

The Forgotten People

The Vietnamese Asylum Seekers in Hong Kong's Detention Centres 1988-1997

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Abstract

This thesis deals with the treatment of Vietnamese asylum seekers in Hong Kong after 16 June 1988, when the colony unilaterally introduced a policy of screening new arrivals for refugee status. It argues that the vast majority of Vietnamese asylum seekers who arrived in Hong Kong after this date were treated unfairly and inhumanely during their detention in purpose-built centres. It shows they were deprived of a fair hearing of their refugee status because the screening process was flawed, and then were forcibly repatriated to Vietnam in contravention of the internationally accepted norm of non-refoulement. This thesis argues that the Hong Kong government condoned widespread corruption and hardship in the detention centres of Hong Kong in an effort to speed up the removal of those Vietnamese boat people who had reached its shores and to deter more from leaving Vietnam.

Further, this thesis argues that the UNHCR, the Hong Kong government and the international community failed to adequately protect the human rights of this group of Vietnamese boat people because of the adoption of flawed processes to assess their refugee status, and detain and repatriate the asylum seekers. The thesis argues that the concern of the Hong Kong government to remove the boat people from its shores and deter more from coming was politically motivated and outweighed official UNHCR policy, international law and accepted thinking on refugees. At the same time, even though the UNHCR was mandated by the international community to protect the asylum seekers, it failed to serve as a protection agency for Vietnamese asylum seekers. The thesis argues that the UNHCR's financial dependency on nation states, such as the United Kingdom and its colony Hong Kong, compromised the protection role of the refugee agency.

The thesis also identifies the failings of the international governance system for human rights in Asia, and specifically highlights the absence of a regional Human Rights Commission and the consequent lack of enforcement of human rights treaties in the region.

This thesis analyses an important and largely unscrutinized episode in refugee history. The reason it is important lies in the number of procedural precedents and human rights violations that occurred, resulting in tragic consequences for this group of individuals. This situation could have been avoided or handled in a more appropriate way that was in the best interests of the asylum seekers.

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Chapter One

Introduction

In the twenty-five years following the end of the Vietnam War in 1975, about two million Vietnamese would leave their country, some legally through official departure programmes and others illegally. Almost half of those escaping Vietnam did so illegally on crowded boats to seek asylum in neighboring countries, and became widely known as “boat people.” An estimated 250,000 people drowned or were killed by pirates en route.¹ This experience was life-changing for the Asylum Seekers who survived. It also had a significant impact on the countries around the region that served as ports of first asylum for the boat people and ultimately set a bad precedent in the international management of asylum seeker flows.

The then-British colony of Hong Kong played an important role in this episode, with more than 200,000 boat people passing through its shores. In part because of its proximity to Vietnam, in part because of its wealth—Hong Kong’s Gross Domestic Product per capita was US\$17,000 in 1990 compared to just US\$98 in Vietnam²—and in part through its democratic values and the political influence of its British owners, Hong Kong became one of the main destinations for the Asylum Seekers. The arrival of such a large number of boat people strained the colony’s resources, and created social tensions and disputes about how to respond to the Asylum Seeker crisis.

Initially, all the boat people arriving in Hong Kong were granted refugee status by the

¹ Boat People SOS, *About BPSOS*, Website, 2013, <http://www.bpsos.org/mainsite/about-us.html>

See also: Vu Thanh Thuy, “‘Boat people’ defeat sea, but all at visa wall,” *The San Diego Union-Tribune*, 20 July 1986.

² World Bank, “Gross Domestic Product per Capita in current US\$,” *World Development Indicators, 1980-2013*, <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD/countries?page=4&display=default>

United Nations Human Rights Commissioner (UNHCR), the refugee agency of the United Nations, and the vast majority were resettled in third countries. However, in response to increasing numbers and changing demographics of the Asylum Seekers from Vietnam in the 1980s, Hong Kong unilaterally introduced steadily harsher policies aimed at deterring more departures from Vietnam. First in June 1982, Hong Kong introduced a policy of placing all new arrivals in closed detention centres, and then on 16 June 1988, in the face of another wave of boat people, Hong Kong introduced a policy of screening new arrivals to determine their refugee status. For the next nine years, all 74,019 Vietnamese boat people who arrived in Hong Kong were immediately placed in detention centres where they waited to be screened. This unique period in refugee history lasted until 1 July 1997, when Britain handed back sovereignty of Hong Kong to the People's Republic of China (PRC). By the latter date, 99 per cent of the Vietnamese boat people had left Hong Kong, with the majority of this group (84 per cent) repatriated to Vietnam voluntarily or by force, and 15 per cent resettled in third countries. The remaining one per cent were effectively stateless: unable to return to Vietnam which did not recognize them as nationals, unable to be resettled in a third country as they were not refugees, and unable to live freely in Hong Kong as they held no legal status. In 2000, Hong Kong agreed to give residency to the final 1,400 stateless Vietnamese.

This thesis examines the significant violations of human rights and international law and norms that occurred at each stage of this three-step process of detention, screening and repatriation. This thesis argues that the vast majority of Vietnamese Asylum Seekers who arrived in Hong Kong after 16 June 1988 were treated unfairly and inhumanely during their arbitrary and indefinite detention, deprived of a fair hearing of their refugee status because of the flawed process of screening, and then were forced back to Vietnam against their will and in contravention of the internationally accepted norm of non-refoulement or non-repatriation. Specifically in relation to detention, this thesis argues that the Hong Kong government

condoned or ignored widespread corruption and hardship in the detention centres of Hong Kong in an effort to speed up the removal of Vietnamese boat people from its shores. I will demonstrate, with particular reference to events in Whitehead Detention Centre, that the Hong Kong government transgressed local laws, local and international human rights treaties and covenants, and overrode UNHCR policy leading to a range of dehumanizing effects on those detained.

Secondly, this thesis critiques the dynamic that existed between the Hong Kong government and the international community that allowed these transgressions to occur. The UNHCR, the Hong Kong government and the international community failed to adequately protect the human rights of this group of Vietnamese boat people because of the adoption of flawed processes to assess their refugee status, and detain and repatriate the Asylum Seekers. The thesis argues that the concern of the Hong Kong government to remove the boat people from its shores and deter more from coming was politically motivated and outweighed official UNHCR policy, international law and accepted thinking on refugees. At the same time, even though the UNHCR was mandated by the international community to protect the Asylum Seekers, it failed to serve as a protection agency for Vietnamese Asylum Seekers. The thesis argues that the UNHCR's financial dependency on nation states, such as the United Kingdom and its colony Hong Kong, compromised the protection role of the refugee agency.

Thirdly, the thesis identifies a series of precedents that had a negative impact on international norms. The precedents were widely hailed by the authorities as successes, though this thesis argues that the arbitrary and indefinite detention of Asylum Seekers, the failure to offer Asylum Seekers a fair hearing of their refugee status and the breaching of a time-honoured policy of not forcing refugees back to their country of origin against their will, were in fact failings of the international refugee architecture designed to protect Asylum Seekers. Another precedent set in this period was the creation of the Comprehensive Plan of

Action (CPA) which ran from 14 June 1989 to 30 June 1996. The CPA was a one-off, purpose-made solution agreed by 74 governments and administered by the UNHCR to handle the influx of Vietnamese boat people in ports of first asylum in Asia. This thesis argues that the CPA was not an acceptable model for dealing with large numbers of refugees, Asylum Seekers or migrants. The policies of detention, screening and forced repatriation, which were implemented by the Hong Kong government and condoned by the CPA as a means of deterrence, are in direct conflict with official UN policy, international law and accepted thinking on asylum and refugee determination. This thesis argues that the CPA was a failed experiment that should not be used as a precedent or model for future situations where people seek asylum.

This is an important and largely unscrutinized episode in refugee history. It is important because of the number of procedural precedents and human rights violations that occurred, resulting in tragic consequences for this group of Vietnamese Asylum Seekers. The violations largely occurred in Hong Kong's detention centres, while the flawed process of screening meant genuine refugees were overlooked resulting in many being forcibly repatriated. The abuses were allowed due to the lack of protection afforded by the UNHCR and the international community. This situation could have been avoided or handled in a more appropriate way that was in the best interests of the Asylum Seekers. I will outline some of the alternative solutions that could have been used in this situation.

Methodology

The thesis draws on my close association with the issue of Asylum Seekers in Hong Kong. I lived in Hong Kong during most of the period covered in the thesis, and worked for a non-government organization (NGO) in Whitehead detention centre, the biggest of the closed camps, for almost two years. I worked closely with the Asylum Seekers, lawyers, media and

advocacy groups throughout the nine-year period covered by this thesis and have written several articles on the issues at hand. This thesis is based on this personal experience, and information I have collected from Asylum Seekers, agency workers and human rights lawyers in Hong Kong.

I also draw on a significant amount of publicly available information. United Nations and UNHCR documents provide detailed coverage of the official policies and related data. Hong Kong Government Information Services and the Hong Kong Legislative Council also have detailed records about refugee and asylum seeker numbers, problems and debates.

In addition, I make use of information published by advocacy groups such as Refugee Concern Hong Kong, Human Rights Watch and Amnesty International, a wide range of local and international newspapers, and relevant court cases. Wherever possible I have tried to juxtapose the official views of the UNHCR and the Hong Kong government with those of the Asylum Seekers. Where available, I have given a website or specific web address in addition to the hard copy reference.

Structure of the thesis

In order to organize the complexities of this subject in the clearest way, I have moved from the broader issues of why Hong Kong reacted in such a harsh manner and why the UNHCR and international community failed to protect the Asylum Seekers to the more specific issues of detention, screening and forced repatriation. Chapter Two examines why the Hong Kong government enacted a policy of deterrence and allowed human rights abuses of the boat people, given the backdrop of the political pressures it faced in the lead up to the handover of the British colony to China in 1997. I will analyse the cost of this policy of deterrence to the Hong Kong government in terms of financial commitment, the long-term impact on Hong Kong's international reputation, and the effect of the loss of support from

critics of the policy, most notably human rights lawyers. At the end of Chapter Two I will assess whether the policy worked as a deterrent or not.

Chapter Three examines the relevant international human rights treaties and covenants and outlines how the international human rights architecture, through the UNHCR, made it possible for the Hong Kong government to abuse the human rights of the Vietnamese boat people in detention. In this chapter I will argue that the international human rights system, with particular reference to the relevant covenants and laws pertaining to Asylum Seekers and the role of the UNHCR, made it possible for the Hong Kong government to carry out its harsher policies without rebuke. The UNHCR and the international treaties allow too much latitude to governments in terms of interpretation of human rights norms and, in addition fail to adequately monitor the breaches when they occur. This meant that when Hong Kong did break international law the abuse or breach was often undiscovered. I will further argue that the inadequate monitoring coupled with the lack of any enforcement body in Asia, such as an equivalent of the European Court of Human Rights, meant Hong Kong was rarely put under pressure by the UNHCR or the international community for its policy of deterrence, and Hong Kong was able to retain its reputation by saying it had not transgressed any of the accepted laws and norms. I will also argue that because the UNHCR was dependent for funds on the very governments it was expected to monitor, its role was compromised and, in effect, the UNHCR became a figleaf for the Hong Kong government to hide behind when it did abuse the Asylum Seekers.

The following chapters examine different aspects of how the interaction between the Hong Kong government and the international human rights system monitored by the UNHCR effectively infringed on the human rights of the Asylum Seekers. In Chapter Four, I will demonstrate how the Hong Kong government condoned and controlled a *dai goh* or gangster system in the detention centres that leveraged corruption and violence to encourage the

Asylum Seekers to return to Vietnam, while at the same time reaping millions of dollars for the perpetrators. I will analyse the overall impact of these abuses on the Asylum Seekers in terms of dehumanization, fear and pressure to return to Vietnam. I will also show how the UNHCR acted as a figleaf for the Hong Kong government, condoning and in some cases actively participating in the abuses. In Chapter Five, I will give details of the three stages of screening and show how the screening process in Hong Kong was flawed in terms of procedures and in that it failed to recognize an unknown number of genuine refugees. The statistics reveal that the percentage of Asylum Seekers granted refugee status in Hong Kong was about half the number compared to the average for the rest of the region. I will show that the Hong Kong Immigration Department failed to apply an adequate or fair process to the screening, and that this was compounded by the UNHCR's inability to monitor the situation as it also held the power of granting refugee status to Asylum Seekers. As a result of the demonstrable and perceived unfairness of the screening process, the Asylum Seekers responded through a series of demonstrations and by refusing to accept the outcomes, thereby extending the length of time the abuses lasted. To conclude this chapter, I will explore the United States' Resettlement of Vietnamese Refugees (ROVR) programme that was set up in 1996 to encourage Asylum Seekers in detention centres around the region to return to Vietnam. The ROVR programme granted refugee status to 88 per cent of the eligible returnees after rescreening them, indicating serious problems with the Hong Kong screening process. In Chapter Six, I will argue that forced repatriation was at best in contravention of the spirit and practice of every humanitarian convention and protocol written in the 20th century and at worst, illegal, according to human rights lawyers. This chapter gives further evidence of the violations resulting from Hong Kong's policy of deterrence and how the UNHCR failed in its responsibility to serve as a protection agency for Vietnamese Asylum Seekers either in Hong Kong or Vietnam during this period. From the Asylum Seekers'

perspective, the physical abuse of being tear-gassed and forcibly removed from detention centres and the stigma of being returned to Vietnam against their will and to a regime by which they perceived they would be persecuted was a significant trauma that for some is still being felt to this day.

Chapter Seven discusses the negative impact that the treatment of Vietnamese Asylum Seekers in Hong Kong had on international norms. It examines the role of the Comprehensive Plan of Action (CPA) and suggests that the creation of an Asian Human Rights Commission would help to prevent some of the human rights abuses that the Vietnamese Asylum Seekers experienced in Hong Kong. To conclude I summarise the key points of this important case study and conclude that the methods used in Hong Kong to cope with the large inflows of Asylum Seekers should not be adopted as a model for future situations relating to the handling of refugees, migrants or Asylum Seekers.

The remainder of Chapter One gives an introduction to how and why the policy of screening was adopted in Hong Kong and the subsequent development of the CPA, as well as a brief introduction to the arrivals of Vietnamese boat people in Hong Kong, starting immediately after the fall of Saigon to the Communist forces on 30 April 1975.

Historical Background to the Vietnamese boat people in Hong Kong

The first 3,743 Vietnamese Asylum Seekers arrived in Hong Kong on 4 May 1975 on board the Danish container ship, the Clara Maersk.³ They were accepted as refugees, held in open camps with no restrictions on their freedom and quickly resettled in third countries. The numbers of such “boat people” arriving in Hong Kong over the next three years were small

³ Stephen Yau, “Vietnamese Boat People,” pp. 111-126, in *The Other Hong Kong Report 1992*, Paul Cheng and C. K. Kwong (eds.), Chinese University Press: Hong Kong, 1992, p. 112.

See also: Jonathan Wichmann, “Clara Mærsk and the rescue of 3,628 Vietnamese refugees in 1975,” Maersk Line Website, 3 September 2012, <http://maersklinesocial.com/clara-maersk-and-the-rescue-of-3628-vietnamese-refugees-in-1975/>

and the rate of resettlement was high. However, during the lead-up to the Sino-Vietnamese war in 1979, the Vietnamese government began to put pressure on ethnic Chinese Vietnamese to leave Vietnam and a second wave of departures occurred. Hundreds of thousands left, with many heading over the northern land border to the People's Republic of China—today almost 300,000 ethnic Chinese Vietnamese remain in China without legal status.⁴ Almost 200,000 Vietnamese refugees arrived in ports of first asylum around Asia (Hong Kong, Malaysia, Indonesia, Thailand, Philippines, Singapore and Macau) in 1979. Some 68,748 Vietnamese refugees arrived in Hong Kong in 1979, about 34 per cent of the number leaving Vietnam for ports of first asylum in that period. More than 80 per cent of the arrivals in Hong Kong were ethnic Chinese.⁵

The Hong Kong government was faced with the dilemma of accepting refugees from Vietnam—the majority of whom were ethnic Chinese—at the same time that it was repatriating about a hundred so-called “illegal immigrants” from China every day. The British-backed Hong Kong government feared compromising its hardline stance on not providing asylum to those arriving from the People's Republic of China, and so it moved to bring the two policies gradually in line. The increased numbers of arrivals from Vietnam led the Hong Kong government to institute a tougher policy against the boat people, introducing harsher treatment in an attempt to deter future arrivals. On 6 June 1979, the Hong Kong Secretary for Security Lewis “Bim” Davies announced the harsher conditions:

It is the Government's policy wherever refugees are accommodated to provide only the minimum standard of services and facilities at as high a density as is consistent with basic public health standards. Steps are being taken to increase the numbers accommodated in existing camps.⁶

⁴ Ramses Amer, Ashok Swain and Joakim Ojendal, *The Security-Development Nexus*, Anthem Press, London, 2012, p. 170.

⁵ Appendix 1e.

⁶ Hong Kong Legislative Council, “Official Report of Proceedings, Wednesday, 6 June 1979,” p. 900, http://www.legco.gov.hk/yr78-79/english/lc_sitg/hansard/h790606.pdf

The groundswell of government and popular local opinion against the continued influx of refugees had grown to such a level, that even though in the calendar year 1981 less than 11.5 per cent (or 8,470 of 73,471)⁷ Vietnamese refugees around the region were arriving in Hong Kong, a new policy of putting refugees in closed camps with restricted freedom of movement was set up as a deterrent starting on 2 July 1982.⁸

This new policy of detention was explicitly stated to be a deterrent. The Secretary for Security stated on 30 June 1982:

The government has concluded that the only immediate option is to set up closed camps in which to accommodate refugees. In adopting this option, the Government is bringing Hong Kong into line with the rest of the region. This move should make Hong Kong less attractive to refugees. When the message gets back to Vietnam, it should help to deter people from setting out.⁹

It took more than six months for the deterrent effect of the detention centres to have an impact. In the second half of 1982, arrivals in Hong Kong actually increased, before more than halving in 1983. For five years from 1983 to 1987, the number of arrivals in Hong Kong remained low, with only 1,112 people arriving in 1985.¹⁰ The number of arrivals stayed at these lower levels for two reasons. First, after the message about harsher conditions in Hong Kong penetrated into the villages of Vietnam (a process that took about six months), it did begin to act as a deterrent; and secondly, increased awareness about the number of attacks by pirates on the southern escape routes from Vietnam to Thailand, Malaysia, Singapore and Indonesia made people realize how dangerous it could be to leave.¹¹ Although, there are no

⁷ Appendix 1e.

⁸ HK Secretary for Security, Lewis “Bim” Davies, *Speech in Legislative Council*, Official Report of Proceedings. 30 June 1982, p. 1022-1023. http://www.legco.gov.hk/yr81-82/english/lc_sitg/hansard/h820630.pdf

⁹ Lewis ‘Bim’ Davies, *Speech in Legislative Council on amendments to Immigration Bill*, 30 June 1982, p. 1022-1023.

¹⁰ Appendix 1e.

¹¹ Boat People SOS, *About BPSOS*, Website, 2013, <http://www.bpsos.org/mainsite/about-us.html>

See also: www.vietka.com/Vietnamese_Boat_People/HorribleStatistics.htm

See also Barbara Crossette, “Thai Pirates Continuing Brutal Attacks on Vietnamese Boat

definitive numbers or geographic breakdowns, Boat People SOS cites the UNHCR estimating that as many as 250,000 boat people leaving Vietnam died at sea as a result of pirate killings, storms, illness and food shortage.¹²

A third wave of departures began in 1987, as more than 28,077 people departed Vietnam illegally. By 1989, there were 69,964 illegal departures from Vietnam.¹³ Some 196,885 Vietnamese migrants arrived at ports of first asylum in Asia between 1987 and 1991, approximately a third more than the 134,468 migrants in the previous five years.¹⁴ The increased numbers departing Vietnam were in direct response to the political changes in the communist country that led to increased persecution of some individuals at a local level. The power of local governments in Vietnam increased in line with the reduction in central government controls. This meant that families with “bad” records—those with connections to the French, the South or the landowner/Capitalist classes—ethnic Chinese families, and increasingly others who were the subject of personal rivalries and jealousies, became the victims of persecution and in many cases fled.¹⁵

Another driving factor was Vietnam’s policy of Doi Moi (renovation), which paved the way for the transition from a command economy to a state-led market economy. The sixth General Conference of the Vietnamese Communist Party launched this policy in December 1986.¹⁶ The implementation of this policy coincided with the steady withdrawal of financial

People,” The New York Times, 11 January 1982; and Jon Swain, “The Last Voyage of the damned; Vietnamese boat people,” The Sunday Times, 23 October 1988, <http://jonswain.org/articles/articles/articles/Vietboatpeople2.html>

¹² Larry Berman and Jason Newman, “The Vietnam War and Its Impact - Refugees and boat people,” *Encyclopedia of the American Foreign Relations*, <http://www.americanforeignrelations.com/O-W/The-Vietnam-War-and-Its-Impact-Refugees-and-boat-people.html#ixzz2PVduUyVM>

¹³ Appendix 1e.

¹⁴ Ibid.

¹⁵ “Vietnam: Repression of Dissent,” *Human Rights Watch*, March 4, 1991, <http://www.hrw.org/reports/pdfs/v/vietnam/vietnam913.pdf>

¹⁶ Lewis M. Stern, *IndoChina Report*, No. 18, Jan-Mar 1989, www.asiandialogue.com/pdf/indochina_report/Jan-Mar1989.pdf

support from the Soviet Union. At the same time, Coi Mo (openness), particularly in relation to international trade, was encouraged. In many textbooks,¹⁷ the policy of Doi Moi is credited with improving economic conditions in Vietnam and leading to a reduction in the number of people fleeing the country. While a reduction in numbers departing Vietnam may have happened in the long term as a result of the “renovation” policy, the number of boat people fleeing Vietnam in the immediate years following the introduction of Doi Moi increased.

The Vietnamese Asylum Seekers in Hong Kong repeatedly referred to Doi Moi and Coi Mo in their applications for asylum, noting that conditions in Vietnam had changed for the worse following the implementation of Doi Moi. In 24 confidential interviews, Vietnamese Asylum Seekers told Human Rights Watch, a non-governmental organization, of events including arrests, surrenders and seizures of contraband literature and tapes in Vietnam at this time.¹⁸ Another NGO, Asia Watch, said it believed that many of those arrested were targeted for their political beliefs, their associations, or non-violent expression of their views.¹⁹

In contrast, the UNHCR blamed the high numbers of Asylum Seekers in the period 1987 to 1991 on poor economic conditions and high unemployment in Vietnam. According to the UNHCR, “much of the flow, ironically, stemmed not from new repression but a relaxation of internal travel restrictions and a dismantling of state industries that left tens of thousands unemployed and uncertain about their future.”²⁰

It was true that an increased freedom of movement allowed those who were able to

¹⁷ Ramses Amer, Ashok Swain and Joakim Ojendal, *The Security-Development Nexus*, Anthem Press, London and New York, 2012, p. 170.

