain, born in the Bronx in 1978 to an Irish-American mother and a Haitian father. After doing his prison time in Florida, he was sent to Haiti without the proper papers -- in direct violation of Article 9.5 of the Barbados Declaration which states that the deporting country would, "Make sure, prior to deportation, that the deportee is a national of the receiving country." He had maintained that he was an American citizen and presented a birth certificate and a passport. But still, U.S. Immigration officials maintained that he was not the person his parents claimed that he was. After one month in Haiti, Sylvain became gravely ill, deteriorating rapidly from an undiagnosed condition.

Emaciated and near death, Alternative Chance, following up on the extensive Miami Herald coverage, intervened and put Sylvain in a private hospital for diagnosis and care while advocates in the United States were fighting for his return to his native country. Two months after the matter was brought to the attention of the U.S. government and after two congresspersons got involved, the INS finally admitted that Sylvain is an American born citizen. The medical evacuation took more than 24-hours despite the doctors warning that Sylvain might die within the day. En route from the air ambulance to a Miami hospital, Sylvain suffered a heart attack because of the deterioration of his condition.

Persecuted in Both Worlds

In a world more inclined towards repression than prevention, it is easy to be in trouble because one can be "in the wrong place at the wrong time."

After the Guyanese police shot and killed five deportees in a house near Georgetown, a
representative of the Guyanese Association for Human Rights (GHRA), said that, "shooting bandits to death is a spectacular demonstration to disguise the inability on the part of the police to gather evidence which will stand up in court." (*15) "To date", the GHRA alleged, "the police have not shown any persuasive evidence to link deportees with serious crimes or the recent crime wave in Guyana." Additionally, in making out its case against police demands for wider powers, the GHRA says that "the force is yet to successfully prosecute any of the big drug kingpins operating in the country, and that targeting so-called deportees with drug convictions is unfair."

Ambassador Granderson seeing a possible upside to the dynamic of criminal deportees told onzeWereld that, "with the support a well-conceived orientation, these young people can bring a valid contribution to the Haitian society. They have a big advantage: they speak English and they know the American society. The Haitian economy can broadly profit of this situation." (*16)

Privat Precil was the former Director of the Government of Haiti's Office on National Migration and was the Government of Haiti representative at the Conference on the Dynamics of Migration held in Costa Rica in 1996. Currently Mr. Precil practices law in Haiti and is admitted to practice under the Port-au-Prince Bar Association. Mr. Precil is the pro bono attorney for Alternative Chance ("Chans Altenativ") in Haiti.

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1. FNUAP Bulletin, 1997. return
2. Larry Rohter, "In U.S. Deportation Policy, a Pandora's Box," The New York Times, 10 August 1997, 1. return
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