See also: Spencer Weber Waller and Lan Cao, *Law Reform in Vietnam: The Uneven Legacy of Doi Moi*. 1996. p. 556, <http://law2.wm.edu/faculty/documents/cao-653-6422.pdf?svr=law>

¹⁸ Human Rights Watch, *Vietnam: Repression of Dissent*, 4 March 1991, <http://www.hrw.org/reports/pdfs/v/vietnam/vietnam913.pdf>

¹⁹ Asia Watch, *Refugees at Risk: Forced Repatriation of Vietnamese from Hong Kong*, Volume 4, Issue 21, 2 August 1992.

²⁰ United Nations High Commissioner for Refugees, *Special Report, Comprehensive Plan of Action*, June 1996, Public Information Section, Geneva, p. 18.

flee. However, a closer examination of the situation from interviews with the Asylum Seekers in Hong Kong shows that levels of persecution were much higher than the UNHCR acknowledged.²¹

The increased numbers had a particularly big impact on Hong Kong as significantly more Vietnamese boat people were choosing Hong Kong as a destination. In 1987, 28,077 Vietnamese migrants left Vietnam illegally. Of those, 12 per cent arrived in Hong Kong. By 1989, the regional number had risen to 69,964, with 49 per cent arriving in Hong Kong. Of the total leaving Vietnam between 1987 and 1991, 82,631 people or 42 per cent of the departures arrived in Hong Kong.²² The preference for those departing to sail to Hong Kong was caused by increased awareness of the pirate attacks on the southern routes. The fear of death at the hands of pirates outweighed the deterrence of poor living conditions in Hong Kong's detention centres.

As the mechanism in place in Hong Kong to determine how many of the Asylum Seekers were political refugees was flawed, the actual number of genuine refugees who passed through the colony is not known.

What is known is that the ethnic background of those Vietnamese arriving in Hong Kong changed during this third wave. In the period after 1975, the majority of boat people arriving in Hong Kong were ethnic Chinese from South Vietnam, and then after 1979 and the start of the Sino-Vietnam War the majority were ethnic Chinese from North Vietnam, fleeing increased levels of persecution against them because of their ethnicity. In 1986, for the first time, ethnic Vietnamese from the north of Vietnam made up the majority (52 per cent) of arrivals,²³ in part because of the impact of Doi Moi, which in its initial years led to increased persecution of individuals at local government level. This trend of northern Vietnamese

²¹ Human Rights Watch, *Vietnam: Repression of Dissent*, 4 March 1991, <http://www.hrw.org/reports/pdfs/v/vietnam/vietnam913.pdf>

²² Appendix 1e.

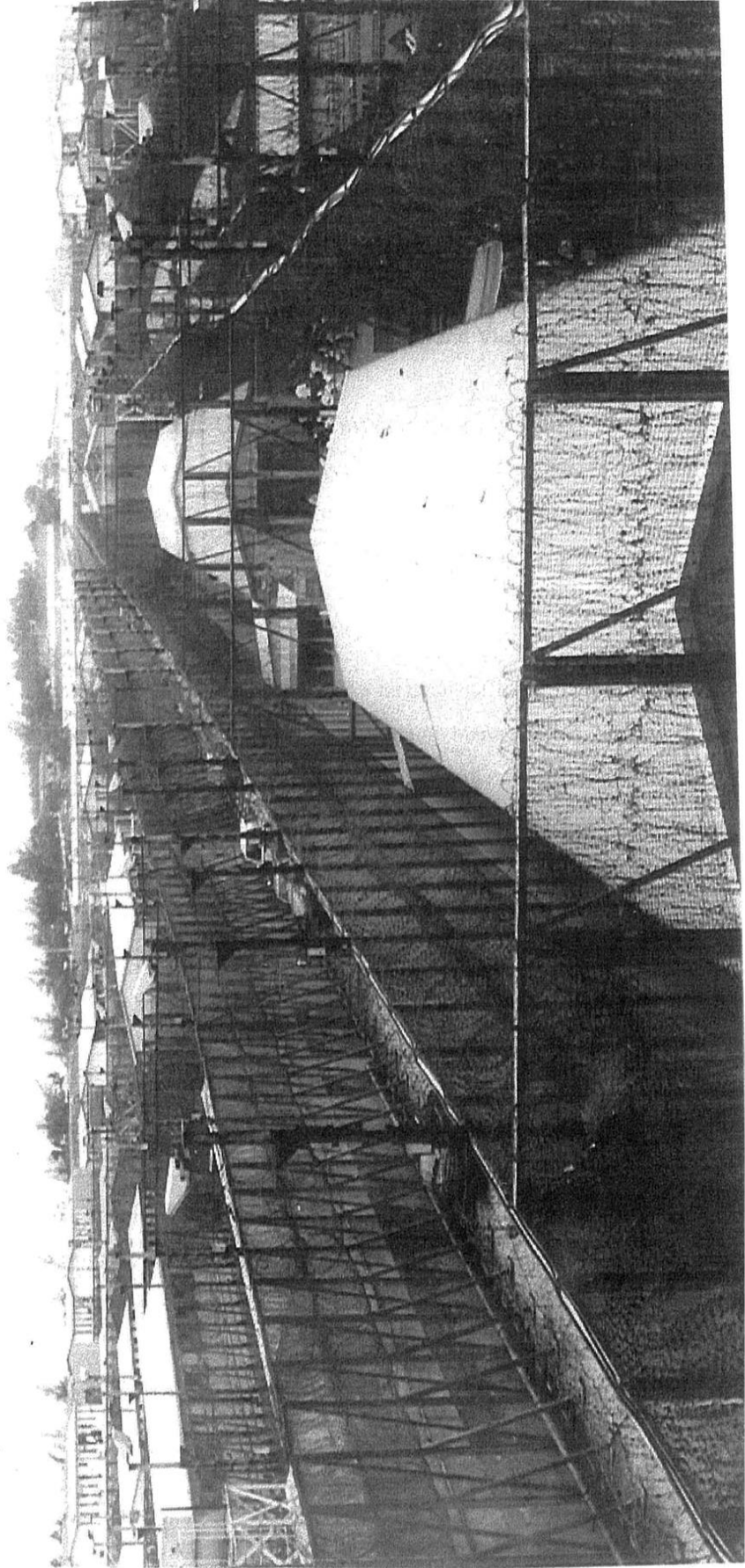
²³ Appendix 1c.

making up the majority of arrivals in Hong Kong continued for ten out of the next eleven years.

Conclusion

The period leading up to 15 June 1988 saw three waves of departures from Vietnam. The first group of 132,000 was predominantly made up of those who had helped the U.S. forces during the Vietnam War. The second group consisted mainly of ethnic Chinese Vietnamese, who left in the build up to and duration of the Sino-Vietnam War in 1979. The third wave was predominantly northern Vietnamese. Concurrent with this change in demographics of the boat people arriving in ports of first asylum was the international community's increasing reluctance to accept more Vietnamese for resettlement. While in 1979, the international community was willing to accept the boat people as refugees, ten years later, they would no longer grant the same level of hospitality to the new arrivals seeking asylum. As a result harsher measures were put in place, namely policies creating the minimum acceptable conditions in the detention centres holding Asylum Seekers and the introduction of a harshly interpreted screening process to determine refugee status. In Chapter Two I will look in more detail at why the Hong Kong government adopted the policy of deterrence and the impact that had on the Vietnamese Asylum Seekers in terms of human rights abuses.

2.1 Whitehead Detention Centre



Chapter Two

Hong Kong and a Policy of Deterrence

As the third wave of arrivals of Vietnamese asylum reached Hong Kong in increasingly large numbers in 1987, so the pressure on the British colony to adopt harsher measures to stop the inflows of boat people rose as the Chinese and British governments, as well as a large number of the Hong Kong population, demanded a response. The colony's toughest policy of deterrence, namely the introduction of screening with a view to forcibly repatriating those who failed to gain refugee status, was passed by the Hong Kong Legislative Council on 15 June 1988. This action would lead to a series of human rights abuses that damaged Hong Kong's reputation in the eyes of many other states, human rights lawyers, refugee advocates, the Asylum Seekers and a minority of the city's residents. The presence of the United Nations High Commissioner for Refugees (UNHCR) to protect the Asylum Seekers proved ineffectual as the Hong Kong government ignored it and at times even managed to enlist the refugee agency's help or tacit approval for some of the worst excesses. For the Asylum Seekers, the new policy meant they faced an unknown period of detention—for some it turned out to be as long as nine years—and a range of physical and mental abuses that left long-term scars that have so far only been partially put on the public record.

This chapter examines the reasons behind Hong Kong's adoption of a policy of deterrence and how it led to the Government being criticized for human rights abuses at a time when it was promoting democracy in the colony and arguing with the People's Republic of China (PRC) about the level of freedom Hong Kong citizens could expect after the handover to the PRC on 1 July 1997. The cost to Hong Kong of the policy of deterrence was more than a significant financial expenditure. It also had a long-term impact on Hong Kong's international reputation, resulting in a loss of credibility in terms of its negotiations with

China and a further erosion of support for the Hong Kong government from critics of the policy.

Motivation behind the policy

One of the key motivations driving Hong Kong's policy of deterrence was the pressure from the PRC to clear the colony of Asylum Seekers before the handover at the start of July 1997. As early as September 1984, when China and the United Kingdom announced the Basic Law as the set of principles to guide the handover of Hong Kong to China, the Chinese Government began to have an increasingly important voice in Hong Kong affairs. By the end of 1988 and early 1989, senior Chinese officials warned "the Hong Kong government that a smooth transition [to Chinese rule in 1997] would be affected if the issue of resettling or repatriating the Vietnamese was not resolved quickly."²⁴ On 4 June 1989, the Tiananmen Square massacre by China's People's Liberation Army of unarmed students calling for increased democracy sent a message to the Chinese people and the world that the Chinese Government would not tolerate dissension. The clampdown resulted in sanctions against China from most Western nations (albeit short-lived), along with messages of support for the Chinese leadership from Vietnam and Cuba.²⁵ In Hong Kong, the impact of the Tiananmen Square incident was immediate, destroying the confidence of the Hong Kong people in China and leading to a doubling in emigration in 1990. More than 62,000 people or about one per cent of the Hong Kong population sought to emigrate in 1990²⁶ with the numbers leaving staying at this level in the lead-up to 1997. Amid this tense atmosphere, ten days later on 14

²⁴ B.Y. Wong, "Chinese Negotiator in Hong Kong to Discuss Laws, Refugees," *Reuters News Agency*, 28 February 1989.

²⁵ *Reuters News Agency*, "China in Crisis Cuba, Vietnam lone supporters of violent crackdown," 6 June 1989.

²⁶ Patrick Brownlee and Colleen Mitchell, *Migration Issues in the Asia Pacific*. Asia Pacific Migration Research Network, University of Wollongong, Australia, 1997, <http://www.unesco.org/most/apmrnwp7.htm>

June 1989, the Comprehensive Plan of Action began in ports of first asylum around Asia. It was received with a chorus of approval by the majority of the Hong Kong people.²⁷

While China was pushing for an early solution to the boat people problem in Hong Kong, the colony and its British rulers were also eager to see the Vietnamese leave Hong Kong quickly. One of the many dilemmas facing the Hong Kong government was the number of illegal immigrants arriving from China. “The problem posed by Vietnamese migrants in Hong Kong should be seen in the context of the pressure of high population density and illegal immigration,” according to the Hong Kong Government Information Services.²⁸ In 1990, 27,826 illegal immigrants from China were arrested and the majority were sent back to the mainland immediately, while those who committed an offence, had arrived in a group or been arrested previously, were sent before a court and jailed. It is understandable that the Hong Kong government was unwilling to accept a continuing large influx of Asylum Seekers from Vietnam, people who were, on the surface, being treated with more leniency than the illegal immigrants from China.

The situation with illegal immigrants from China had become more complex in 1987, with a large number of ethnic Chinese Vietnamese who had fled Vietnam for China in 1979 seeking to leave. The UNHCR estimated that 20 per cent of the 288,000 Vietnamese living in China wanted to leave.²⁹ In 1987, 7,406 ethnic Chinese Vietnamese illegal immigrants (ECVIIs) arrived in Hong Kong from China, with 7,299 of this group sent back to China in the same year.³⁰ In total, 25,212 ECVIIs arrived in Hong Kong between 1979 and 1997, with

²⁷ Kathy Griffin, “Thousands Join Viet Camp Demonstration,” *South China Morning Post*, 15 October 1989, p. 1.

²⁸ Hong Kong Government Information Services, *Vietnamese Migrants in Hong Kong*. Ref: SRD 704/1/1. July 1993.

²⁹ John Ngai, “Fears of Vietnamese Exodus Grow as More Arrive in Hong Kong,” *Reuters News Agency*, 7 August 1987.

³⁰ Appendix 1c.

23,781 returned to China in the same period.³¹ The ECVIs were held after 1982 in the high security Chi Ma Wan detention centre located in a remote part of Lantau Island, where for the vast majority there was no access to lawyers, refugee concern groups or outside assistance.

Another factor in Hong Kong's decision to introduce a policy of deterrence towards the Vietnamese Asylum Seekers was its relationship with the British Government. The Hong Kong administration adhered to the British legal system and took guidance from London on all important matters. That included the colony's initial response to the influx of Vietnamese boat people starting in 1975, under which Hong Kong agreed to serve as a port of first asylum accepting all boat people as refugees on the understanding that they would be resettled in third countries. It was the British Government that agreed for Hong Kong to remain a port of first asylum at the Geneva Conference on Indo-Chinese refugees on 20-21 July 1979 on the understanding that resettlement places would be made available. However, by 1982 the number of resettlement places for Vietnamese refugees was dwindling. In 1982, 9,247 Vietnamese refugees were resettled from Hong Kong, less than a quarter of the number accepted in 1980.³² In 1987, for the first time, more Vietnamese boat people arrived in Hong Kong than were accepted for resettlement.³³

As the shift in sentiment among the resettlement countries moved against the Vietnamese boat people, the British Government stepped up its search for alternative solutions to the problem of an increasing number of refugees arriving in Hong Kong. The then British Foreign Secretary Geoffrey Howe, told reporters during a visit to Hong Kong and Chi Ma Wan detention centre: "There is no quick fix available to us or anybody else. But conditions and the whole problem are becoming increasingly intolerable, and it is difficult to

³¹ Ibid.

³² Ibid.

³³ Ibid.

believe things can go on the way they are.”³⁴ Change came two weeks later, when Hong Kong and the British Government under Prime Minister Margaret Thatcher approved the introduction of the policy of screening of all new arrivals in Hong Kong starting on 15 June 1988.

While the presence of the Vietnamese in Hong Kong was another bargaining chip in negotiations between the British and Chinese Governments over the handing back of Hong Kong to China in 1997, another influence was also at play. The United States Government had played a central part in the Indochina region since the 1950s and had fought the Vietnam War ostensibly to protect the democratic south against the communist north of Vietnam. The legacy of that war was to play an important role in the fates of the Vietnamese boat people in Hong Kong and around the region as the U.S. remained sympathetic to the plight of this group of Asylum Seekers fleeing Vietnam. The U.S. Government in fact maintained a trade embargo against Vietnam until 3 February 1994. This anti-communist policy led the U.S. Government to criticize Hong Kong’s policy of deterrence and in particular the forcible repatriation of Asylum Seekers to Vietnam. “The U.S. position is that involuntary repatriation is unacceptable until conditions improve in Vietnam,” said the White House spokesman Marlin Fitzwater³⁵ in December 1989, in reference to the forcible repatriation of Vietnamese Asylum Seekers from Hong Kong. At the same time, the U.S. refused to allow any of the Hong Kong Asylum Seekers to be transferred to holding centres in the U.S. protectorate of Guam during this period. The U.S. position on forced repatriation was widely condemned by Hong Kong and members of the Association of South East Asian Nations (ASEAN) as

³⁴ Chris Peterson, “British Foreign Secretary Lashes Vietnam Over Boat People,” *Reuters News Agency*, 30 May 1988.

³⁵ *The New York Times*, “U.S. Aides Critical Of Britain's Move,” 13 December 1989.

protecting Vietnam's intransigence in not accepting back forced returnees and as a result putting at risk the principle of first asylum in the region.³⁶

Hong Kong maintained its status as a port of first asylum through to the handover in 1997, never refusing a Vietnamese asylum seeker the right to state their case as a refugee. British parliamentarians credited Hong Kong for maintaining its status as a "safe haven," inferring that people from Hong Kong could also be seeking asylum after the handover to China. Yet the Asylum Seekers from Vietnam were regarded by the Hong Kong government as a burden, with the policy of screening and then the CPA welcomed as processes to ease that burden. Hong Kong Governor Chris Patten wrote, "the return of over 50,000 Vietnamese economic migrants from Hong Kong camps to their own country under the auspices of the United Nations High Commissioner for Refugees remained a wearisome problem, but the mechanism [CPA] for dealing with them was now [from 1989] in place."³⁷

Although Hong Kong retained its status as a port of first asylum, the hospitality was never extended to resettling large numbers of refugees in Hong Kong. Hong Kong resettled a total of 582 refugees between 1975 and 1997.³⁸ It is clear in the case of Vietnamese Asylum Seekers that political expediency outweighed the need for labour in the Territory. At the same time as the Vietnamese were being deterred, Hong Kong relaxed its immigration laws in the 1990s to allow 30,000 foreign labourers from South Korea and the Philippines to be brought in to work on infrastructure projects, such as the new airport at Chep Lap Kok.³⁹ In 1992, Hong Kong families paid approximately HK\$4.2 billion (\$538.5 million) to hire 102,182 domestic helpers, predominantly from the Philippines, at an average salary of HK\$3,500 per

³⁶ Steven Erlanger, "U.S. Policies Criticized by Allies in Asia," *The New York Times*, 25 July 1990.

³⁷ Chris Patten. *East and West*. Macmillan, London, 1998, p. 39.

³⁸ Appendix 1f.

³⁹ Guy McKenna, "(Hong Kong) Jobless Rate at Low 1.3 Per Cent," *The Australian Financial Review*, 18 August 1992, p. 40.

month (US\$448).⁴⁰

Nationalism in Hong Kong was another important factor in relation to the treatment of Vietnamese Asylum Seekers. Hong Kong has a highly complex cultural and racial population mix. There was a British government, backing a British-led local administration in a British Territory, populated predominantly by people of Chinese origins. An estimated population of 6.5 million in 1993 included 5.75 million Hong Kong Chinese, approximately 500,000 illegal immigrants from China and 250,000 foreigners (mainly from the Philippines, Great Britain, America, Australia, India and Taiwan).⁴¹

The majority of the press coverage and local voices were opposed to the presence of Vietnamese in Hong Kong. Hong Kong was not unique in this respect. In a book published in 1988, Michael R. Marrus noted growing “refugee fatigue” worldwide. Marrus identified three factors that are adversely affecting refugees and their rights: Nationalist ideologies in many western countries, which perceive refugees as a threat to security, cultural cohesion and an established way of life; the perception that refugees are carriers of ideas that appear to threaten the host nations' interests (the Vietnamese boat people, for instance, were from a communist nation and therefore might be expected by the unthoughtful to import ideas alien to democratic values); and finally that refugees are perceived to be health hazards.⁴²

Governments determined to protect their borders from large influxes of unwanted refugees may stir up public sentiment against migrants by raising health issues. The Vietnamese were constantly portrayed in the Hong Kong press as dirty, disease-ridden and violent people. In fact, the opposite was largely true, though the conditions that were forced upon them in

⁴⁰ Hong Kong Immigration Department, *Foreign Domestic Helpers (FDHs) Population in Hong Kong*, Hong Kong Federation of Employment Agencies Ltd., 2009, [http://emaidd.com.hk/web/eng/enews/Foreign%20Domestic%20Helpers%20\(FDHs\)%20Population%20in%20HK.pdf](http://emaidd.com.hk/web/eng/enews/Foreign%20Domestic%20Helpers%20(FDHs)%20Population%20in%20HK.pdf)

⁴¹ Hong Kong Government Information Services, “Report of the Task Force on Population Policy,” Hong Kong, February 2003, www.info.gov.hk/info/population/eng

⁴² Michael R. Marrus, Introduction in *Refugees in the Age of Total War*, Unwin Hyman, London, 1988.

detention led to outbreaks of disease and unrest. Hong Kong newspapers for instance reported that the Asylum Seekers seeking treatment at hospitals were stealing videos (amongst other items) and transporting them back to the detention centres. At a local level, vociferous elements of the Hong Kong Chinese population—such as the Shatin District Board⁴³—put tremendous pressure on the Hong Kong government to treat the Vietnamese Asylum Seekers in the same way as illegal immigrants from China and return them to Vietnam immediately. In 1980, Hong Kong had ended its “touch base” immigration policy, which allowed Chinese illegal immigrants to remain if they reached an urban area safely.⁴⁴ In relation to the Vietnamese Asylum Seekers, a member of the Shatin District Board, Johnston Wong, told the *South China Morning Post* in August 1989, “the only solution would be to stop accepting any more refugees and immediately send back those already in Hong Kong.”⁴⁵ Whitehead Detention Centre, the largest of Hong Kong’s detention centres for Vietnamese Asylum Seekers, was housed in a remote part of Shatin district. The Shatin District Board called at various times for the detention centre to be closed down,⁴⁶ for the Hong Kong government to call in the army to manage the camps,⁴⁷ to restrict Asylum Seekers’ access to local hospitals because of the strain on the service, and for greater policing and security measures to prevent crime escalating because of the Asylum Seekers.⁴⁸

There were also a few moderate opinions expressed. Legislator Dr Lam argued in Hong Kong’s Legislative Chamber in 1987:

⁴³ Chris Peterson, “Vietnamese Break-Outs Trigger Calls For Troops to Guard Camps,” *Reuters News Agency*, 30 April 1990.

⁴⁴ *Far Eastern Economic Review*, “Hong Kong 1997—From Pirates to Patten: How Hong Kong People Built a Stunning City,” 16 June 1997, p. 52.

⁴⁵ Chris Peterson, “Police Clear Protesters as H.K. Anger Mounts Over Boat People,” *Reuters News Agency*, 8 August 1989.

⁴⁶ *Ibid.*

⁴⁷ Chris Peterson, “Viet break-outs spark fears in Hong Kong,” *Reuters News Agency*, as printed by the *Straits Times*, Singapore, 1 May 1990.

⁴⁸ *Agence France-Presse*, “Hong Kong to speed up repatriations despite violence, escapes,” 12 May 1996.

There are 3500 Vietnamese refugees who have been in Hong Kong for more than five years and they are still here. For those who do not have a chance of leaving Hong Kong, we must come up with a practical solution; we cannot keep them in camps forever until their deaths. I would like to suggest that we set a period, say five years, seven years, or ten years—after this they will be integrated into our society. I believe that among the honourable members sitting in this Chamber are those who fled the rule of the communists. They have managed to contribute towards Hong Kong's stability: this we all recognise. Therefore these Vietnamese refugees too may one day make a contribution to Hong Kong.⁴⁹

Others such as legislator Christine Loh were supportive of the Asylum Seekers, arguing that “if they are in Hong Kong, they should be treated with dignity and respect.”⁵⁰ In 1994, Ms Loh established the Non-Government Organisation Joint Conference (NGOJC) in a bid to supply neutral sources of information to the Asylum Seekers in the wake of the government's forcible removal of a group of Asylum Seekers from Section 1 of Whitehead Detention Centre on 7 April 1994 ahead of forced repatriation to Vietnam.⁵¹

One final important group was made up of the Correctional Services Department and Police officers (among others), who profited from illegal activities carried out in the detention centres. This thesis argues that the Hong Kong government condoned or ignored widespread corruption in the detention centres. While ostensibly part of the policy of deterrence to speed up the removal of Vietnamese boat people from its shores, it actually increased the amount of time the Vietnamese Asylum Seekers stayed in Hong Kong. It was in the interests of the profiteers, both officials and detainees to perpetuate the money-spinning operations they were allowed to operate. In some cases, Asylum Seekers participating in the illegal activities were promised refugee status and resettlement in return for their cooperation. The officers making these promises did not have the authority to offer this prize, but it had the effect of encouraging the Asylum Seekers to stay in Hong Kong. In Chapter Four I will give details of

⁴⁹ Lam Sim Fook, *Legislative Council Records*, Hong Kong Legislative Council, 4 November 1987.

⁵⁰ Christine Loh, *Legislative Council Records*, Hong Kong Legislative Council, 1994.

⁵¹ Scott McKenzie, “Viets to be given views on prospects,” *South China Morning Post*, 13 December 1994.

how this system of violence and corruption, which included the provision and usage of heroin, prostitution, a black market and indebtedness, worked.

Domestic Hong Kong law offered limited protection to the Asylum Seekers. Hong Kong introduced a Bill of Rights in 1991. Its purpose was to incorporate into the law of Hong Kong the provisions of the International Covenant on Civil and Political Rights on (ICCPR).⁵² “Before that, there were no human right treaties for Hong Kong citizens and Britain denied the right of access to the European Commission and the European Court of Human Rights to Hong Kong inhabitants,” according to Nicole Furrer.⁵³ The Hong Kong government effectively removed the Vietnamese Asylum Seekers from the Bill’s protection by inserting a clause excluding those who had entered the country illegally. The impact of the Bill of Rights in civil law by 1994 was “negligible,” according to barrister Gladys Li,⁵⁴ and even in 2002, lawyer Paul Harris concluded that the impact was “modest.”⁵⁵ Another reason for the Bill’s modest impact was the exclusion of immigration legislation about the entry into, stay in and departure from Hong Kong, according to Harris.

All of the above factors combined to unfairly penalize the Vietnamese Asylum Seekers who arrived in Hong Kong after 15 June 1988. The unfair treatment was exacerbated by the inability of the United Nations High Commissioner for Refugees (UNHCR) to protect the rights of the Asylum Seekers, as will be detailed in Chapter Three.

⁵² Johannes M. M. Chan, *Hong Kong's Bill of Rights: Its Reception of and Contribution to International and Comparative Jurisprudence*, *International and Comparative Law Quarterly*, 47, 1998, pp. 306-336.

⁵³ Nicole Furrer, *Comparative Constitutional Law—The Protection of Human Rights under the Hong Kong Basic Law*, University of Zurich Faculty of Law, September 2008. Available at: http://www.ivr.uzh.ch/institutsmitglieder/kaufmann/archives/hs08/seminare/Furrer_Nicole.pdf

⁵⁴ Gladys Li, *The Non-Impact of the Bill of Rights in the Civil Area*, June 1994, Hong Kong University, Faculty of Law, Hong Kong, 1995.

⁵⁵ Paul Harris, *The Impact of the Bill of Rights Ordinance and the ICCPR on Hong Kong Civil Law*, Hong Kong University, Hong Kong, 12 January 2002, [http://www.law.hku.hk/ccpl/Docs/PaulHarris\(FinalJan12Conf\).pdf](http://www.law.hku.hk/ccpl/Docs/PaulHarris(FinalJan12Conf).pdf)

A Policy Pursued Despite the Costs

The financial costs of Hong Kong's policy towards Asylum Seekers were high. The Hong Kong Government Information Services figures put the amount spent on detaining Vietnamese Asylum Seekers between 1975 and 1997 at HK\$8.71 billion (US\$1.12 billion).⁵⁶ Of this, only HK\$1.46 billion (US\$187 million) was spent prior to the cut-off date of 16 June 1988, after which all Asylum Seekers were held in detention centres and screened. That works out at US\$124 million each year for the nine years from 15 June 1988 to 1 July 1997 or US\$1,676 per asylum seeker per year or about US\$4.60 per person each day. Moreover, this is only a portion of the costs involved, as the screening process and repatriation were also expensive. By comparison, estimates of Vietnam's gross domestic product per capita fluctuated between US\$97.16 per annum or US\$0.27 per day in 1989 and US\$1,224.31 or US\$3.35 per day in 2010, according to the Index Mundi. The same index recorded Hong Kong GDP per capita at US\$49 per day in 1989.⁵⁷

The expenditure continued to rise after 1997, as Hong Kong still maintained until 2000 the Pillar Point Refugee Centre, which cost approximately HK\$20 million per year to run.⁵⁸ The Hong Kong government's total expenditure rose another HK\$300 million (US\$38.5 million) to HK\$9.01 billion (US\$1.15 billion) in 1998. The British government contributed an additional HK\$1.131 billion (US\$145 million) between 1979 and 1998. The majority of the money, HK\$7.55 billion (US\$0.97 billion), was spent after 15 June 1988 when Hong Kong introduced screening,⁵⁹ underscoring the high cost of the policy.

⁵⁶ Hong Kong Special Administration Government, "Closure of the world's last Vietnamese refugee centre marks end of era," Press Release, Hong Kong, 17 July 2000, <http://www.info.gov.hk/gia/general/200007/17/0717165.htm>

⁵⁷ Index Mundi, *Vietnam—GDP per Capita 1989-2010*, 2010, <http://www.indexmundi.com/facts/vietnam/gdp-per-capita#sthash.cpFAkaSX.dpuf>

⁵⁸ K.S. So, "Vietnamese Refugees and Migrants: The Way Forward," Hong Kong Legislative Council Brief, Security Bureau, 22 February 2000, http://www.legco.gov.hk/yr99-00/english/panels/se/papers/se-l_m1_99_to_srd_401_1_c-e.pdf

⁵⁹ Hong Kong Government Information Services, *Factsheet*, Hong Kong, June 1997.

The costs were only modestly subsidized by the international community. The UNHCR first agreed to cover the cost of basic maintenance in refugee camps in the region at the 1979 meeting on Refugees and Displaced Persons in Geneva, Switzerland at which 65 governments had pledged 260,000 resettlement places. Again in 1988, the UNHCR pledged to cover the costs of housing the Vietnamese Asylum Seekers in Hong Kong's detention centres. Between 1979 and 1998, the UNHCR spent a total of HK\$1.502 billion (US\$192.5 million) on housing and food for Vietnamese refugees and Asylum Seekers in Hong Kong, more than HK\$1 billion of which it borrowed from the Hong Kong government (with the government paying all additional costs). As of April 2011, the Hong Kong government said it was still owed HK\$1.162 billion (US\$149.5 million) by the UNHCR, with only HK\$3.865 million (US\$495,512) repaid in 1998.⁶⁰

The government frequently cited the high cost of detaining Asylum Seekers as one of the main driving forces behind Hong Kong's decision to adopt a policy of forced repatriation. Nevertheless, the average annual cost of US\$135 million was low relative to Hong Kong's gross domestic product—0.26 per cent in 1988 falling to 0.085 per cent in 1997—with GDP tripling from US\$50.5 billion in 1988 to US\$158.9 billion in 1997.⁶¹ In a city where less than 10 per cent of the population paid taxes,⁶² the Hong Kong government remained cash-rich because of the fees and taxes it received from business and the financial costs of detention, screening and forced repatriation were considered acceptable.

The costs of the policy of deterrence were not limited to dollars and cents for Hong Kong. There was also damage to the city's international and local reputation, as well as the

⁶⁰ Hong Kong Government Information Services, "LCQ15: Repayment of advances related to Vietnamese migrants," *Hong Kong government*, 13 April 2011, <http://www.info.gov.hk/gia/general/201104/13/P201104130170.htm>

⁶¹ Trading Economics, "Hong Kong GDP," New York, 2013, <http://www.tradingeconomics.com/hong-kong/gdp>

⁶² Serge Berthier, "The Real Social Structure of Hong Kong," *Asian Affairs*, Issue No. 19, Hong Kong, May 2000, <http://www.asian-affairs.com/HongKong/structureofhongk.html>

reputation of the British Government. The damage came in several stages in line with the introduction of the policies of deterrence. In 1982, when detention centres were first introduced, there was an outcry from refugee lawyers, human rights groups and refugee agencies including the UNHCR and Oxfam, predominantly about the poor living conditions. Outbreaks of cholera, malaria and dysentery in 1989 testified to the poor living conditions in detention⁶³—standards not even up to the Hong Kong government’s minimum acceptable conditions—while cases of malnutrition reflected the inadequate and repetitive diet served up in detention.⁶⁴ In 1988, when the policy of screening was introduced in addition to arbitrarily and indefinitely detaining Asylum Seekers, the level of criticism of Hong Kong and the United Kingdom rose higher, with the media attacking the policy,⁶⁵ politicians in the U.K. venting their displeasure and refugee concern groups vocal about the flaws in the procedures. In the U.K., David Alton, the opposition Member of Parliament for Liverpool, asked the British Government in a November 1989 House of Commons debate, why it was “an historic event when thousands of economic migrants fled a drab life in East Germany and an inconvenience when they fled Vietnam.”⁶⁶ By the time of the first forced repatriation flight, the international community was split, with the United States and France strongly opposed to returning Asylum Seekers to Communist Vietnam and attacking both the British and Hong Kong governments for contemplating this move.⁶⁷ Hong Kong received more condemnation

⁶³ *Reuters News Agency*, “H.K. Authorities Battle Malaria among Vietnamese,” 4 October 1989.

⁶⁴ Yojana Sharma, “Camps for Boat People 'Most Repressive' in Area,” *Sydney Morning Herald*, 30 October 1989, p. 10.

⁶⁵ Chris Peterson, “Hong Kong to Ease Controversial Closed Camp Policy,” *Reuters News Agency*, 7 September 1988.

⁶⁶ *The Times*, “David Alton in Appeal for Vietnamese Refugees in Hong Kong,” 16 November 1989.

⁶⁷ Chris Peterson, “Rumours Rife on Fresh Forced Repatriation of Boat People,” *Reuters News Agency*, 30 June 1990.

See also: Cait Murphy, “The Refugees No One Wants,” *The Wall Street Journal*, 14 June 1989.

internationally following a series of violent removals of Asylum Seekers from detention ahead of forced repatriation flights (see Chapter Six).⁶⁸

Finally, another result of the policy of deterrence was the loss of support from critics of the policy, who became increasingly vociferous the longer the situation went on. This was a unique situation. The Vietnamese Asylum Seekers had no official protectors, with the UNHCR which was mandated for the role under the CPA, unable to fulfill its responsibilities. Concerned groups, lawyers and the *Viet Kieu* (the diaspora of Vietnamese living overseas) transitioned from initial empathy with the boat people's situation, to frustration at the bureaucratic treatment that delayed solutions, to anger and outrage as the policies toughened and the processes failed.

However, overall, the normative pressure on Hong Kong to adhere to International human rights standards was weak. The Territory was not a signatory to many of the relevant conventions before the handover to China in 1997. Hong Kong could avoid censure over its treatment of the Vietnamese Asylum Seekers by saying it was not a signatory to the relevant human rights treaties and therefore the treaties and censure should not apply to it. Even where the treaties did apply to Hong Kong, the colony could still claim it acted legally as the language in these international agreements provides considerable leeway and official monitoring of the breaches was almost non-existent. In practice, with reference to the written standards of the various declarations, covenants and principles on human rights, the Hong Kong government was in regular contravention of international norms, abusing the Vietnamese Asylum Seekers on an almost daily basis in detention. However, as Ann Kent wrote: "Since rights, unlike domestic laws, are not enforced on the state by any legal agency,

⁶⁸ Court Robinson, "U.S. on Refugees: Do As We Say, Not As We Do," *The Asian Wall Street Journal*, 3 June 1992, p. 8.

See also: Glenn Frankel, "Britain Accuses U.S. of Obstructing Solution to Boat People Issue," *The Washington Post*, 15 June 1990, p. a28.

their actual enforcement is thus ultimately dependent on the political will of the state.”⁶⁹ In practice, that meant there were no serious repercussions for Hong Kong. Former Governor Chris Patten wrote:

Over 200,000 Vietnamese in all passed through Hong Kong in under twenty years; the majority settled abroad, the others mostly returned home. This was thankless work conducted on the whole humanely, subject—such is a free society—to the ever present attentions of civil liberties lawyers. We did our duty with no thanks from anyone.⁷⁰

Patten was able to dismiss the Vietnamese boat people in one paragraph in his book, seeing no need to defend the colony’s treatment of the detainees, because even the “ever present” human rights lawyers were unable to prevent the abuses perpetrated in Hong Kong. The Hong government pursued its policy despite these costs, and without a clear indication of its effectiveness. The Hong Kong government argued that the policies of detention, screening and forced repatriation were successful because the majority of the Vietnamese Asylum Seekers had been cleared from Hong Kong’s shores by 1 July 1997, the deadline it had been given by China to ensure the boat people were not in Hong Kong. The government also justified the policies by pointing to the reduced numbers that arrived in Hong Kong from 1992 onwards, saying that the deterrents of detention, screening and forced repatriation resulted in fewer people departing Vietnam for Hong Kong. In 1992 only 12 Vietnamese Asylum Seekers arrived in Hong Kong.⁷¹

However, others have argued that the policy failed to deter Asylum Seekers. Following the introduction of detention centres in 1982, the number of arrivals in Hong Kong did fall by more than half to 3,651 in 1983 from 7,836 in 1982, but critics argue that this was in keeping with the around 40 per cent reduction in numbers leaving Vietnam at this time.⁷² The main statistic supporting the argument that the policy of deterrence was ineffective is that

⁶⁹ Ann E. Kent. *Between Freedom and Subsistence—China and Human Rights*. OUP, Hong Kong, 1993, p. 23.

⁷⁰ Chris Patten. *East and West*. Macmillan, London, 1998, p. 49.

⁷¹ Appendix 1a.

⁷² Appendix 1e.

in 1989, after the introduction of the policy of screening in June 1988, the number of arrivals rose to 34,503 from 18,449 in 1988. Again in 1991, the number of arrivals in Hong Kong was 20,209, the second largest figure in the period 1979 to 1997. These Hong Kong government statistics suggest that there were other drivers of the Vietnamese Asylum Seekers departing Vietnam. The Vietnamese Government cracked down on illegal departures in 1992, after various economic and financial guarantees were made by the U.S. and other nations.⁷³ In addition, as discussed earlier in this chapter, the United States began official departure programmes directly from Vietnam from 1990, while the United States trade embargo on Vietnam was lifted in February 1994, both of which had an impact on the number of departures.

Hong Kong's policy of deterrence therefore arguably was coincidental to the reduction in the number of arrivals, and it was unrelated actions taken by Vietnam that led to a reduction in the number of departures. The reality of the situation was that the living and working conditions in Vietnam and China remained worse than those in the detention centres of Hong Kong throughout the period 1979 to 1997, so it was inconceivable that a policy of detention could serve as an effective deterrent. That many of the Asylum Seekers were also facing various forms of persecution in Vietnam at this time, was the real driver of their decisions to depart Vietnam and seek asylum in the region.

Conclusion

Hong Kong pursued its policy of deterrence primarily because of the pressure put on it by the Chinese government to remove the Vietnamese Asylum Seekers from its shores ahead of the handover of Hong Kong to China on 1 July 1997. This, coupled with Hong Kong's status as a British colony beholden to the laws and guidance of the British government, meant

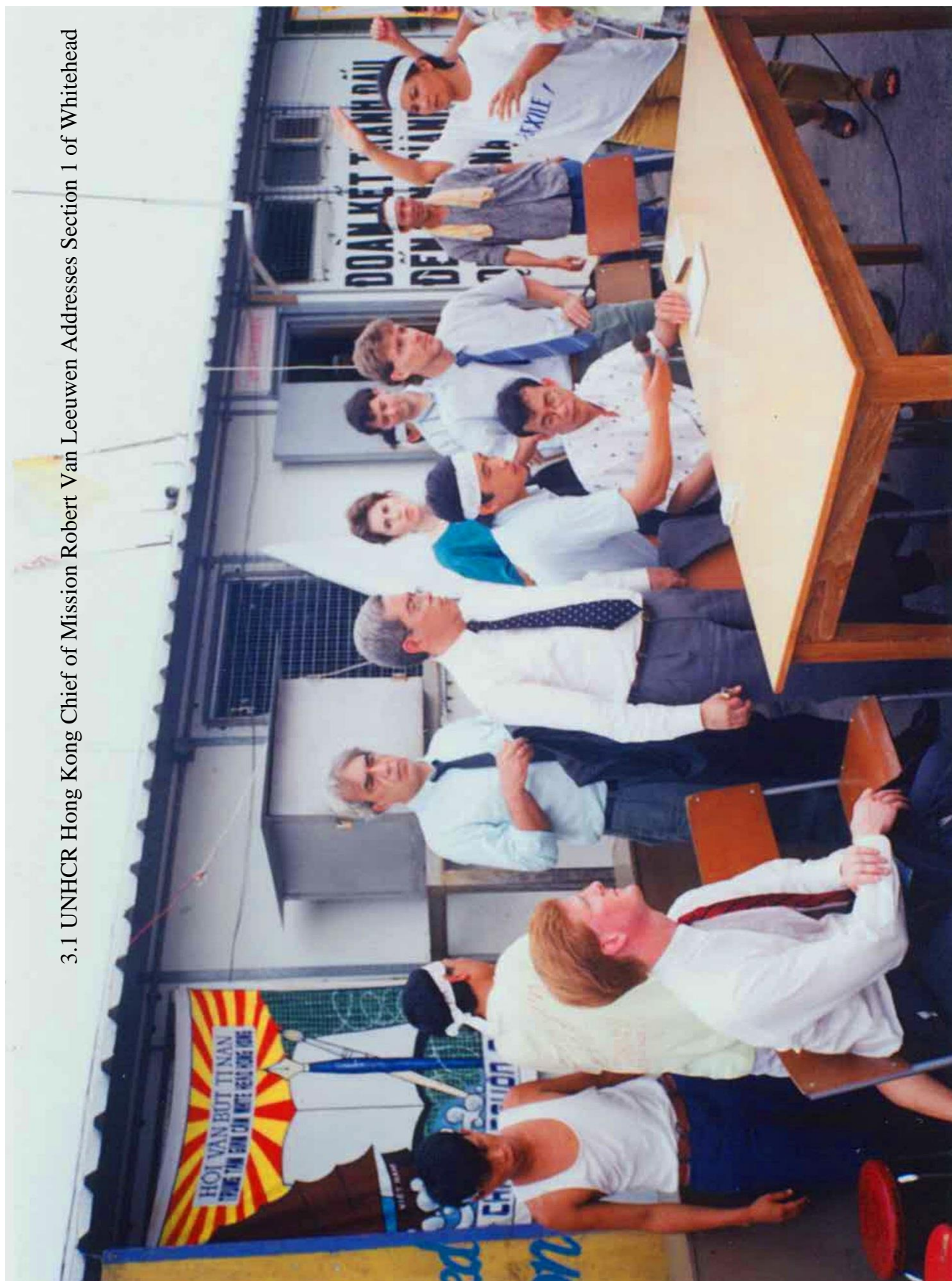
⁷³ Human Rights Watch, "Human Rights Watch World Report 1992—Vietnam," 1992, <http://www.hrw.org/reports/1992/WR92/ASW-15.htm>

that the Asylum Seekers became a bargaining chip in the negotiations between China and the U.K. leading up to the handover of Hong Kong. Additionally, the U.S. government, which remained politically and economically opposed to the Communist government following the Vietnam War, refused to sanction the repatriation of Vietnamese Asylum Seekers to a communist nation, thereby delaying any possibility of a swift resolution to the situation.

Hong Kong therefore chose a policy of deterrence knowing that the cost of detaining the Vietnamese would be expensive financially, politically and socially. It pursued the policy aggressively, which meant that only an independent, strongly motivated external authority could prevent the occurrence of a series of human rights abuses. Unfortunately, the UNHCR failed in its mandate to protect the Vietnamese Asylum Seekers, allowing, and in some cases condoning and exacerbating, human rights abuses.

In the next chapter, I will examine the role of the UNHCR and explain why it repeatedly failed to fulfill its responsibilities as a protection agency for the Vietnamese.

3.1 UNHCR Hong Kong Chief of Mission Robert Van Leeuwen Addresses Section 1 of Whitehead



Chapter Three

The UNHCR: From Protection Agency to Figleaf

In October 1981, the Office of the United Nations High Commissioner for Refugees (UNHCR) was awarded the Nobel Peace Prize for its work bringing relief and aid to refugees around the world, including “the mass exodus of people fleeing by land and sea from Vietnam.”⁷⁴ The refugee agency’s reputation was strong amongst refugees, donor and resettlement nations. Yet, within a decade, the UNHCR went from being a Nobel Peace Prize winner to a situation in which its expenses outstripped its income as it was unable to attract enough funding from donor nations and it was regularly criticized by refugee workers for failing to protect the rights of refugees and Asylum Seekers.

The UNHCR’s failure to handle the continuing inflow of Vietnamese Asylum Seekers to Hong Kong in the late 1980s was a watershed in this decline. By 1990, a poorly financed UNHCR had become a mere figleaf for the Hong Kong government, unable to protect its charges in detention centres, dependent for finances on the government it was meant to be monitoring, and condoning or in some cases justifying policies that would set international human rights norms back by several decades.

This thesis argues that the international human rights architecture gave nation states too much latitude to ignore or breach the relevant conventions and treaties. This latitude, combined with the inability of the UNHCR to protect the Asylum Seekers or enforce international human rights norms, allowed the Hong Kong government to perpetrate a series of human rights abuses against the Vietnamese Asylum Seekers. In addition, the UNHCR did not adequately monitor the situation, so that when the Hong Kong government did breach

⁷⁴ Nobelprize.org, “Press Release–Nobel Peace Prize 1981,” 14 October 1981, http://www.nobelprize.org/nobel_prizes/peace/laureates/1981/press.html

international law, it frequently went undiscovered. The final argument in this chapter is that the UNHCR and human rights lawyers were unable in most instances to utilize international law to punish the Hong Kong government or change its behaviour, because there was no Asian-based human rights court to opine on the breaches, nor a system of enforcement to ensure that rulings were carried out in practice.

This thesis also argues that the Comprehensive Plan of Action (CPA) was not a well-planned or well-implemented model for dealing with large numbers of Asylum Seekers in ports of first asylum. The CPA justified many of Hong Kong's policies and condoned many of the human rights breaches perpetrated by the Hong Kong government, because it was vaguely written and poorly enforced. In the forthcoming pages, I analyze the CPA and show how it facilitated the Hong Kong government's abuse of the Asylum Seekers' human rights.

The Comprehensive Plan of Action

The general ineffectiveness of the international human rights architecture, and in particular the Comprehensive Plan of Action, was key to shaping Hong Kong's behaviour and abuse of the Asylum Seekers. There were no effective enforcement mechanisms in place, which meant that the fate of the Asylum Seekers relied on reputational pressures applied by the international community. As Hong Kong was not a signatory to many of the relevant conventions, there was even less pressure on the colony to comply. In particular, the provisions in the 1951 United Nations Geneva Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees would have provided additional protection for Vietnamese Asylum Seekers in Hong Kong, as they provide a definition of the term refugee which would have extended to many of the Vietnamese Asylum Seekers and which would have prohibited the expulsion or return (*refoulement*) of refugees. In addition, the treaties would have offered some protection to the Asylum Seekers by not allowing the

Hong Kong government to discriminate against them on the basis of their country of origin.

Many human rights lawyers argue that because Hong Kong was a British colony beholden to British law and sovereignty, it should have been held responsible for complying with international refugee agreements. However, this did not happen in practice, leaving the Asylum Seekers defenceless and reliant on the CPA for protection. It was important therefore that the international community intervened in Hong Kong's Asylum Seeker issue by introducing the CPA, administered by the UNHCR. Almost a year after Hong Kong had unilaterally introduced policies of detention and screening in response to the growing influx of Asylum Seekers on its shores, the international community ratified the CPA, incorporating these policies at the core of the plan. The content of the CPA was finalized in June 1989 at a conference in Geneva organized by The Steering Committee of the International Conference on Indo-Chinese Refugees and ratified by 74 governments. The CPA was designed to deter and to stop the continuing influx of Indochinese boat people and to cope with an increasing reluctance by third countries to resettle the Vietnamese, Cambodian and Laotian Asylum Seekers. The CPA came into operation on 14 June 1989 and lasted almost seven years to 30 June 1996.

As pointed out by international human rights lawyer Arthur Helton, the CPA was not intended to offer solutions to the Asylum Seekers' problems, but rather was aimed at "migration control and deterrence."⁷⁵ The CPA was applied retrospectively, accepting as a *fait accompli* the screening and detention policies already in place in many countries around the region. In accepting these processes as normal, according to Helton,⁷⁶ the signatories of the CPA effectively ignored some of the key human rights issues affecting the Asylum Seekers. It

⁷⁵ Alan Nichols and Paul White, *Refugee Dilemmas, Reviewing the Comprehensive Plan of Action for Asylum Seekers*, LawAsia Human Rights Committee, Manila, 1993, p. 30.

⁷⁶ Ibid.

did this through bending and even breaking human rights norms.⁷⁷ Detention was expressly designed and used as a deterrent against the Asylum Seekers, according to the Hong Kong government.⁷⁸ This, in itself, is in contravention of the humanitarian principles of every post-World War II declaration and covenant on human rights. Several areas of the CPA concerned Helton, including a concept of first asylum that was “minimalist and meager”; the flawed practice of screening in Indonesia and Hong Kong; “patterns of ungenerosity” such as “erroneous credibility assessments” in the screening process; and the failure to practice or enforce the UN principle of “non-refoulement,”⁷⁹ in relation to the protection of refugees from being returned to places where their lives or freedoms could be threatened. The Jesuit Refugee Service (JRS) held a similar view.⁸⁰

The CPA was much less protective of human rights than other agreements, such as the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁸¹ and the 1969 Convention on Refugee Problems in Africa known as the Banjul Charter.⁸² None of the basic principles of the ICCPR, the ICESCR, and the Banjul Charter—including the right to self-determination, as well as other political, social and economic rights—are reflected in the CPA.

The CPA created a compromised definition of the term refugee. The peculiar complexities of a situation in which Vietnamese refugees were fleeing a communist state at a

⁷⁷ W. Courtland Robinson, “The Comprehensive Plan of Action for Indochinese Refugees, 1989-1997: Sharing the Burden and Passing the Buck,” Oxford University Press, *Journal of Refugee Studies*, 2004, Vol. 17, No. 3, p. 319.

⁷⁸ Lewis “Bim” Davies, *Speech in Legislative Council*, Official Report of Proceedings, 30 June 1982, pp. 1022-1023.

⁷⁹ Alan Nichols and Paul White, *Refugee Dilemmas, Reviewing the Comprehensive Plan of Action for Asylum Seekers*, LawAsia Human Rights Committee, Manila, 1993, p. 30.

⁸⁰ *Ibid.*

⁸¹ International Covenant on Civil and Political Rights, adopted on 16 December 1966 by Resolution of the General Assembly of the United Nations, <http://www2.ohchr.org/english/law/cescr.htm>

⁸² For the full text of the Banjul Charter go to:

<http://www.unhcr.org/refworld/type,MULTILATERALTREATY,OAU,,3ae6b3630,0.html>

time when the Cold War was drawing to a close and Vietnam was seeking economic rapprochement with Western countries, including the U.S., the nation it had defeated in 1975, made it inevitable that interested parties such as regional governments would question the validity of the boat peoples' refugee claims and look for alternative ways to deal with them. The CPA created another category of refugees, namely that of Asylum Seekers who were defined in Hong Kong as those arriving in the colony after 15 June 1988. This new categorization was endorsed by the creation of the CPA in 1989.

First asylum is a long-established norm with roots dating back to Ancient Greece.⁸³ One criticism of the CPA is that it provided no mechanism for enforcing this well-established right. As automatic resettlement places for refugees from Indo-China were reduced, so ports of first asylum, notably Malaysia, adopted an unofficial policy of “pushing-off” boatloads of refugees, forcing them to continue their journeys to alternative destinations. According to Boat People SOS, as many as 250,000 boat people leaving Vietnam post-1975 died at sea as a result of the push-offs and pirate attacks, starvation or drowning after capsizing.⁸⁴

In Hong Kong, the Millport policy remained an anomaly in the process of first asylum. In effect, the Hong Kong government created an ad hoc policy. It was a semi-official policy, akin to the Malaysian government's policy of pushing boats back to sea, but without the brutality, and one which might have been abandoned if it had ever been challenged by the international community. During the 1980s and early 1990s new arrivals of Vietnamese Boat People were given the option of being detained in Hong Kong pending their resettlement (this was the case up until 16 June 1988, after which time they were detained pending screening and repatriation to Vietnam if not found to be refugees), or they could be reprovisioned in

⁸³ Ann E. Kent. *Between Freedom and Subsistence—China and Human Rights*, Oxford University Press, Hong Kong, 1993, Chapter 1.

⁸⁴ Boat People SOS, *About BPSOS*, Website, 2013, <http://www.bpsos.org/mainsite/about-us.html>

See also: Elizabeth Becker, *When the War Was Over*, Public Affairs, New York, 1986, revised 1998; see also: [www.vietka.com/Vietnamese Boat People/HorribleStatistics.htm](http://www.vietka.com/Vietnamese_Boat_People/HorribleStatistics.htm)

order to sail on to a new destination. From the Hong Kong government's perspective, the latter option was preferable as it reduced the numbers arriving in the Territory. However, it was not a popular policy with other governments around the region as it shifted the burden to them. In Hong Kong the Millport policy backfired, when in 1989 a boat load of Vietnamese Asylum Seekers, Boat 101, took the government to court claiming they had asked to continue their journey to Japan, but were illegally detained and had their boat confiscated as unseaworthy. The applicants won their case and were released, before being rearrested by the Immigration Department. They eventually gained refugee status via a UNHCR mandate in a compromise solution and received token compensation for the hardship caused by their illegal detention.⁸⁵

There were also a series of social problems created by the introduction of the CPA. The Vietnamese Asylum Seekers were stigmatised by the CPA, effectively labelled as economic migrants because of the CPA's objective of increasing official departure programmes from Vietnam and curtailing clandestine departures. All of the Vietnamese boat people in Hong Kong departed Vietnam illegally. Section 2 of the CPA read: "In order to offer a preferable alternative to clandestine departures, emigration from Vietnam through regular departure procedures and migration programmes, such as the Orderly Departure Programme should be fully encouraged and promoted."⁸⁶ The CPA had the impact of marginalizing the Asylum Seekers before they had recourse to any rights as individuals.

⁸⁵ Joseph Cheng, "Boat 101 vs the Hong Kong Government," *The Other Hong Kong Report*, Hong Kong, 1992, pp. 111-124.

Minimal sums were awarded as damages to the plaintiffs in July 1993:

Captain Pham - HK\$30,000 (US\$3,846)

Mr. Nguyen Viet Hung - HK\$30,000

Madam Nguyen Thi Phuong - HK\$30,000

Dr Nguyen Ngoc Cuong - HK\$50,000 (US\$6,410)

Miss Tran Thi Kim Thanh - HK\$50,000

Mr. Tran Quang Minh - HK\$15,000 (US\$1,923)

Miss Nguyen Hoang Anh (baby) - HK\$100 (US\$12.80)

⁸⁶ Appendix 3.

According to lawyer James Hathaway, “Formalising immigration-based departure is fundamentally at odds with the concept of a refugee, since the essence of refugee status is the autonomous right to disengage from abusive societies to seek protection abroad.”⁸⁷

The CPA also failed to clearly define persecution. Persecution remains a grey area in international law. Although the 1951 Convention remains the benchmark for refugee rights and determining what qualifies as persecution, it is outdated and unable to adapt to the various and different forms of persecution that beset the modern world, leaving those persecuted defenceless. In an interview with *World Affairs* magazine in 1991, Dr Alexander Casella, the then UNHCR Regional Co-ordinator for East and Southeast Asia said:

To be considered as a refugee, they (the Vietnamese Boat People) have to prove that they have had a high position in the Saigon [South Vietnam] government or that they have cooperated closely with Americans during the war. If they cannot prove one of those two things, they will not be classified as refugees and will not be accepted by western nations... and that all the young ones—too young to have been a high ranking official of the Saigon Regime during the war—all the peasants, fishermen and ordinary workers, will never be resettled by western nations.⁸⁸

The issue at stake here is whether the definition of persecution can justifiably include hardships incurred because of social, economic and cultural issues, rather than just political and civil matters. International human rights sentiment indicates that they should be included, and indeed this is written into the more recent covenants, such as the ICCPR.

In addition to sacrificing human rights in the name of deterrence and politics, the CPA was also rushed and careless. Much of the hastily put together language in the CPA ended up being vague. Terms such as “durable solutions”⁸⁹ and “in the best interest”⁹⁰ of the child, were open to a number of interpretations. Indeed, the latter term, which had been specifically used in the CPA in reference to unaccompanied minors, was soon used on a wide basis by both

⁸⁷ Alan Nichols and Paul White in *Refugee Dilemmas, Reviewing the Comprehensive Plan of Action for Asylum Seekers*, LawAsia Human Rights Committee, Manila, 1993, p. 31.

⁸⁸ Alexander Casella, *World Affairs*, 1991.

⁸⁹ Appendix 3.

⁹⁰ Ibid.

UNHCR and the Hong Kong government to justify their forced repatriation programme (as in forced repatriation was “in the best interests of the Asylum Seekers”). At no stage were the Vietnamese Asylum Seekers asked what they wanted or what they thought about the various plans affecting their lives.

Another example of the broad brush approach to the CPA is that there is no mention of detention centres (even though this was the terminology already in existence and used by several governments around the region, including Hong Kong), thereby avoiding controversial language that might have upset sponsor nations or first asylum countries. The assumption by the UNHCR was that the detention centres would be safe places for the Asylum Seekers. As I will show in later chapters, people’s safety was put at risk in the detention centres and lives were lost.

The UNHCR bears considerable responsibility for the CPA. By taking a line of appeasement in the drafting of the CPA, the UNHCR failed in its first duty, which was to vouchsafe the safety of Asylum Seekers. By ignoring the issue of detention in the official plan, the UNHCR and the governments responsible for the CPA tacitly accepted the fact of detention and the abuses that resulted (see Chapter Four). Furthermore, the UNHCR and the Hong Kong government had no reference point from which to benchmark acceptable conditions to the international community, lending credence to Helton’s assessment of the CPA only meeting “minimum international standards.” As detention was never formally referred to in the CPA, the question of whether or not the detention of Vietnamese Asylum Seekers was acceptable was difficult to define in legal terms.

With the changing nature of the refugee question has come a growing need to quantify and formalise the situation and to create legal rights for refugees. Hathaway argues that “legal formulations of refugee status are a product of recent Western history,”⁹¹ and that the

⁹¹ James C. Hathaway. *The Law of Refugee Status*, Butterworths Canada, Toronto, 1991, p 1.

UNHCR has in recent years because of its growing competence “expanded the refugee concept” from the formalised versions that were written down in the 1951 Geneva Convention and then widened in the 1967 Protocol. An example of this is the UNHCR's acceptance of a new role under the CPA in which it took responsibility to “provide humane care and assistance” for “persons determined not to be refugees...pending their return to the country of origin.”⁹² It is this informal expansion of its role that has caused many problems for the Asylum Seekers, as there is no legal basis for the UNHCR to be providing protection. It was a frequently heard excuse amongst UNHCR officials in Hong Kong when they had failed to protect their charges, that it was not their responsibility to protect Asylum Seekers and they were “only doing it at the request of the international community.”

As the representative of the signatories of the CPA, the UNHCR was responsible not only for administering the plan, but also for coordinating the work of non-government organizations relating to the plan. Importantly, the UNHCR was invited to become responsible for the welfare and “best interests” of Asylum Seekers, an expanded brief that went beyond the agency's official mandate as outlined in the 1951 Geneva Convention and more specifically in the Protocol relating to the Status of Refugees of 31 January 1967.⁹³

Unfortunately, in relation to the CPA and the Vietnamese Asylum Seekers, the protection of the latter's rights was inadequate because of the flawed implementation of the policy. The problem with enforcement is “who is going to do the enforcing?” Enforcement is the test of a right. Jack Donnelly cites the 17th century English political philosopher, Thomas Hobbes, on this point, “rights without the sword are but mere words.”⁹⁴ Since the United Nations is seen widely as the most legitimate international body, the burden of enforcement

⁹² Appendix 3.

⁹³ For the full text of the 1951 Convention and 1967 Protocol Relating to the Status of Refugees go to: <http://www.gdrc.org/doyourbit/refugee-convention.pdf>

⁹⁴ Jack Donnelly, *The Concept of Human Rights*, Croom Helm Australia Ltd., Sydney, 1985, p. 15.

has fallen on it. Yet, as Kent points out, Article 2 (7) of the UN Charter forbids interference in matters “which are essentially within the domestic jurisdiction of any state.”⁹⁵

This compromised UNHCR’s role. The UNHCR was responsible for monitoring four key areas of Hong Kong’s handling of Asylum Seekers, namely detention centres, the screening process for refugee status, camp movements and returnees in Vietnam. As will be discussed in subsequent chapters, there were grave failings in the UNHCR’s handling in each of these areas.

As the UNHCR cannot provide effective levels of protection, the only real defence left to the Asylum Seekers is through legal haggling and in situ bargaining to establish their rights. In Hong Kong, in spite of the best efforts of a handful of human rights lawyers, the CPA was heavily stacked against the lawyers as they sought to gain the release of groups and individuals via the courts. There are a series of problems in the area of human rights, starting with the inadequacies of definitions, moving through the issue of prioritising rights, the attempt to establish a core of rights to be used as a minimum international standard, building a monitoring framework, and finally the question of enforcement.⁹⁶ This demonstrates that German historian, Gunther Plaut was correct in his argument that Asylum Seekers only have moral rights—those handed to them in the generic declarations, rather than political, civil, legal or other rights. They are “beggars at the gate,” and the state retains all the power with no need to justify its actions.⁹⁷

Conclusion

Despite its failings, the UNHCR hailed the CPA a success. The UNHCR reported: “The CPA should also be remembered as international burden-sharing at its best and as an

⁹⁵ Ann E. Kent, *Between Freedom and Subsistence-China and Human Rights*, Oxford University Press, Hong Kong, 1993.

⁹⁶ Ibid.

⁹⁷ Gunther Plaut, *Asylum—A moral dilemma*, Praeger, Westport, Connecticut, 1995.

innovative approach to a major refugee crisis.”⁹⁸ The seventh and final meeting of the Steering Committee of the Comprehensive Plan of Action in March 1996, concluded “that the objectives of the CPA had been met,” noting that “more than 100,000 (Asylum Seekers) had returned voluntarily to Viet Nam and Laos in safety and dignity.”⁹⁹ Three months later on 30 June 1996, the CPA came to an official end.¹⁰⁰ More than 10,000 Asylum Seekers and almost 2,000 refugees remained in Hong Kong at this date.¹⁰¹

The UNHCR said the CPA was a success because it saw “international burden-sharing at its best,” and because the majority of post-CPA Asylum Seekers were returned to their country of origin.¹⁰² The UNHCR focused its criticism of the CPA not on human rights failings but on the cost and longevity of the plan. The UNHCR report in 1996 about the CPA noted three key criticisms: “It has been said that the CPA went on too long, that it cost too much money [nearly US\$350 million] and that, given its reliance on substantial third-country resettlement commitments, the CPA is not a practical model for other parts of the world.”¹⁰³ Yet even in 1991, the then Hong Kong Chief of Mission, Robert Van Leeuwen admitted that the CPA had not “solved the boat people problem.”¹⁰⁴

This gives an insight into the UNHCR’s main concerns, namely the interests of sovereign states and the agency’s donor countries in particular, all of which wanted to find a rapid, rather than the best, solution for the Vietnamese Asylum Seekers.

The UNHCR also tried to shift the blame onto the Asylum Seekers, casting aspersions

⁹⁸ UNHCR, “Special Report, Comprehensive Plan of Action. The Indo Chinese exodus and the CPA,” Public Information Section, June 1996, p. 23.

⁹⁹ UNHCR, *Executive Committee of The High Commissioner's Programme Standing Committee 4th Meeting Update on Regional Developments in Asia and Oceania*, EC/46/SC/CRP.44 19, Geneva, August 1996, <http://www.unhcr.org/3ae68cf94.pdf>

¹⁰⁰ Ibid.

¹⁰¹ Appendix 1c and Appendix 1g.

¹⁰² UNHCR, “Special Report, Comprehensive Plan of Action. The Indo Chinese exodus and the CPA,” Public Information Section, June 1996, p. 23.

¹⁰³ Ibid.

¹⁰⁴ Robert Van Leeuwen, “CPA has not solved Boat People problem,” *South China Morning Post*, 30 December 1991, p. 30.

on them as economically motivated opportunists, who were mainly farmers and fishermen.

“Our Nobel Prize winners left a long time ago for the West,” said the UNHCR’s Hong Kong Chief of Mission Jahanshah Assadi in November 1994. “What we have now is the bottom of the barrel.”¹⁰⁵ UNHCR statistics dated September 1994 disputed Assadi’s comments, showing that more than 25 per cent of the Asylum Seekers in Hong Kong were professionals—including scientists, doctors, dentists, midwives, architects, teachers, engineers and technicians—and students.¹⁰⁶

As the following chapters will show, this episode stands out as a grave failing in the international community’s record of protecting Asylum Seekers and their human rights.

¹⁰⁵ Jahanshah Assadi, *Far Eastern Economic Review*, 3 November 1994.

¹⁰⁶ Refugee Concern Newsmagazine, “UNHCR figures,” Issue 4, Feb/Mar 1994, p. 11.

4.1 Black Market in Whitehead



Chapter Four

Detention—A Corrupt and Abusive Deterrent

Detention was a central component of Hong Kong's policy towards Vietnamese Asylum Seekers. It was intertwined inextricably with screening and forced repatriation as the majority of those detained would be classified as non-refugees after screening and then repatriated. The conditions in detention were intentionally made bad to act as a deterrent to stop more Asylum Seekers from coming. More importantly, detention was used to pressure the Asylum Seekers to leave "voluntarily," so that Hong Kong was not compelled to use force. As a result of the bad environment in the detention centres, corrupt elements were able to profit. The detainees faced a conundrum: the possibility of persecution if they returned to Vietnam, or the possibility of abuse and corruption if they remained in Hong Kong.

The UNHCR "does not favour detention of Asylum Seekers or refugees," said UNHCR Chief of Mission in Hong Kong, Robert Van Leeuwen in 1991, reiterating a 1986 statement by the agency. He added that the detention of Asylum Seekers and refugees "should normally be avoided...but in any case that should only be for very limited periods of time, which is, of course, not the case in Hong Kong."¹⁰⁷ It is testimony to the lack of lobbying by the UNHCR against detention that Van Leeuwen still referred to a 1986 decision five years later.

UNHCR did little to mitigate this disaster. The detention centres became a humanitarian disaster for the nine years before their closure in the months leading up to the British handing Hong Kong back to China on 1 July 1997. The highest number of Vietnamese migrants and refugees housed in Hong Kong at one time peaked at 60,022 in December 1991,

¹⁰⁷ Refugee Concern Newsmagazine, "UNHCR figures," Issue 4, Feb/Mar 1994, p. 17.

falling steadily thereafter. This was more than half of the 109,809 Asylum Seekers¹⁰⁸ housed at this time in all the ports of asylum in the region (Malaysia, Indonesia, Thailand, Philippines, Singapore and Macau). In 1993, more than 78 percent were women and children. About half of the children were under the age of five.¹⁰⁹

There were 11 detention centres in Hong Kong at the height of the influx, all of similar construction. Whitehead (24,600 people) had more than double the capacity of the next biggest camp, the Tai A Chau Detention Centre (10,000 people), which was purpose built on a remote island of the same name to the south-west of Hong Kong. Sek Kong (9,000 people) and High Island Detention Centre (6,600 people) were the other sizable centres. Hong Kong had two other categories of camps for Vietnamese migrants: (1) departure transit centres, for those screened in as refugees and awaiting immediate resettlement in third countries and (2) refugee centres, for those accepted as refugees but who for various reasons had to stay in Hong Kong for longer periods or indefinitely. Pillar Point, located just outside the northern New Territories suburb of Tuen Mun, was the largest refugee centre, housing as many as 5,088 people.¹¹⁰ It was the last of the camps to close, finally shutting on 31 May 2000 when the remaining 1,400 residents were granted Hong Kong residency.¹¹¹

This chapter is divided into two parts. The first part covers the corruption that was rampant throughout the detention centres. This thesis argues that the Hong Kong government condoned and controlled a *dai goh* system in the detention centres that leveraged corruption and violence to encourage the Asylum Seekers to return to Vietnam. *Dai goh* are gangsters (also known as “big brothers,” which is the literal translation of this Cantonese term. They are

¹⁰⁸ Appendix 1g.

¹⁰⁹ Eve B. Burton and David B. Goldstein, “Vietnamese Women And Children Refugees in Hong Kong: An Argument against Arbitrary Detention,” *Duke Journal of Comparative & International Law*, 1993, Vol. 4:71.
<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1333&context>

¹¹⁰ Appendix 2.

¹¹¹ Stella Lee, “Last Vietnamese leave Pillar Point,” *South China Morning Post*, 22 June 2000.

also referred to as “bear heads”). Corruption and criminal activity reaped its perpetrators millions of Hong Kong dollars each year.

The second part of the chapter discusses such non-corruption related features of detention as overcrowding, institutionalization and systematic abuses.

PART I—Rampant Crime and Corruption

The *dai goh* system—Government-controlled deterrence

From day one of the post-5 June 1988 period, the Correctional Services Department (CSD) began to exert its control over the Vietnamese Asylum Seekers through a *dai goh* system. In the Boat 101 case trial, several witnesses described this *dai goh* system. Graham Adutt, a secondary and adult education coordinator in Whitehead from October 1990 to September 1991, confirmed earlier witness statements that the camp was “run by a number of Big Brothers or gang leaders” and that “anyone complaining about their methods risked being beaten or even killed.”¹¹² In a 2009 interview with Radio Free Asia, Ly Hoang Phuc, who was held for several years in Chi Ma Wan Detention Centre, said, “The Hong Kong government used the bear heads to govern us. Our lives in the camp were filled with nervousness and anxiety. We were afraid of being repatriated to Vietnam and bullied by the bear heads at the same time.”¹¹³

It was the Peace and Order Committee under the orders of the Correctional Services Department who dealt with problems, conveyed official messages to detainees and generally supervised what happened on a day-to-day basis inside Whitehead, according to Mr. Adutt.¹¹⁴

“Fear is a habit,” wrote Burmese democracy leader Aung San Suu Kyi, who spent

¹¹² *South China Morning Post*, “Tears as Viet tells how TB delayed his trip,” 25 July 1992.

¹¹³ Ly Hoang Phuc, “Boat People Recall Misery,” *Radio Free Asia*, 11 May 2009.

¹¹⁴ *South China Morning Post*, “Tears as Viet tells how TB delayed his trip,” 25 July 1992.

many years under house arrest in Yangon.¹¹⁵ She went on to argue that this fear can be overcome. The ability to overcome fear was reduced in the confines of Hong Kong detention centres where the people were disenfranchised, watched and controlled both by dominant *dai gohs* and the Correctional Services Department officers. The Asylum Seekers were reluctant to voice an opinion because it might jeopardise their chances of gaining refugee status, so fear and acceptance became a habit. The daily fears became the norm. It was too much for some who cracked under the pressure, becoming sick, depressed or suicidal.¹¹⁶ In addition to the constant mental pressure, came the terror of physical violence, in the form of *dai goh* retribution and rioting.

The amount of money generated by illegal activities in the camps ran into the millions of US dollars. In Whitehead alone, the profits conservatively totalled an estimated US\$500,000 each year. That works out at around US\$20 per person held in the camp.¹¹⁷ Three areas provided particularly high returns to both the Vietnamese gangsters and their CSD and agency worker suppliers: heroin, telephone calls and the black market. Other areas such as prostitution, wine making, charging new arrivals “rent” in a section, re-selling stolen food from the kitchens and charging a levy on workers' wages also brought in large incomes for both the *dai gohs* in charge and their protectors. The following section is based on information derived from eye-witness accounts and a series of interviews with Asylum Seekers in Whitehead and Pillar Point, corroborated by media, legal and NGO reports.

¹¹⁵ Aung San Suu Kyi, *Freedom from Fear*, Penguin, New York and London, 1997, p. 18.

¹¹⁶ Human Rights Watch, “Abuses Against Vietnamese Asylum Seekers in the Final Days of the Comprehensive Plan of Action,” 1 March 1997, <http://www.unhcr.org/refworld/docid/3ae6a7f10.html>

¹¹⁷ Estimates based on known margins for the various corrupt practices, as told to the author by buyers and sellers in Whitehead and Pillar Point, corroborated by information from media and NGOs.

Heroin

The illicit introduction of heroin into the camps was debilitating for the Asylum Seekers. The question of how any quantity of heroin could enter the tightly guarded sections at Whitehead was not as large an enigma as it first seemed. Initially the CSD denied that heroin was being used or was available in the camp. However, both Community and Family Services International and the UNHCR documented in internal reports the existence of heroin and addicts in the camps. “You have to ask yourself how heroin is getting into the camps,” UNHCR chief-of-mission Robert Van Leeuwen told the *South China Morning Post* on 1 May 1993. “These people are clever. They do not just put needles into their arms, they put them into places like the soles of their feet.”¹¹⁸ Van Leeuwen articulated his detailed knowledge of the presence of heroin in the camps, making him one of the few officials who acknowledged the problem.

While various methods were used to take heroin into Whitehead, the key route was via the security officers in each section who supplied a *dai goh* inside the camp on a weekly basis.¹¹⁹ The security officers had two objectives. The first was to make money. The second was to control the *dai goh* and, ultimately, the section. By supplying twenty to thirty packets of heroin each week, the security officer created a money-spinning operation in a section. Equally, a number of addicts came to rely on the white dust. Therefore, if the supply was cut at any stage, the *dai goh* lost a sizeable income and also had to handle the irrational responses of the deprived addicts. It was then easy to pressure the *dai goh* to obey CSD orders by suggesting, for instance, that it would be better if the section did not hold demonstrations against forced repatriation or do anything to upset the equilibrium of the camp. If members of the community objected to this, the *dai goh* would send members of his personal “army” to visit them at night. If they persisted in their arguments, they would be beaten or framed for

¹¹⁸ Beryl Cook, “Viet Crime Victims Trapped,” *South China Morning Post*, 1 May 1993.

¹¹⁹ Information from interviews by the author with inmates of Whitehead in 1991-1993.

some crime and removed from the section. This element of control is a key as to why the heroin was imported by the CSD. It also underscored the systematic violence that was directed on a regular basis at the broader population of Asylum Seekers.

Each section in Whitehead had a different number of heroin addicts. Sections 2, 8 and 9 were the worst affected with up to one hundred addicts each at the peak of the trade in 1991 and 1992. Few of the addicts had been hooked on heroin before they arrived in the camp. Depression, despair, peer pressure and entrapment induced some of the young men (and a few women) to take up the habit. The street price in Hong Kong for one of the small plastic packets of heroin was around HK\$50, according to the *South China Morning Post*,¹²⁰ with the main source of supply coming from the security officer's connections to the Vietnamese open camp in Pillar Point. The camp was situated in Tuen Mun, an area notorious for Hong Kong gangster (triad) activity. Inside the sections at Whitehead the value of a small straw of heroin (one packet made six straws) was HK\$100—sometimes the price was kept down to HK\$50, but this was usually from other “unofficial” sources. The profit margin for the security officer bringing the heroin into the camp was approximately HK\$3,000 (30 packets @ HK\$150 less HK\$50 purchase price) per week per section. If this amount is multiplied by three sections (some of the sections were supplied individually, others in pairs) the total profit comes to HK\$9,000 per week, or HK\$39,000 per month, or a total of HK\$468,000 (approximately US\$60,000) per year. (It is possible this figure could have been as high as US\$100,000 if the CSD were supplying five rather than three *dai gohs*).

For the Vietnamese *dai gohs* the profit margin on each packet was HK\$450 (each packet was bought for HK\$150, then divided into six straws which were sold at HK\$100 each). With thirty packets supplied each week, a profit of HK\$13,500 could be made, which translates to HK\$58,500 per month or HK\$702,000 per year. This added up to a potential total

¹²⁰ Fiona MacMahon, “Refugee camp huts to be demolished,” *South China Morning Post*, 15 July 1992.

of over HK\$2 million (US\$250,000) per year across Sections 2, 8 and 9, where heroin was widely used. Profit margins were possibly lower than this, as regular supplies were not always maintained into the camp, and the price fluctuated accordingly.¹²¹

With the creation of an addict population in the sections, the amount of crime increased. While some of the addicts were wealthy individuals who enjoyed outside patronage from friends and relatives, many were not. As the craving became unbearable, theft became the obvious solution. The victims of these robberies—other Asylum Seekers—were unwilling to make a complaint to the community leaders or the CSD as they knew that the addicts were well connected to a *dai goh* and that revenge would be swift and violent.

Security officers were not the only suppliers of heroin into the sections. Individuals with connections to the underworld of Hong Kong did import the white powder into the camp through the visiting room. Runners, often young children or women, would be employed to carry the goods, which usually arrived late in the afternoon when the CSD were tired and a little less watchful. The straws would be handed over in the folds of a HK\$100 bill when no one was watching, or perhaps it would be secreted in the midst of a packet of biscuits. To get through the bag search into the Section, the straws would sometimes be secreted in undergarments, with the carrier hopeful that the CSD's cursory check would not find them.

In May 1996, as it was becoming obvious to the *dai gohs* that they were also going to be forced back to Vietnam (some had been promised refugee status if they cooperated with the CSD), the *dai gohs* took revenge, rioting through the camp and organizing the escape of 119 people by cutting through the fences. In the riot, they targeted CSD property—buildings, belongings and especially their cars. Pictures later emerged in the *South China Morning Post* and other Hong Kong newspapers of the damage. Unnoticed by most observers were dozens

¹²¹ The figures are based on interviews by the author with users inside Whitehead and Pillar Point, police informants in Hong Kong, *dai goh* buyers in two sections, and the couriers who handled the proceeds.

of burnt out CSD cars that had been targeted in the 16 May 1996 riot, which caused an estimated HK\$50 million of damage.¹²² The majority of cars were top end BMWs and Mercedes—vehicles that cost upwards of HK\$350,000 and would have been difficult to afford on a CSD salary. The monthly salary for a mid-ranked manager, such as a CSD officer, in Hong Kong in 1994 was between HK\$8,516 and HK\$13,960, according to the Hong Kong Monthly Digest of Statistics published in 1995.¹²³

Prostitution

In early 1995, NGO Refugee Concern Hong Kong reported details of a police-run prostitution racket in Sek Kong detention centre that had been run until the camp closed in 1993, citing multiple unnamed sources:

Over a two-year period approximately 500 different Vietnamese girls were ghosted out of the camp at night by police officers and handed over to triad contacts in Mongkok, who put them to work as prostitutes. The girls and women were rewarded with gold and small favours, the bulk of the revenue from this profitable exercise going into the pockets of the police and triad pimps. The main organizer of this illicit trade was a police sergeant at Sek Kong. While some of the girls and women were induced by the offer of financial incentives and occasionally the scent of freedom, others were coerced by Vietnamese big brothers in the camp working with the police for money.¹²⁴

To give a sense of the profit margin on this particular racket, I have estimated possible earnings based on known numbers for prostitutes working in Mongkok at that time. A session could cost between HK\$50 and HK\$100, and each woman might average five sessions a night. If 15 women (the number that a Hong Kong minibus is licensed to carry) were ghosted out of Sek Kong each night, then the profit per annum might range from HK\$1.35 million to

¹²² Scott McKenzie, “Threat of Breakout Prompts Shake-Up,” *South China Morning Post*, 24 June 1996.

¹²³ Hong Kong government, “Hong Kong Monthly Digest of Statistics, Payroll Statistics in Selected Industries, 1990-1994,” *Census and Statistics Department*, 23 July 1995, p. F16, <http://www.statistics.gov.hk/pub/B79507FA1995XXXXB0100.pdf>

¹²⁴ Refugee Concern Newsmagazine, “Police profit from Sek Kong tour of duty,” Issue 1, March/April 1994, p. 7.

HK\$2.7 million. These figures are likely on the low side. An October 1994 article in the *South China Morning Post* said Mainland Chinese prostitutes charged HK\$200 a session in a low-class brothel, but as much as HK\$1,500 in a high-class hotel.¹²⁵

In a February 1992 article in the *South China Morning Post* discussing the reasons behind a riot and the deaths of 23 detainees in Sek Kong, the journalist inadvertently confirmed that there were prostitutes working in the camps. The article said: “Had the 6 pm brawl at the hot water taps been, as was initially thought, a squabble over hot water? Or was it a fight over payments for illegal alcohol or, worse, drugs or prostitutes known to be available in the camps?”¹²⁶

There is no public testimony or many accounts of widespread prostitution in other detention centres in Hong Kong. This may be a result of no one knowing what went on after dark in the camps because there was no UNHCR, NGO, legal or other outside presence. For some the appalling conditions in the camps and the constant possibility of physical threats particularly to women were too much to bear and they made the difficult decision to return to Vietnam, fulfilling the Hong Kong government’s “policy of deterrence.” However, the UNHCR’s Hong Kong head Robert Van Leeuwen was quoted in a 1993 *South China Morning Post* article as saying: “Loansharks offer money to people and when men cannot pay they force the wives into prostitution.”¹²⁷ He gave no clarification on this and the newspaper wrote no follow-up articles. *Newsweek* in 1992 quoted Le Thi Nhuan, a female returnee as saying: “I’m going home because life in the camps is worse than in Vietnam. I’m sick of constant sexual harassment.”¹²⁸

¹²⁵ Wanda Szeto, “Prostitutes from China take over,” *South China Morning Post*, 31 October 1994.

¹²⁶ Jonathan Braude, “Unanswered questions over deaths of 23,” *South China Morning Post*, 9 February 1992.

¹²⁷ Beryl Cook, “Viet Crime Victims Trapped,” *South China Morning Post*, 1 May 1993.

¹²⁸ *Newsweek Magazine*, “Between Limbo and Hell,” 22 March 1992, <http://www.thedailybeast.com/newsweek/1992/03/22/between-limbo-and-hell.html>

Telephones—Tapping into a lucrative business

The *dai gohs* also made money from the telephones in the camp tapping into the CSD and UNHCR phone lines at night and the weekends. Half-hour local calls cost HK\$30 (HK\$10 for 10 minutes), while the same length of time for international calls went for HK\$50. Operating hours were between eight o'clock at night and around four or five in the morning, when none of the agency workers were in the camp. Most nights the phones were kept busy on local calls—international calls were limited as they showed up on the phone bill—and an estimated HK\$240 could be made each night by the *dai goh* in control. This amounted to HK\$7,200 per month or HK\$86,400 per year. If you multiply the number by 10 sections the amount rises to HK\$864,000 per year in Whitehead. Between 1990 and 1994, this was a regular income for a variety of *dai gohs*. ” In most sections at least one phone was tapped each night and in some sections two were tapped.

The CSD steadfastly refused to allow pay phones to be installed inside the camps. This was in spite of the willingness of Hong Kong Telecom to install them, and advice from a variety of agencies that it would be a good idea. The refusal seems to have stemmed from a belief that it would be impossible to control the usage of the phones and prevent fights, not to mention safeguarding the monies received from the phones. However, it could also be argued that the authorities wanted to keep the Vietnamese isolated from the outside world.

Refugee Coordinator Clinton Leeks answered a series of questions sent to him by the asylum seeker editors of the *Freedom Magazine* on behalf of all detainees in Whitehead in June 1992. His response to the question on why the Vietnamese could not have public telephones in the sections is as follows:

We have looked carefully at the possibility of providing public telephones inside the camps. The problem is that we cannot possibly provide enough telephones to be sure that there will not be disputes over them (you will remember the dispute that arose in

section C of Sek Kong at Tet over the supply of hot water). We do not have enough staff to guard the telephones or regulate access to them in a sensible way.¹²⁹

The last sentence was particularly ironic as under the eyes of the CSD, the *dai gohs* were doing precisely that.

A Large-scale Black Market

The black market in Whitehead was a complex operation, covering legal items, high profit-margin items and goods banned from the camp such as shampoo and fresh meat. The legal items on the stalls were for the most part brought in through the visiting room. These included sandals, clothes, biscuits and sweets. Usually they were items that the receiver did not want, or things that could bring in a little extra cash, which could be spent in other areas. Sometimes the stalls would contain food items such as oranges and eggs that were supplied as part of the everyday diet. These were sold by some of the poorer families to make a little profit so that they could afford to splash out every so often and buy something they really wanted. That the price was often higher than it would have been outside the camp reflected the demand for the product and the difficulty with which it had been transported into the camp. These items gave the CSD the excuse to blame the Vietnamese for running and organising the whole black market, which was not the case.¹³⁰

The main profit-making items on the black market were carefully controlled by the security officers to ensure that no other supply could endanger their revenue. Shampoo, fresh meat (chicken legs and pig's hearts), black dates and raisins (used to ferment alcohol), yeast, margarine, syringe needles, glass bottles of fruit juice and cigarettes were all high profit items that were banned by the CSD and therefore difficult or impossible to smuggle into the camp

¹²⁹ Clinton Leeks, Extract of letter to *Freedom Magazine*, Issue 23, June 1992.

¹³⁰ *Refugee Concern Newsmagazine*, "Black market run by CSD," Issue 1, March/April 1994, p. 5.

through the visiting room. Shampoo for instance, was a popular item. Shampoo was supplied in the camp in shops run by local NGO Hong Kong Christian Aid to Refugees,¹³¹ but it was a cheap brand that came in three different colours—green, pink and yellow—which were universally spurned by anyone with money as they were associated with poor quality and the hardship of the camp. Up to two hundred bottles of “expensive” shampoo could be seen in one section's black market on any given day. In Hong Kong, if a dealer purchased 1,000 units of shampoo, the selling price would be around HK\$20 per piece. Each bottle of shampoo was sold at HK\$35 into the camp, and then re-sold at HK\$40 on the black market. The profit for the middle man, approximately every two months for 1000 bottles, would be HK\$15,000, with a further HK\$5,000 made by the *dai goh* in the sections. So each year the importer could make HK\$90,000 profit and the *dai goh* HK\$30,000. Unofficially, the reason that shampoo was banned was because the CSD suspected that plastic sachets of heroin would be placed inside the bottles and smuggled into the camp. Officially, the reason given by the CSD was that the Vietnamese were supplied with shampoo by the authorities and therefore there was no need for additional products to be brought in. The illegal trade in shampoo provided a sizeable income for the CSD and their Vietnamese trading partners.

Asylum Seekers were also charged “rent” by the *dai gohs*. According to a 1993 article in *The Standard* newspaper, “Inmates paid an average ‘rent’ of HK\$10 a month for each bunk. Those wanting to be near ceiling fans or windows paid HK\$30 a month.”¹³² This HK\$10 payment would reap the *dai gohs* in excess of HK\$240,000 (US\$30,000) a year in Whitehead (the calculation is based on approximately 120 people in 60 bunks in 22 half huts, across 10 sections paying between HK\$10 and HK\$30 per bunk).

Cigarettes also followed a similar pattern of profit-making for the *dai gohs*. In the

¹³¹ Hong Kong Christian Aid to Refugees was renamed Christian Action in 1994, www.christian-action.org.hk/index.php/about/origins

¹³² Lucia Palpal-latoc, “Viet gang lords ‘control camps’: CSD officer tells of reign of terror,” *The Hong Kong Standard*, 9 September, 1996.

latter months of 1991, the CSD stopped supplying cigarettes to the people in the camp in accordance with a newly aligned general policy for all prison services. As a high percentage of Vietnamese men smoked, the cut was felt hard. Cigarettes, usually the American brand “Marlboro” but occasionally the British brand “555,” smuggled back into Hong Kong from Mainland China,¹³³ were sold illegally at HK\$80 per carton of 200 (or the slightly more expensive price of HK\$10 per packet of 20) on the streets in 1993.¹³⁴ These were brought into the camps and sold under the counter in the HKCAR shops for HK\$30 per packet.

Another item that generated profit for the *dai gohs* was rice wine, fermented using black dates or raisins in illegal stills that were often housed in or near the peace and order committee huts. Alcohol was banned in the camps. The Vietnamese took dustbins full of the white rice that was cooked daily in each Section’s kitchen hut and then fermented it, still in the dustbins. While the *dai gohs* drank the resulting wine regularly, it was sold to the wider camp population particularly around Tet, the Lunar New Year, and other festivals.

The production of rice wine was not tolerated by the Hong Kong government and the CSD as it did not generate any money for CSD suppliers (with the exception of the black dates and raisins) and it also did not give the CSD any element of control over the *dai gohs*. So it was frequently cited by government officials when the topic of CSD control of the camps was raised. In the following passage, Brian Bresnihan, Hong Kong’s Refugee Coordinator, responded to Pam Baker of Refugee Concern, mentioning the control of rice wine making at High Island Detention Centre:

Our efforts to control the illegal making of rice wine in the camps is on-going and yesterday, for example, we met with some success. Rice wine and associated equipment were seized during a routine search operation in High Island. We shall continue to use our best endeavours to stamp out these activities in all camps.¹³⁵

¹³³ Hugh Roberts, “Cigarette Cruisers,” *Far Eastern Economic Review*, 11 July 1991, p. 21.

¹³⁴ Jimmy Leung, “2M Smuggled Cigarettes Held After Flat Raid,” *South China Morning Post*, 13 October 1993, p. 3.

¹³⁵ Brian J. Bresnihan, “Letter to Pam Baker, Refugee Concern Hong Kong,” 15 November 1995. Document with the author.

The sheer volume of black market goods on display in the alleyways between the huts, particularly in sections 3, 6 and 8 was such that it would have taken a truck to transport them. Given that many of these items were fresh meat and vegetables, the supply must have been regular and by the truckload. The quantity belied the suggestion that all these things were carried in piecemeal by relatives, interpreters and agency workers. It seems likely that the CSD officers connived with the *dai gohs* in a section to supply a variety of goods from which they made a profit on resale. The market stalls were run by relatives or friends of the *dai gohs* in charge of this operation within the section. To run a stall one had to have permission from the *dai goh* and the Peace and Order Committee, and hence the tacit approval of the CSD.

In 1992, Graham Adutt, a camp worker in Whitehead, testified in the Boat 101 trial in 1992 about the *dai goh* system, also noting that a black market flourished inside the camp as part of the system of control.¹³⁶ Refugee Concern Hong Kong described the black market in a 1995 article entitled “Black market run by CSD”:

This lucrative trade is carried on by security officers and other individuals who are determined to make a fast buck. At the moment margarine is the latest hot item on the well-organised black market—large quantities have suddenly appeared in the camp stalls. This would not be possible without the connivance of the CSD.¹³⁷

Hong Kong authorities continually denied the existence of a black market and ignored requests to investigate the illegal scams. In early 1995, the black market had become rampant in Whitehead, and various parties including the author attempted to bring the matter to the attention of the authorities. At first through conversations between NGOs and officials, the CSD denied any such black market stalls even existed in Whitehead. The typical CSD response to questions about the black market and their control of it is that there is “no information to substantiate the allegations” that CSD officers were involved in the illegal

¹³⁶ *South China Morning Post*, “Tears as Viet tells how TB delayed his trip,” 25 July 1992.

¹³⁷ *Refugee Concern Newsmagazine*, “Black market run by CSD,” Issue 1, March/April 1994, p. 5.

operations. With the help of photographic evidence¹³⁸ smuggled out of the camp and an itemised breakdown of what was being sold illegally, the CSD reluctantly accepted that a black market did exist and an internal investigation began. In April 1995, Mr. P.T. Choi of the CSD Inspectorate and Management Services based in Causeway Bay answered the allegations, explaining “there is no evidence to support the theory that CSD officers were involved in its [black market] operation.”¹³⁹ The inference was that the CSD's internal watchdog was determined to find that the black markets were run by the Vietnamese for the Vietnamese despite all evidence to the contrary.

The question that comes to mind is, what happened to all the money generated from these illegal activities? For the CSD and police officers who profited from the system, the cash was tax-free and enabled them to live a better lifestyle than would have been possible on their basic salary. The Vietnamese *dai gohs* kept their money in three places—CSD safes in the Sections, around their bunks, and with outside relatives or dealers who would help them repatriate it to friends and family in Vietnam.

Security Officers—At the heart of the matter

It was the influence of the security officers (commonly known as “bao an”), which set the tone for the camps. Originally established as an internal watchdog to prevent corruption amongst CSD officers, the security officers were a law unto themselves. They alone did not wear insignia or name badges on their uniforms. They were feared by the ordinary CSD staff about whom a report was written each month regarding their performance and their attitude. While officially the security officers would report to the superintendent of a centre, such as Jasminder Kang in Whitehead, they had their own channels of communication to senior

¹³⁸ See photo 4.1 “Black market in Whitehead”, p. 46.

¹³⁹ P.T. Choi, “Letter to the author regarding allegations of CSD involvement in the black market in Whitehead,” April 1995. Document with author.

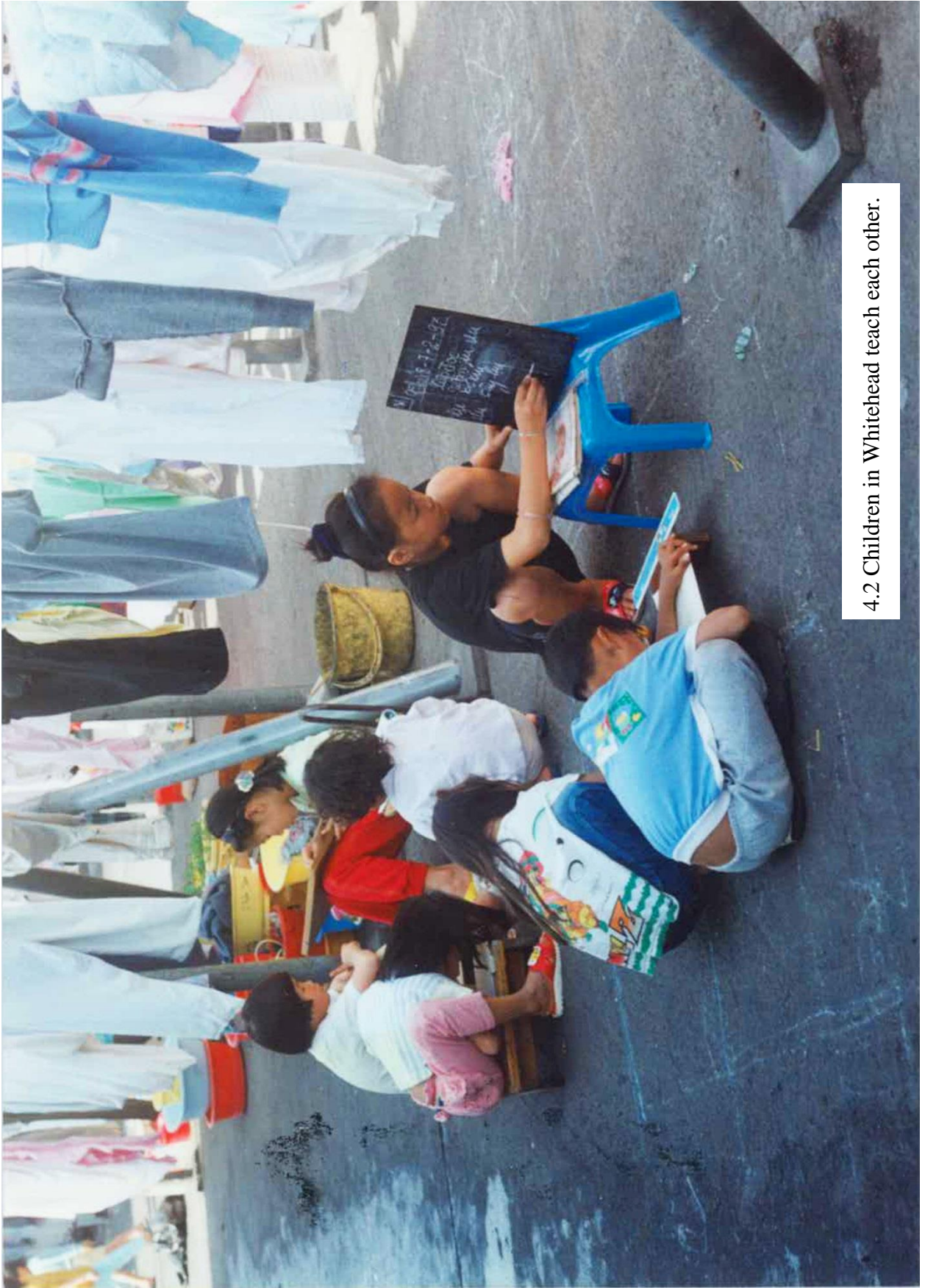
officers in CSD headquarters in Wanchai and ultimately to the commissioner himself, Frederick McCosh. In effect they created an all-important power block within the camp. Each pair of sections had a security officer, who was assisted by two junior officers. They had their own office inside the Section. According to a 1995 article in Refugee Concern Hong Kong's February/March newsletter,¹⁴⁰ it was the security officers who controlled and organised most of the illicit operations inside Whitehead. A letter from barrister Michael Darwyne to CSD headquarters requested information about the role of the security officers. The reply from Jeff Leung on behalf of the Commissioner of Correctional Services was brief, but it was important as it acknowledged the existence of the security officers for the first time:

Security section [sic] is a part of the centre management. Staff attached to the section, normally called as 'BAO AN', wear the prescribed uniform. Like staff of other sections, they work in accordance with rules and instructions equally applicable to others. Their primary role is to maintain order and security in the centre including searching, inspection of security installations and intelligence gathering.¹⁴¹

Two points in this reply bear examination. Mr. Darwyne's original question requested an explanation of why security officers did not wear name or identification badges like other CSD officers. Mr. Leung avoids a direct response to this question, implying that they were identifiable as they wore the "prescribed uniform." This was not the case. Secondly, one of their functions is described as intelligence gathering. This became a highly sensitive area in the centres as forced repatriation flights were stepped up in 1991, and the issue of asylum seeker "spies" in the sections came to the fore in targeting individuals and groups of Vietnamese for these flights. Payments to the spies by the CSD and their on-going employment to undermine the communities posed major ethical and human rights questions.

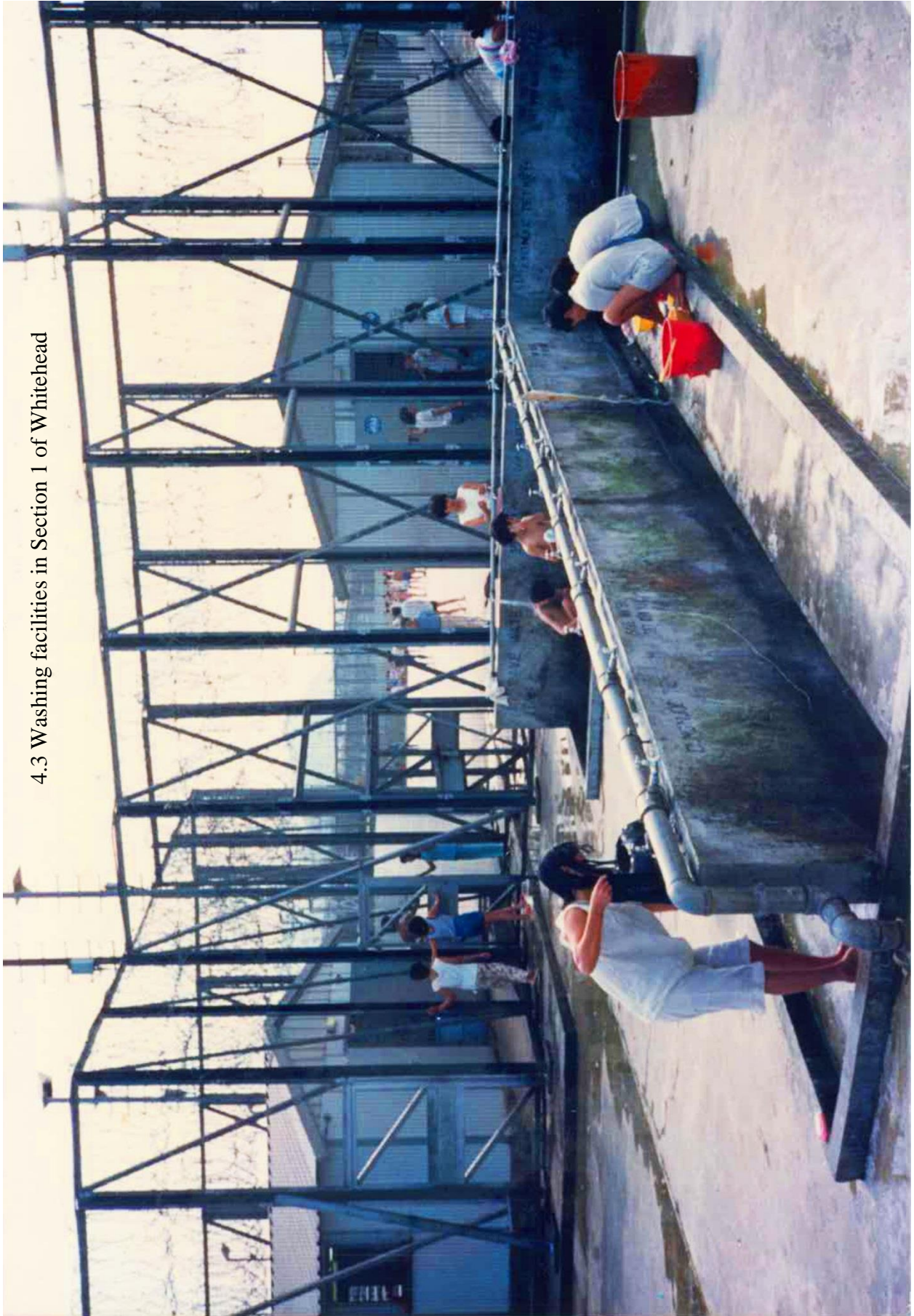
¹⁴⁰ Refugee Concern Newsmagazine, "Black market run by CSD," Issue 1, March/April 1994, p. 5.

¹⁴¹ Jeff Leung on behalf of the Commissioner for Correctional Services to Michael Darwyne, 10 June 1994, CSD Reference: (18) in PD Gen 059/028 Pt 4.



4.2 Children in Whitehead teach each other.

4.3 Washing facilities in Section 1 of Whitehead



Part II—The Effects of Detention

Overcrowding

With the arrival of more than 34,000 Asylum Seekers in 1989, Hong Kong's detention centres were at maximum capacity. Whitehead opened in January 1989, but was not fully operational until the following year. New arrivals were forced to stay in makeshift camps and on ferries seconded for the purpose off Stonecutter's Island. The overcrowding resulted in an outbreak of cholera on Tai A Chau, where the provision of water and proper sanitation was not able to cope with the large numbers present.

The government response to accusations of overcrowding and poor conditions in detention was to offer comparisons with conditions in Hong Kong housing estates. Clinton Leeks, the refugee coordinator for the Hong Kong government wrote in mid-1992:

Since the planned capacity of our detention centres was 57,000 and 54,000 now live in them, we could say the camps are not over-crowded. But to anyone unfamiliar with conditions in our older housing estates the camps will seem to be teeming with people. There are no absolute standards.¹⁴²

Leeks' statement was misleading, as some centres were overcapacity. For example, Whitehead had an official capacity of 24,600, yet was housing more than 27,000 people at that time. Moreover, the situation in Hong Kong housing estates and detention centres was starkly different as the detained Asylum Seekers were not allowed to move in, out or around the camps.

Sir Philip Goodhart had brought up overcrowding in the camps in the UK House of Commons as early as December 1990:

The minimum guidelines set by the United Nations High Commissioner for Refugees state that every adult or child should have living space of at least 3.5 square metres. At the Whitehead and High Island detention centres, which hold almost 30,000 boat people, the living space is about 1 square yard per person. That means that three families will live on top of each other in tiered bunks. It means that home for a husband, a wife and two children will be a strip of plywood measuring 8 feet by 6 feet,

¹⁴² Clinton Leeks, "Government cannot win over refugees," *South China Morning Post*, 9 February 1992, p. 8.

with one family living 3 feet above their heads and another family living 3 feet below them. I am ashamed that we should make families live in such conditions.¹⁴³

Sek Kong was the third largest of the detention centres. It was built on a former military airbase in a remote part of the New Territories in northern Hong Kong. On 3 February 1992 during Tet (the Lunar New Year), 23 north Vietnamese Asylum Seekers died in a violent clash between north and south Vietnamese who lived together in Sek Kong. The camp had a capacity for 9,000 people and was then nearly full, housing 8,900. Camp officials initially blamed the deaths on a dispute between detainees over the availability of hot water, though later concluded that a complex series of events was to blame (see also p. 55). In practice, the housing of North and South Vietnamese in cramped conditions was a known trigger for conflict and might have been avoided.¹⁴⁴

Clinton Leeks responded to the criticisms leveled against the government following the violent episode in Sek Kong in an article carried by the *South China Morning* on 9 February 1992. Leeks refuted suggestions that overcrowding was responsible for the deaths in Sek Kong, while agreeing that living in a camp was a “cruel prospect.” He then attempted to shift blame to the wider international community and the United States in particular:

It is not some perverse aberration of the Hong Kong government that drives us to put illegal immigrants in camps. Asylum-seekers, immigrants and genuine refugees are in camps all over the world. Yet the same point comes through every time. Putting people in camps is no solution. It may prevent some problems but it probably causes others.

In 1989, when the Comprehensive Plan of Action was agreed by 74 governments, including that of the US, the US representative said that rather than face non-voluntary return, people should sit in camps until they realised that they had to go home. The Hong Kong government has argued fiercely for three years that this is a misconceived and ultimately cruel prospect, as it invites people to waste years of their lives in camps by holding out to them hopes that can never be realised.¹⁴⁵

¹⁴³ Philip Goodhart, “Vietnamese Children (Hong Kong),” *Hansard*, HC Deb, 20 December 1990, vol. 183, cc582-8582,

<http://hansard.millbanksystems.com/commons/1990/dec/20/vietnamese-children-hong-kong>

¹⁴⁴ Jonathan Braude, “Unanswered questions over deaths of 23,” *South China Morning Post*, 9 February 1992.

¹⁴⁵ Clinton Leeks, “Government cannot win over refugees,” *South China Morning Post*, 9

The omission in Leeks' comments is any acceptance that the Hong Kong government was responsible for the conditions in the camps. Part of Leeks' job as Refugee Coordinator was to defend the Hong Kong government's actions in regards to the Asylum Seekers. It is ironic that his title was Refugee Coordinator, when Hong Kong had not classified most of his charges as refugees.

Institutionalisation

The dehumanising effects of living in detention began from day one. At Green Island, Hong Kong's reception centre for Vietnamese Asylum Seekers, the new arrivals were lined up to register their details. At this stage they were given a number, which would be their identification for the rest of their time in Hong Kong. The authorities did not use the names of individual Asylum Seekers. Instead, on arrival they were given a Vietnamese Refugee in Detention (VRD) number – comprising a boat number and the year in which the boat arrived, i.e. 800/91 referred to the 800th boat that arrived in 1991. When they entered a detention centre they were given a camp number, which was a simple sequence referring to the order of arrivals, starting at number one and continuing towards 75,000 (the approximate number of Asylum Seekers arriving in Hong Kong after 16 June 1989).

Even before they became a number, the Asylum Seekers had been sprayed with disinfectant, and had their hair doused with a white liquid poured from a small plastic beaker to remove lice. Next, all the women with long hair were ordered by the interpreter to sit in a plastic chair, where a man with scissors proceeded to cut it short. During the Boat 101 trial the correctional services officers who looked after Green Island from October 1989, maintained that the hair cutting was on a purely voluntary basis that was done for health reasons and the good of the boat people. "If they were reluctant, they would be persuaded to do so, but never

compelled,” said Miss Fa,¹⁴⁶ the Vietnamese interpreter on Green Island at the time the group from Boat 101 went through. Miss Fa perhaps failed to realize the Asylum Seekers’ instinctive fear of authority and the impact of being “persuaded.”

Detainees had little recourse. Access for outsiders to the camps was severely limited, and in addition to the limits on media access, NGOs working in the detention centres were strictly controlled. All NGOs were required to ask for permission from the UNHCR to gain access to the detention centres. This was a screening process to limit access to individuals and groups with political, religious or other agendas the UNHCR disliked. The majority of agency workers had to agree with the basic tenets of the CPA in order to gain access. For NGOs, such as International Social Services (ISS), a clause in their employees’ contracts stated that they were not allowed to speak to the media about their experiences in the camps, either while they were working for ISS or for two years afterwards. As the camps were cleared and a new more stringent policy regarding the services offered by NGOs was instituted, the UNHCR in 1995 demanded all NGOs working in the camps sign a further document that urged the Asylum Seekers to volunteer for repatriation to Vietnam. If an agency refused to sign, they would not be allowed to work in the camps.¹⁴⁷ Only Medecins Sans Frontieres (MSF) was given a special dispensation.

The Hong Kong legal system provided almost no protection against detention. The success in challenging the government on the grounds of imprisonment without trial was zero. Equally, no one successfully challenged the detention on the grounds of unacceptable conditions. The human rights abuses happened, but there was inadequate monitoring of the detention centres, so many of the abuses went unrecorded and for those that were brought to

¹⁴⁶ Hong Kong High Court, “The Judgment of the Hon. Mr. Justice Patrick Chan in the case of Pham Van Ngo and others vs the Attorney General (1990, No. A4895),” the Supreme Court of Hong Kong, High Court, 30 July 1993, p. 157. The author is in possession of the transcript.

¹⁴⁷ *Refugee Concern News Magazine*, “Agencies sign Volrep agreement,” Issue 4, February/March 1995.

the authorities' attention, there was no proper process to provide redress or relief.

Mounting Health Issues

Combatting the effects of boredom and depression was never a serious concern of the Hong Kong government, although up until 1993, non-government organisations were allowed to provide leisure facilities to the Asylum Seekers. In that year, the UNHCR reviewed and began cutting service programmes into the detention centres, arguing it could not fund any programmes that might be encouraging the Asylum Seekers to remain in Hong Kong.¹⁴⁸

When added to the agency's budget shortfalls, the UNHCR's newfound desire to make the Asylum Seekers uncomfortable spelled the end for all but the most basic services into the detention centres,¹⁴⁹ resulting in increased mental stresses on the detainees.

Health problems were an on-going concern. In Whitehead, two sections were serviced by one clinic, housed in a secure area alongside the CSD administration buildings. A government doctor, who was invariably Hong Kong Chinese, worked in each of the clinics. Every day a queue of people, most frequently mothers with babies or small children would line up at the gate to their section. Only the first 25 people, but sometimes as many as 40, could be seen by the doctor on any given day. Once the people had registered to see the doctor, they were given a number and told to wait outside until their name was called over the loudspeaker system. If they did not present themselves immediately, another number was called and their chance for that day disappeared. Those patients not seen by the doctor in the allocated hours had to start the whole queuing process again the next day. A whole morning could be wasted waiting in the rain or heat for a number that was never called.

Once inside the clinic, other problems arose. The main difficulty was the language

¹⁴⁸ Frederik Balfour, "VIETNAM'S BOAT PEOPLE—Camp fear: Inmates prefer grim life in Hong Kong to going home," *Far Eastern Economic Review*, 4 March 1993, p. 34.

¹⁴⁹ Teresa Poole, "Boat People Out of Sight, Out of Mind," *The Independent*, 30 April 1993, p. 14.

barrier. Each clinic had a government-paid interpreter from outside the camp. The government employed 64 interpreters, most of whom spoke Cantonese and Vietnamese, to work in the camps.¹⁵⁰ Most of these interpreters were southern Vietnamese, often ethnic Chinese, who had settled in Hong Kong years before. As the majority of the Asylum Seekers in Hong Kong were ethnic Vietnamese from north Vietnam, prejudices and language differences were serious issues.

In November 1989, a UNHCR field assistant, Anne Wagley Gow, wrote a damning briefing report on conditions within Whitehead, which included the following extract on medical care:

Primary medical problems are skin infections, scabies, conjunctivitis, coughs and diarrhoea. As a course of treatment for skin infections, scabies and conjunctivitis requires more than one visit to the clinic, the limited access to the clinic means that many individuals are prohibited from receiving the complete treatment. In a recent UNHCR survey it was found that 24 per cent of the population suffered from infectious conditions. Medecins Sans Frontieres (MSF) research indicates 25 per cent of children under five are borderline malnourished (less than 85 per cent weight/height).

Referrals to outside hospital [sic] are rarely informed of diagnosis and treatment, and this information is often not communicated to the camp clinics. Delays are experienced in treatment and two of the four deaths which have occurred at Whitehead are being investigated by the UNHCR protection office for denial/delay in access to medical treatment.

A major medical concern is the availability of contraception. Family Planning of Hong Kong visits four of the camps once a week, and offers Depo-Provera injections as the primary form of contraception, which is questioned by residents and agency workers alike. Limited or no access to Family Planning, which operates out of the camp clinic, is a serious problem, and primary request of women who do get to see Family Planning is for termination of pregnancy [ToP]. This is infrequently granted due to requests being received at the end of the first trimester of pregnancy, and because Family Planning does not routinely recommend "ToP" even when the patient requests it. The birth rate at Whitehead is about 7 per cent.¹⁵¹

¹⁵⁰ Oliver Poole and Tommy Lewis, "Interpreters 'Victims' Of Boat People Success," *South China Morning Post*, 9 June 1997.

¹⁵¹ Anne Wagley Gow, "Whitehead Detention Centre Briefing Report," *UNHCR*, November 20, 1989.

Hong Kong law stipulates that two doctors must sign a “ToP” and it is generally not granted unless the mother-to-be is at risk. Between March 1989 and July 1993, 8,777 babies were born in the detention centres.

At the Argyle Street detention centre, a scandal erupted in 1988 over the use of the contraceptive drug, depo–provera. At the time the drug was banned in the USA and parts of Europe because of its side effects, which according to information on the Brown University student website in the US, include depression, irregular menses (57 per cent of women stop menstruating after one year of usage) and a “slightly increased risk of breast cancer.”¹⁵² It was however, and still is, in common use in Hong Kong and other countries such as Australia. Depo–provera is administered by injection, providing the patient with three months’ protection against pregnancy. The uproar in Argyle Street arose not because of the question marks over the side effects of depo–provera, but rather about the way in which it was administered to several Vietnamese women. One of the women said, “We were not given enough sanitary napkins—we never were—and the authorities in the camp told us that if we wanted to get more, we would have to have an injection. No one told us what the injection was and we assumed it was for our health, because they told us that we all had to have it.” Most of the women in Argyle St at the time were single. “We were never told what the drug was or what the side effects might be,” she said. “Many of the women stopped menstruating for many months, others would bleed two or three times each cycle. None of us was used to taking contraceptives in Vietnam and it did not go well in our bodies.”¹⁵³ A western nurse working for an NGO was banned from the detention centres while collecting evidence about

¹⁵² Brown University Student Services, “Health education, Depo-Provera birth-control shot,” Brown University, 2013, http://brown.edu/Student_Services/Health_Services/Health_Education/sexual_health/safer_sex_and_contraceptives/depo_provera.php

¹⁵³ Interview with the author in 1991, when the woman had been moved to Whitehead.

the use of depo–provera and its side effects.¹⁵⁴ No action was taken to offer the victims support, aid or recompense. The head of the International Planned Parenthood Federation, Dr. Halfdan Mahler, visited Whitehead detention centre in February 1990 and said he was satisfied the Hong Kong Family Planning Association did not coerce Vietnamese women to take Depo-Provera.¹⁵⁵

In another incident, Tien Ngoc Hung, a mother at Tai A Chau detention centre alleged in the Hong Kong High Court in 1997, that despite her pleas that her newborn baby was seriously ill, doctors at the detention centre dismissed her as a paranoid first-time mother and refused to let her take the child to hospital. As a result the child’s condition went untreated. “The young child, Vien Thi Boi, now six, is unable to do anything for herself, the court heard. She is blind, deaf and has great difficulty eating.”¹⁵⁶

Several international groups criticised the diet provided to Asylum Seekers in detention. In 1987, at a meeting of leading NGOs (including MSF, Save the Children and Oxfam) and the UNHCR at Oxford University, one of the papers presented indicated that children in the camps were suffering from inadequate diets:

Comparison of nutrition status in Open Centers, versus Detention Centers where self-cooking is prohibited, showed a significant decrease in malnutrition. Noting the change in Hong Kong government attitudes when refugees began to come mostly from North rather than South Vietnam and the subsequent “prison-like environment” of the Detention Centres, Murphy observed: “The Vietnamese Asylum Seekers are living under a system of total control. This repressive penal system model, augmented by the

¹⁵⁴ Human Rights Watch, “Indefinite Detention and Mandatory Repatriation: The Incarceration of Vietnamese in Hong Kong,” December 3, 1991, <http://www.hrw.org/reports/pdfs/h/hongkong/hongkong91d.pdf>

¹⁵⁵ Kathy Griffin, “Contraceptives chosen by boat people – doctor,” *South China Morning Post*, 11 February 1990.

¹⁵⁶ *Agence France-Presse*, “Vietnamese mother sues Hong Kong government for daughter’s brain damage,” 31 January 1997.

See also: Cliff Buddle, “Medical Plea for sick baby ‘was ignored,’” *South China Morning Post*, 31 January 1997.

severe overcrowding, inhibits any freedom of choice, autonomy, or dignity in the daily lives of the Vietnamese contained in these Detention Centers.”¹⁵⁷

While the food in detention was provided on a regular basis, boredom with the repetitious menu became a problem as appetites were lost. Attempts by concern groups to supply regular fresh fruit and vegetables into the camps were refused by the government on the grounds that the Asylum Seekers' diet was adequately catered for already and so did not need enhancing.

In response to queries by Human Rights Watch Asia regarding complaints of hunger among camp inmates, the government affirmed that it had not reduced food rations:

While a spokesman for the CSD has openly admitted that the distribution of food within the camps is a task which has been relegated to camp representatives, the government's Refugee Coordinator insists that there is no evidence to indicate that *dai gohs* have been used in such a system. Social workers in the camps, however, assert that hut leaders regularly exploit food distribution powers to intimidate other inmates, extort money and services, or to make rice wine for sale or for personal consumption. As guardians of the camps and as architects of the food distribution system, the CSD is ultimately accountable for this situation.¹⁵⁸

Tuberculosis (TB) was also a problem in the detention centres, with the overcrowded conditions a perfect breeding ground for the disease. No official figures for TB in the detention centres were ever released by the Hong Kong government. In the clinic serving sections 1 and 2 of Whitehead, the number of cases of TB in the sections was recorded on a whiteboard. This and anecdotal evidence from the Asylum Seekers suggest that there were at any one time approximately 100 sufferers of TB in the two sections which held a total of

¹⁵⁷ David Keen, “Responding to the Nutrition Crisis among Refugees; The Need for New Approaches,” St. Antony's College, Oxford University, 28 March 1991, p. 5, repository.forcedmigration.org/pdf/?pid=fno:684

¹⁵⁸ Human Rights Watch, “Abuses Against Vietnamese Asylum Seekers in the Final Days of the Comprehensive Plan of Action,” 1 March 1997, C902, p. 9, <http://www.unhcr.org/refworld/docid/3ae6a7f10.html>

4,500 people.¹⁵⁹ The problem was exacerbated by two factors: the CSD did not isolate TB sufferers from the general centre population and treatment was often delayed until the disease was at an advanced stage. The Hong Kong government noted that TB was in endemic proportions in Vietnam, and was transported to Hong Kong by the Asylum Seekers. There was no suggestion that the conditions in detention might have exacerbated the problem.

Failure to Provide Education

In its 1988 Statement of Understanding with the Hong Kong government, the UNHCR reaffirmed its commitment to provide for the care, maintenance and social services required by all Asylum Seekers, refugees and persons determined not to be refugees. This included the provision of general welfare such as food, education, training and recreational activities.

However, in the final years of the camps starting in 1993, the UNHCR progressively scaled back its budget for the boat people, cutting education for children in 1995. In its 1997 report Human Rights Watch said:

In August 1995, the UNHCR stopped all secondary schooling and all schooling in Chinese in Hong Kong detention centers. The UNHCR's response to queries regarding this decision was that the agency, "both historically and globally," has never provided education in any of its refugee camps. Not only is this statement patently false, since UNHCR, through its implementing partners, does provide education in refugee camps, but it also contravenes the agency's own guideline No.5 which states, "Children have the right to education which should optimally take place outside the detention premises" and Guideline No. 6, which states that all Asylum Seekers should have the possibility to continue further education or vocational training while in detention. In 1995, the UNHCR based its decision to close Hong Kong's camp schools on the desire to "bring all of its programs through the [Southeast Asian] region in line." As a result of this decision, approximately 1,150 children were deprived of the right to learn.¹⁶⁰

At the same time the Hong Kong government argued that schooling the Vietnamese

¹⁵⁹ Information from a series of interviews by the author with Asylum Seekers in Section 1 and 2 of Whitehead during 1991 and 1992.

¹⁶⁰ Human Rights Watch, "Abuses Against Vietnamese Asylum Seekers in the Final Days of the Comprehensive Plan of Action," 1 March 1997, C902, pp. 3 and 10, <http://www.unhcr.org/refworld/docid/3ae6a7f10.html>

children was not its responsibility; it said that the “power to bring [the situation] to an end lies with the parents,” who could choose to volunteer to return to Vietnam.¹⁶¹ The result was that the children were deprived of a basic right.

Unaccompanied Minors

By March 1992, the UNHCR had identified 4,862 unaccompanied minors and vulnerable people in the detention centres of Hong Kong, a figure even higher than the 4,000 that had been estimated by British MP Sir Philip Goodhart in December 1990¹⁶²—a number that accounted for 1 in 4 of the 16,008 children in detention (see Table 4.1). Of these only 674 had been recommended for refugee status by the Special Committee for Unaccompanied Minors—known by its acronym SCUM—and only a handful of these were ever actually granted refugee status. At the same time, 742 of the minors had become adults because the process had taken so long.

Another 737 unaccompanied minors departed Hong Kong, returning “voluntarily” to Vietnam before they were ever interviewed by the SCUM. Within months of the 1988 cut-off date, concerned agency workers had flagged the huge potential problem of unaccompanied minors. A conference was held on exactly this topic and a book was published by Refugee Concern Hong Kong on the findings in mid-1991.¹⁶³

¹⁶¹ Hong Kong Home Affairs Department, “Supplementary Report by the United Kingdom of Great Britain and Northern Ireland in respect of Hong Kong under the International Covenant on Civil and Political Rights,” Hong Kong, 1996.

¹⁶² Philip Goodhart, “Vietnamese Children (Hong Kong),” *Hansard*, HC Deb, 20 December 1990, vol. 183 cc582-8582,

<http://hansard.millbanksystems.com/commons/1990/dec/20/vietnamese-children-hong-kong>

¹⁶³ Ibid.

Table 4.1
Hong Kong Detention Centre Population under the age of 18 in 1990¹⁶⁴

Age	DETENTION CENTRES						
	CMW	HLC	NKC	HI	SK	WH	TAC
<1	N/A	177	26	364	73	1089	54
1-5	239	239	62	671	883	2343	282
6-17	555	586	163	1065	1654	4822	611
Total:	794	1002	251	2100	2610	8254	997
Total Camp Pop.	1646	2546	580	6415	7150	21708	2673
% of Minors	48%	39%	43%	33%	36%	38%	35%
# of Minors							
Males	340	504	N/A	1103	1403	4386	519
Females	454	494	N/A	997	1207	3868	791

Key:

CMW = Chi Ma Wan; HLC = Hei Ling Chau; NKC = Nek Kwu Chau; HI = High Island;

WH = Whitehead; TAC = Tai A Chau.

The table does not include figures for refugees or Kai Tak and Green Island camps.

The UNHCR took the stance that the unaccompanied minors would be better off in Vietnam than in detention, thereby ignoring the possibility of them being reunited with caregivers and relatives in a third country. Some of the unaccompanied minors spent seven or more years in detention in Hong Kong, because the UNHCR was unable to make a decision on their future. “If the ultimately hopeless period of waiting in the camps in Hong Kong is hard on adults, it is even harder on children,” said UK Member of Parliament Sir Mark Lennox-Boyd in the House of Commons in December 1990.¹⁶⁵ A whole series of solutions were offered by a variety of parties, but were never taken up due to the bureaucratic

¹⁶⁴ Susan Ann Comerford, Victoria Lee Amour-Hileman, and Sharon Rose Waller, “Defenseless in Detention—Vietnamese Children Living Amidst Increasing Violence in Hong Kong,” *Refugee Concern Hong Kong*, Hong Kong, 14 June 1991, p. 222.

¹⁶⁵ Mark Lennox-Boyd, “Vietnamese Children (Hong Kong),” *Hansard*, HC Deb 20 December 1990, vol. 183 cc582-8582, <http://hansard.millbanksystems.com/commons/1990/dec/20/vietnamese-children-hong-kong>

inefficiency of the UNHCR, even though everyone agreed that it was appalling for unaccompanied minors to be left in detention and everyone was working in their “best interests.”

The case of Ngo Van Ha best sums up the frustrations involved in dealing with the UNHCR. The case only came to light by accident when volunteer lawyer David Ireland visited Tai A Chau and was told about Ha’s situation. Ha was a minor, who had been refused the opportunity of reunion with his relatives in America, screened out and was now pending repatriation to an uncle who did not want him in Vietnam. The matter seemed a simple question of following the UNHCR's own dictum of basing any decision about unaccompanied minors “on the fundamental principle of the best interests of the child.” Yet according to the SCUM, it was in Ha's best interests to return to his uncle in Vietnam.

Lawyers Pam Baker and David Ireland filed papers aimed at making Ha a ward of the court, which would effectively prevent his removal from Hong Kong while more information was gathered to support his case. Although High Court judge Neil Kaplan refused to intervene through wardship proceedings, he did urge the UNHCR and immigration department to reconsider their decision and send Ha to America.

The immigration department's response to this judicial advice was to remove Ha from Tai A Chau to Whitehead post-haste on 15 January 1994, threatening that he would be repatriated very soon to Vietnam. The media ran stories on Ha's case, bringing it fully into the public arena. A judicial review of Ha’s refugee status was filed and duly dismissed. At the time, a new chief of mission, Jahanshah Assadi, had just been appointed to run the UNHCR in Hong Kong and this was his first test.

While much information had been gathered about Ha's relatives in California, and their willingness to look after him, little was known about his uncle in Vietnam. The UNHCR through its Vietnam agents, Nordic Assistance for Repatriated Vietnamese (NARV), went to

visit Ha's uncle, a journey of several days. When his uncle said that he did not want to have Ha come back, the NARV representative persevered, offering the uncle money and then when all else failed, saying that he only had to accept Ha back for one day after which the child would be relocated into an orphanage. The uncle still refused.¹⁶⁶

An ATV camera crew from Hong Kong led by reporter Vivian McGrath also flew to Vietnam and visited the uncle. She was regaled with stories of NARV harassment and told that it would be very difficult for Ha to live with the family as they had barely enough food and shelter to look after themselves.

Under pressure from the press and lawyers, the UNHCR reconsidered its position. Finally, on 23 February 1994, Ngo Van Ha was granted refugee status by the UNHCR on the grounds of it being in “his best interests” to be reunited with his aunt in America.¹⁶⁷

No Freedom of Information

In the detention centres of Hong Kong, Vietnamese Asylum Seekers and agency workers were punished for expressing their opinions. There were also punitive restrictions on Asylum Seekers' access to information. This situation contravened Article 19 of the 1948 Universal Declaration of Human Rights which reads: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

Unsupervised access of journalists to the detention centres was completely prevented on the grounds that the government wanted to avoid inciting unrest in the camps,¹⁶⁸ and also

¹⁶⁶ Kerry E. Doyle, “Orphan Ha Freed: How many more cases like it?” *Refugee Concern Newsmagazine*, Issue 1, March/April 1994, p. 6.

¹⁶⁷ Ibid.

¹⁶⁸ Human Rights Watch, “Abuses Against Vietnamese Asylum Seekers in the Final Days of the Comprehensive Plan of Action,” 1 March 1997, C902, pp. 3 and 10,

because the government did not want individual cases seeking asylum to be highlighted in the media to prevent public sympathy from undermining the government's hardline policy. On occasions when the government needed to create an atmosphere of support for its policy of forced repatriation, selected journalists were allowed to tour the camps under the guidance and control of the CSD ("for their own safety"). In July 1992, the *South China Morning Post* wrote a piece entitled "Inside Whitehead" giving a favourable account of the way CSD ran the camps.¹⁶⁹ This was aligned with the resumption of forced repatriation flights and increased tensions in the detention centres.

On Friday, 4 December 1992, an ATV camera crew was allowed into Whitehead to film children dancing in the school area, while CSD officers handed money to Asylum Seekers to buy food and talked in a friendly fashion with detainees. The background was that a forced repatriation flight was in the offing, and negative stories about the conditions of detention as described in testimony in the Boat 101 case had hit international headlines. Refugee Coordinator Clinton Leeks was due to testify in the case 11 days later.¹⁷⁰

Another method of control was through the provision of information. The type of information allowed into the camps was distorted, with the UNHCR determined to maintain control of all news that reached the ears of the Asylum Seekers. They created "information rooms" aimed at providing a constant stream of news to the Asylum Seekers.¹⁷¹

Another important episode was the closing of *Freedom Magazine*, the premier news and commentary journal edited by Vietnamese Asylum Seekers in Whitehead in 1993. Ostensibly, it was closed down due to a lack of funds. However, according to Human Rights Watch:

The UNHCR refused to reauthorize the magazine, citing lack of resources despite

<http://www.unhcr.org/refworld/docid/3ae6a7f10.html>

¹⁶⁹ Paul Lakatos, "Inside Whitehead," Spectrum, *South China Morning Post*, 19 July 1992.

¹⁷⁰ *South China Morning Post*, "Refugees not told of successful action," 15 December 1992.

¹⁷¹ Scott McKenzie, "Bid to fight Viet plan threat," *South China Morning Post*, 19 May 1995.

offers of financing and technical assistance from Hong Kong corporations and professionals; the journal's independence in publishing refugee views, however, was widely believed to be the real reason for its closure.¹⁷²

The Vietnamese distrusted information from the UNHCR, believing it was dedicated to forced repatriation and therefore all the news it provided was prejudiced towards positive news about Vietnam and negative news about their chances of gaining refugee status and resettlement. In 1994, legislator Christine Loh established the Non-Government Organisation Joint Conference (NGOJC), one of its objectives being to “understand the information needs of Vietnamese Asylum Seekers detained in camps in Hong Kong.”¹⁷³ For the first time, a group looked at what the Asylum Seekers needed rather than dictating what they thought was necessary. However, the UNHCR refused to work with one of the members of the NGOJC, Refugee Concern Hong Kong (RCHK), which had a history of speaking out as an advocate of the Asylum Seekers. Even though RCHK subsequently withdrew, the momentum of the programme was lost and the NGOJC disintegrated, leaving the UNHCR in its dominant role as the main provider of information into the camps.

In 1992, Heather Stroud was banned from Whitehead, after it was stated that she had used her position as an agency worker to gather information about individual Asylum Seekers and then aired the stories in public. Mrs. Stroud had been lobbying on behalf of a group of Asylum Seekers, known as the Fang Cheng group,¹⁷⁴ and having pursued her concerns with the UNHCR and security branch, she felt that nothing would be done to protect this group, who were in danger of being repatriated to China. Although Mrs. Stroud was banned, the

¹⁷² Human Rights Watch, Human Rights Watch World Report 1994 - Hong Kong,” 1 January 1994, <http://www.unhcr.org/refworld/docid/467fca841c.html>

¹⁷³ Charter of the NGOJC, 27 April 1994, revised 10 August 1994. The author attended the first meetings of the NGOJC.

¹⁷⁴ Chris Dobson, “UN High Commissioner for Refugees bans aid worker from camp,” *South China Morning Post*, 22 September 1991, p. 5. The Fang Cheng group gained their name from one of the prisons in China where Vietnamese were incarcerated when they were caught after crossing the land border between Vietnam and China.

majority of the Fang Cheng group was eventually granted asylum. While the press and agency workers were restricted in their access to and reporting about what happened in the camps, the Asylum Seekers faced the possibility of even sterner restrictions.

Isolation Huts

On 20 July 1990, the CSD camp commander at High Island Detention Centre, Alan Newton, revealed to the *South China Morning Post* that 213 Asylum Seekers, including women and children, had been locked up indefinitely in a corrugated iron shed encircled by steel fences and razor wire. The existence of isolation units in the detention centres had been previously unknown to the public. Some Asylum Seekers had been held for up to six months in the shed, known as Hut I. Some individuals were also put in isolation units without warning and for no reason, according to the article. Newton said the people had been locked up because of complaints from other inmates or for causing disturbances. None had been given access to a lawyer or charged with any crime. Newton said the isolation hut helped prevent outbreaks of violence and was one of the major reasons why there had been few problems at High Island.¹⁷⁵

The existence of isolation units at Whitehead came to light during the Boat 101 trial in 1990, when the judge asked to visit the detention centre. During an inspection of Sections 1 and 2, Whitehead Superintendent Jasmin Kang was asked whether there was an isolation or prison unit in the camp, to which he replied, “No.” The plaintiffs’ lawyers had been briefed by their clients of the exact location of the isolation units and asked to visit them, at which point they were told the isolation units were voluntary units in which the Asylum Seekers

¹⁷⁵ Fiona MacMahon, “Police defend use of detention hut at centre,” *South China Morning Post*, 21 July 1990.

sometimes asked to be placed.¹⁷⁶

Legal Challenges to Indefinite Detention

This section deals with two issues: those stateless people who could not be returned to their country of origin as they had no papers, which resulted in them being detained indefinitely and, secondly, the arbitrary detention of Asylum Seekers for an indefinite term.

Under Section 13D (2) of the Hong Kong Immigration Act, Vietnamese migrants who had been screened out were held in detention “pending their removal to Vietnam.” The problem for a sizeable group of Asylum Seekers was that the Vietnamese authorities did not recognise them as Vietnamese citizens. As a consequence, when they applied for voluntary repatriation, and in some cases when the Hong Kong government applied on their behalf for forced repatriation, the Vietnamese delegation based in Hong Kong refused to accept them. Several thousand Asylum Seekers fell into this category, which meant that in effect they were held in detention indefinitely rather than “pending their removal to Vietnam.”

Groups that fell into this category included 80 Cambodians who had been granted refugee status by the UNHCR in Vietnam after they had fled Cambodia during the Pol Pot era, over 400 stateless people held in the camps and as many as 3,000 Ethnic Chinese Vietnamese Illegal Immigrants¹⁷⁷ (ECVIIs). The ECVIIs had fled Vietnam after the Sino-Vietnam War of 1979 and settled in China. They were accepted, but never received residency documents. The vast majority of the ECVIIs who arrived in the post-1988 cut-off period were eventually returned to China after Hong Kong agreed to pay Beijing to take them back.¹⁷⁸

¹⁷⁶ Hong Kong High Court, “The Judgment of the Hon. Mr. Justice Patrick Chan in the case of Pham Van Ngo and others vs the Attorney General (1990, No. A4895),” the Supreme Court of Hong Kong, High Court, 30 July 1993, p. 157. The author is in possession of the transcript.

¹⁷⁷ Appendix 1c.

¹⁷⁸ Emma Batha, “Boat People Accuse Government of Breaking Promises on Screening,” *South China Morning Post*, 5 August 1995.

They were treated in the same way as illegal Chinese immigrants from the Mainland entering Hong Kong.

A series of legal challenges to the indefinite detention of these groups by law firm Pam Baker & Company, which worked on behalf of the Asylum Seekers, resulted in the release from detention and subsequent refugee status for several hundred people. This included 274 ECVIIs, who were then rearrested by the government.¹⁷⁹

In February 1997, four months ahead of the handover of Hong Kong to China, there were 2,300 Asylum Seekers in Hong Kong who had not been approved by the Vietnamese authorities for repatriation. In October 1997, there were still 550 stateless people in Hong Kong, according to lawyer Pam Baker.¹⁸⁰ By 2000, this number had dwindled to just over 100 stateless people in Hong Kong, who although not detained, lived without citizenship or refugee status. They were housed in Pillar Point refugee camp and in a special amnesty were granted residency by the Hong Kong authorities.

The treatment of stateless people in Hong Kong highlights the continued insecurity of stateless people worldwide. The UNHCR estimated there were about 3.5 million stateless people worldwide at the end of 2010, of which the UNHCR had assisted 207,452.¹⁸¹

The Devastating Impact of Detention

All of the issues discussed above, including the fear, violence and corruption associated with the *dai goh* system and government raids, as well as extreme boredom and depression, had a devastating impact on detainees. In November 2011, a “Four Corners” television documentary in Australia and subsequent article on the *ABC’s The Drum Opinion*

¹⁷⁹ Niall Fraser, “Fury as legal chiefs ‘defy’ court over boat people,” *South China Morning Post*, 4 October 1997.

¹⁸⁰ Glenn Schloss and Cliff Buddle, “Blair to be tackled on stranded boat people,” *South China Morning Post*, 11 October 1997.

¹⁸¹ UNHCR, “Stateless Persons,” 2010, <http://www.unhcr.org/4e5228096.html>

website reaffirmed the problems facing Asylum Seekers detained for long periods of time by Australian authorities:

Detained Asylum Seekers have higher rates of depression, anxiety, and PTSD [post-traumatic stress disorder] symptoms than those living in the community. There is evidence regarding the length of detention and prior exposure to interpersonal trauma on rates of depression.¹⁸²

This was also the case in Hong Kong. The impact was not just on adults, it took a serious toll on the many children held in detention. As stated above, there were many unaccompanied minors in the camps. Families were held in detention amid deliberately minimal living conditions and with no regard to the length of stay. “The conditions are problematic and frustrating at best; at worst they create anguish, demoralization and humiliation for families,” reported a 1991 Refugee Concern Hong Kong research study.¹⁸³ The report, “Defenseless in Detention—Vietnamese Children Living Amidst Increasing Violence in Hong Kong,” continued:

“A slow and terrible torture,” were words chosen by one man to describe daily life which never varies except for violent incidents. Boredom, a common and debilitating effect of detention, leads to depression and lowered self-esteem. Respondents reported the following: “I do the same thing every day. It is very boring. I just feel tired and sleep, and when I get up I do not know what to do with myself. My abilities and all my knowledge are slowly lost from my memory.”

The treatment of the Asylum Seekers in Hong Kong was so bad that it provoked academics into giving it a new label—“ethnocide.” The term was coined by Professor Joe Thomas, who worked in the Hong Kong camps for three years. He argued that ethnocide is when a community loses all its internal cohesion. A community may lose its ability to influence its own direction and affairs due to the direct intervention of a dominant group.

¹⁸² Simon Tatz and Kim Ryan, “Detention centres are factories for mental illness,” *ABC’s The Drum Opinion*, 18 November 2011.

¹⁸³ Susan Ann Comerford, Victoria Lee Amour-Hileman and Sharon Rose Waller, “Defenseless in Detention—Vietnamese Children Living Amidst Increasing Violence in Hong Kong,” *Refugee Concern Hong Kong*, 14 June 1991, http://dsc-content-dev.cdlib.org/view?docId=hb9000095r&brand=calisphere&doc.view=entire_text

Ethnocide is a product of a process of an extreme community reaction to an extreme external stimulus of segregation and separation of that community from a broader society.¹⁸⁴ This process has both individual and group consequences. The most important observation in this analysis is the negative direction of change. Mostly, this phenomenon is more destructive than the situation they experienced in their home country.¹⁸⁵

Arbitrary detention was also a clear human rights violation. Amnesty International published a research paper on the “Arbitrary detention of Vietnamese Asylum Seekers” in April 1994. Amnesty said the detention of the Vietnamese in Hong Kong violated Article 9 of the Universal Declaration of Human Rights—“No one shall be subjected to arbitrary arrest, detention or exile”—and the similar Article 9 of the International Covenant on Civil and Political Rights (ICCPR). The summary of the report reads in part:

The Hong Kong authorities' policy of detaining Vietnamese Asylum Seekers contravenes a number of international standards. The detention is in practice automatic and is for an indefinite term. The legislation makes no provision for the detention to be subject to judicial control, nor does it provide for a procedure whereby Asylum Seekers can challenge the lawfulness of their detention; the only way to challenge the detention is through an application for judicial review, which is not an effective remedy. The result is that thousands of Vietnamese Asylum Seekers are arbitrarily detained in Hong Kong—committed to detention by the order of an immigration officer and held, in many cases, for several years, in prison-like conditions.

The Hong Kong government's stated purpose, when introducing the policy of detention in 1982, was to deter other Asylum Seekers from coming to Hong Kong. Deterrence is not one of the reasons stated in Conclusion 44 of the Executive Committee of the Programme of the UNHCR for which Asylum Seekers may legitimately be detained; moreover, the automatic detention of Asylum Seekers on their arrival in Hong Kong runs counter to the provision in Conclusion 44 that detention of Asylum Seekers should normally

¹⁸⁴ Joe Thomas, “Life in the Hong Kong Camps: Detention or Ethnocide?” *Refuge*, Vol. 13, No. 5, September 1993,

<https://pi.library.yorku.ca/ojs/index.php/refuge/article/viewFile/21746/20416>

¹⁸⁵ Ibid.

be avoided.¹⁸⁶

The Lawyers Committee for Human Rights and the Women's Commission for Refugee Women and Children in 1993 submitted a legal brief to the United Nations Working Group on Arbitrary Detention of the United Nations Commission on Human Rights requesting the Hong Kong government end its practice of arbitrarily detaining Vietnamese Asylum Seekers. It argued the detention was in “violation of current international norms as established by treaty and customary law.” The report said:

Hong Kong's humane deterrence policy, intended to deter Vietnamese from coming to Hong Kong through the use of prolonged arbitrary detention, is cruel, unfounded, and violates international law. The Ordinance singles out the Vietnamese for this inhumane treatment and fails to provide even the most minimal procedural safeguards. The Vietnamese have no right to an individualized determination nor the right to challenge the underlying legality of the detention.¹⁸⁷

Conclusion

As seen in the examples above, detention was a disastrous policy that had dire consequences for the more than 74,000 Vietnamese Asylum Seekers who were subject to it. In addition, it resulted in a series of human rights violations that largely went unnoticed as there was no adequate process to monitor the problems or enforce any change when the abuses did come to light.

“The creation of this planning disaster, this administrative impossibility, this manager's nightmare, was rightly described by [UNHCR Hong Kong Chief of Mission] Robert Van Leeuwen as a ‘monster’ that was not readily controlled by anyone,”¹⁸⁸ wrote

¹⁸⁶ *Amnesty International*, Hong Kong, “Arbitrary Detention of Vietnamese Asylum Seekers,” April 1994. AI Index: ASA 19/04/94. Distr: SC/CO,

<http://www.unhcr.org/refworld/publisher,AMNESTY,,VNM,3ae6a98d14,0.html>

¹⁸⁷ Eve B. Burton and David B. Goldstein, “Vietnamese Women And Children Refugees in Hong Kong: An Argument, Against Arbitrary Detention,” *Duke Journal Of Comparative & International Law*, 1993, Vol. 4:71,

<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1333&context>

¹⁸⁸ Leonard Davis, *Hong Kong and the Asylum Seekers from Vietnam*, Cambridge University Press, Hong Kong, 1991, p. 52.

Leonard Davis about Whitehead detention centre in 1991. Yet in spite of being aware of the problem and in spite of their best efforts to the contrary, the UNHCR, both administrative staff and field workers, failed to protect the rights of Asylum Seekers in detention. Indeed, the UNHCR, through its support of the CPA, actually condoned the Asylum Seekers' loss of freedom in detention.

The whole policy was created so no one would have to take responsibility. The Hong Kong government hid behind the figleaf of the UNHCR, saying it supported or condoned actions against the Vietnamese Asylum Seekers, and the UNHCR simply did not have a strong enough presence or mandate to protect its charges. While the UNHCR led outsiders to believe that it maintained a 24-hour presence in the camps the reality was different with field workers arriving at 9:30 am and leaving at approximately 4:30 pm. At night-time when the Asylum Seekers needed an area of sanctuary or a safeguard most, the UNHCR was not present. The same is true of every occasion on which there was a raid or camp movement exercise as the UNHCR instructed its staff to leave the camps to maintain their safety.¹⁸⁹

The Hong Kong government created the policy of detention in Hong Kong in 1982 and the UNHCR condoned the policy when it accepted the terms of the CPA in 1989. Both the Hong Kong Government and the UNHCR managed detention in their own interests, and manifestly not in the best interests of the Asylum Seekers.

¹⁸⁹ Joe Thomas, "Life in the Hong Kong Camps: Detention or Ethnocide?" *Refuge*, Vol. 13, No. 5, September 1993, <https://pi.library.yorku.ca/ojs/index.php/refuge/article/viewFile/21746/20416>



5.1 SOS protest formation in Section 1 of Whitehead

Chapter Five

Screening—A flawed policy

The Asylum Seekers colloquially dubbed their failures to achieve refugee status as “chicken wings.” The first letter of refusal of refugee status sent by the immigration department was known to the Asylum Seekers as their first “chicken wing.” The second “chicken wing” was the refusal of the Refugee Status Review Board (RSRB). The third “chicken wing” was a refusal of the UNHCR mandate. The UNHCR had been given a special power, known informally as its mandate, under the CPA to grant refugee status to Asylum Seekers in exceptional cases that had been overlooked or missed by the Immigration Department and RSRB. The term “chicken wing” derived from the eagle stamp at the head of the notepaper containing the Immigration Department refusal and was transposed by the Vietnamese into a chicken as this was a flightless bird and the refused asylum seeker would not be able to “fly” to freedom.

In this chapter I look at the three “chicken wings” in the screening process—the Hong Kong Immigration Department, the Refugee Status Review Board and the UNHCR mandate—giving examples of those screened in as refugees and those who failed. I will also look at a fourth process, accessed by far fewer people, the domestic court system. I highlight the flaws in each stage of the screening process as articulated by a range of human rights lawyers including Arthur Helton in the United States, David Clark from New Zealand and Harriet Samuels from the United Kingdom.

I cite several legal challenges—the judicial reviews—to screening, highlighting the injustice of the system. Finally, I will use the example of the United States’ Resettlement of Vietnamese Refugees (ROVR) programme that was set up in 1996 to encourage Asylum Seekers around the region to return to Vietnam, to show that the group of Asylum Seekers

who underwent screening in Hong Kong were cheated of their rights. Under ROVR, 88 per cent of the almost 20,000 former Asylum Seekers who were eligible for rescreening after returning to Vietnam were granted refugee status and were resettled overseas. I will show that the criteria used in Hong Kong were far stricter than those employed by the U.S. because the Hong Kong screening process was aimed at deterring future arrivals, rather than serving as an unbiased process to determine refugee status. This chapter demonstrates that screening was a cynical mechanism of deterrence and precursor to coercive repatriation, all of which occurred with no effective oversight from the UNHCR.

Screening as a Deterrent

From mid-1988, the Hong Kong government stopped granting automatic refugee status to new arrivals from Vietnam. Instead, a new policy of screening all Vietnamese arrivals to determine whether they were political refugees or economic migrants was introduced. This policy was adopted with the express aim of deterring future arrivals. Geoffrey Barnes, Hong Kong Secretary for Security, said in the Hong Kong Legislative Council on 15 June 1988:

...as from midnight tonight, all boat people from Vietnam will be treated as illegal immigrants and detained, like illegal immigrants anywhere in the world, pending their return to their country of origin. However, we shall screen all arrivals. This procedure will determine whether any of them qualify as genuine refugees according to internationally accepted criteria.¹⁹⁰

Only 15 per cent¹⁹¹ of the new arrivals were designated as refugees, leaving more than 67,000 people in limbo in Hong Kong's detention centres, unwilling to return to Vietnam for fear of persecution and unable to be resettled in a third country. The screening process to

¹⁹⁰ Geoffrey Barnes, *Hong Kong Legislative Council*, 15 June 1988, www.library.legco.gov.hk

¹⁹¹ Appendix 1c.

determine refugee status was flawed,¹⁹² and a significant proportion of those placed in detention were probably genuine refugees.

One of the criticisms of the Hong Kong government and the UNHCR was that they were not forthcoming with information about how the Asylum Seekers had performed in screening. In fact, at no point were details of the refugee screening interviews made available for scrutiny. This was in spite of the Comprehensive Plan of Action including provisions for the disclosure of information regarding the procedures, the criteria and the presentation of asylum cases, and prompt advice of the decision in writing within a prescribed period and a right of appeal against negative decisions and proper appeals procedures for this purpose.¹⁹³ A major reason for this lack of transparency, particularly in the first two years of the new policy, was that the screening process was intended as a deterrent. Secretary for Security Barnes told the Hong Kong Legislative Council on 15 February 1989:

The objectives of the new screening policy are to deter arrivals from Vietnam and to form a basis for long-term durable solutions for both refugees and non-refugees.

The long-term effectiveness of the policy will therefore have to be judged in terms of deterring people from travelling to Hong Kong, the level of repatriation and the level of resettlement. It is far too early at this stage to form a judgment on the effectiveness of the policy and we must wait to see the level of arrivals over the summer of 1989 and the outcome of the international efforts now being made to find long-term solutions to this problem.¹⁹⁴

Table 5.1 shows the number of Vietnamese Asylum Seekers that went through the screening process.

¹⁹² Arthur Helton, "Comprehensive plan of action for Indochinese Asylum Seekers: hearing before the Subcommittee on International Operations and Human Rights of the Committee on International Relations," House of Representatives, One Hundred Fourth Congress, first session, July 27, 1995, p. 109-110, http://www17.us.archive.org/stream/comprehensivepla00unit/comprehensivepla00unit_djvu.txt

¹⁹³ Appendix 3.

¹⁹⁴ Geoffrey Barnes, Secretary for Security, Hong Kong Legislative Council, 15 February 1989, http://www.legco.gov.hk/yr88-89/english/lc_sitg/hansard/h890215.pdf

Table 5.1
Screening of Arrivals after 16 June 1988

	Number	% of total arrivals	% of total screened
Total arrivals	74,019	100	
Total screened	60,434	82	100
Total never screened	13,585	18.1	
Immigration Department (total)			
Screened in	6,911	9.3	11.4
Screened out	53,533	72.3	88.6
RSRB (total reviewed)	48,758	65.9	80.7
Screened in	2,865		5.9
Screened out	45,893		94.1
Total number screened in by UNHCR:	1,601	2.2	3.5
Total number screened in (ID, RSRB, UNHCR)	11,377	15.4	18.8

Source: Government Information Services 1997¹⁹⁵ and UNHCR

The bottom line is that almost six out of every seven people who fled Vietnam and arrived in Hong Kong after 15 June 1988 were refused refugee status or returned to Vietnam before being screened. Of those who returned, 13,585 people were never screened. Hong Kong government statistics generally tried to inflate the percentage of those screened in by excluding those who returned to Vietnam before they were screened. However, given that many departed Hong Kong because they were put under pressure to do so by government actions, in Table 5.1 I have given percentages for both categories.

As Human Rights Watch Asia noted the final percentage of those screened in was very close to “the government’s initial projection that no more than 10 per cent of the Vietnamese boat people would be ‘genuine refugees.’”¹⁹⁶ This suggests that the government had set a quota.

Moreover, significantly higher success rates for the granting of refugee status were

¹⁹⁵ Appendix 1c.

¹⁹⁶ Human Rights Watch, “Abuses Against Vietnamese Asylum Seekers in the Final Days of the Comprehensive Plan of Action,” 1 March 1997, C902, p.15, <http://www.unhcr.org/refworld/docid/3ae6a7f10.html>

reported in all other ports of first asylum.¹⁹⁷ Thailand, Indonesia and Malaysia all resettled more Asylum Seekers than were repatriated in the post-1988 period. Only Hong Kong repatriated more than were resettled in this period. For the region as a whole, more than 32,300 people, or 27.9 percent of the total, were recognized as refugees under CPA procedures, while 83,300, or 72.1 per cent, were screened out.¹⁹⁸ The regional success rate is almost double the percentage for Hong Kong.

The flaws in the screening process were compounded by the UNHCR's failure to adequately monitor the situation. The agency was compromised because it also held the power of granting refugee status to Asylum Seekers, meaning it was not a neutral observer of the process.

A well-founded fear of persecution in Vietnam

It is likely that the vast majority of Asylum Seekers believed they had a well-founded fear of persecution if they returned to Vietnam. In April 1992, Amnesty International produced a report stating, "at least 60 prisoners of conscience and possible prisoners of conscience continue to be held in detention in the Socialist Republic of Vietnam, apparently for the peaceful expression of their religious beliefs."¹⁹⁹ Among them were former "re-education" camp detainees, members of the Protestant church, and writers and journalists and other non-violent critics of the government."²⁰⁰

In October 1993, Amnesty noted continuing concern "about a number of existing legal and political practices and policies which violate the civil and political rights of its citizens,

¹⁹⁷ Appendix 1d.

¹⁹⁸ UNHCR Public Information Services, "Special Report, Comprehensive Plan of Action, The Indo-Chinese exodus and the CPA," June 1996, p. 10.

¹⁹⁹ Amnesty International, "Socialist Republic of Vietnam, Continued detention of members of religious organisations," April 1992, AI Index: ASA 41/04/92.

²⁰⁰ Amnesty International, "Socialist Republic of Vietnam, Arrests of Political Prisoners, 1990-1991," June 1992, AI Index: ASA 41/01/92.

such as the use of administrative detention and unfair political trials.” From 1994 to 1997, Amnesty International published at least eight reports detailing persecution and human rights violations in Vietnam.²⁰¹

In the detention centres of Hong Kong there were also multiple cases of Asylum Seekers who had well-grounded fears of persecution in Vietnam under the guidelines of the 1951 Convention. There were “201 known former South Vietnamese soldiers, and 60 Nung minority Special Forces troops, all of whom fought for the Americans during the war,” as well as “between 50 and 100 refugees from Cambodia [who] were being detained illegally.”²⁰²

Amongst those screened out in Hong Kong’s detention centres were approximately 150 writers and poets, many of whom had been working in this profession in Vietnam, while others by dint of their articles penned in detention had assumed the status of journalist or writer. The international writers’ association PEN compiled a list of 140 writers in need of support in Hong Kong in order to prevent them from being forcibly repatriated to Vietnam, where they would likely suffer persecution because of the materials they had written

²⁰¹ Amnesty International, “Socialist Republic of Vietnam, Rearrest of government critic,” March 1994, AI Index: ASA 41/03/94.

Amnesty International, “Socialist Republic of Vietnam, Buddhist Monks in detention,” May 1994, AI Index: ASA 41/05/94.

Amnesty International, “Socialist Republic of Vietnam, Recent arrests of Buddhists,” February 1995, AI Index: ASA 41/02/95.

Amnesty International, “Socialist Republic of Vietnam, Vietnamese authorities arrest leading dissident monks,” 10 January 1995, AI Index: ASA 41/WU01/95.

Amnesty International, “Socialist Republic of Vietnam, AI condemns imprisonment of party critics,” 8 November 1995, AI Index: ASA 41/07/95.

Amnesty International, “Socialist Republic of Vietnam, AI against the trial of Ha Si Phu and Le Hong Ha,” 22 August 1996, AI Index: ASA 41/07/96.

Amnesty International, “Socialist Republic of Vietnam, The death penalty,” February 1996, AI Index: ASA 41/02/96.

Amnesty International, “Socialist Republic of Vietnam, Newspaper editor arrested and detained,” October 1997, AI Index: ASA 41/13/97.

²⁰² Rob Stewart, “The Boat People: A disaster waiting to happen,” *Executive*, May 1994, p. 34.

criticizing the Vietnamese authorities.²⁰³

The case of Nguyen Van Kha exemplifies the dangers that awaited many Asylum Seekers upon their return to Vietnam. Kha arrived in Hong Kong in August 1989. The reasons he gave for leaving Vietnam, which were supported by several of his friends and acquaintances, clearly placed him in the category of political dissident. He had been in the air force, and had been sent to Russia for training as a flight instructor. His life began to unravel when a senior officer asked him to smuggle drugs and explosives back to Vietnam. Kha refused and he was subsequently arrested for consorting with foreigners to the detriment of Vietnam. After spending a year in a hard labour camp in Vietnam, Kha bribed his way out and into the Hanoi's Foreign Languages University. He became involved in a political group and was again arrested and imprisoned. This time he escaped and fled to Hong Kong. His story was not accepted by the Immigration Department or the RSRB. He slashed his stomach in protest at the decision, but was still forcibly repatriated to Vietnam, in spite of pleas by lawyers to rescreen him. Kha was separated from his wife and child upon arrival in Hanoi, and then imprisoned on unclear charges, initially quoted as burglary but later changed to bigamy.

Kha's case was high profile enough to warrant caution by the Hong Kong government and the UNHCR before he was forcibly repatriated. His case should also have been followed up after his return to Vietnam. However, no investigation was conducted, and refugee lawyers were merely told by the UNHCR, the British ambassador to Vietnam, and the Hong Kong government that they did not have any jurisdiction to interfere in domestic matters in Vietnam.

Without a doubt many genuine refugees, such as Kha, were labeled as economic migrants and coerced into "voluntarily" returning to Vietnam or they were forcibly returned.

²⁰³ Hong Kong PEN, "Vietnamese Writers in Hong Kong's Camps," European Human Rights Foundation, October 1995. For more information on PEN go to: www.pen-international.org

However, the failings of the screening process meant that no one will ever know the true number of genuine refugees that were detained in Hong Kong.

The first stage of screening—the Immigration Department

In introducing the closed camp policy and screening on 15 June 1988, Hong Kong's Chief Secretary told the Legislative Council:

All but a handful of these people are ethnic Vietnamese and have no connections or family links outside Vietnam. Their prospects for resettlement in third countries under current criteria are negligible. The major resettlement countries are increasingly unwilling to accept these people, particularly ethnic Vietnamese from North Vietnam, as refugees for resettlement purposes.

Indeed, it is widely believed that a large proportion of Vietnamese boat people, particularly those arriving in Hong Kong, are not refugees, and that they are not leaving Vietnam, in the terms of the 1951 UN Convention on the status of refugees, because of a 'well-founded fear of persecution on grounds of race, religion, nationality or membership of a particular social or political grouping.' They are simply people seeking a better life.²⁰⁴

By announcing that they believed only "a handful of" the new arrivals were refugees, the Hong Kong government effectively predetermined the outcome of the screening process, undermining its credibility and denying the Asylum Seekers a fair hearing. It meant that instead of applying the "benefit of the doubt" criteria suggested in the Comprehensive Plan of Action's adherence to guidelines based on the 1951 UN Convention on the Status of Refugees, the immigration officials would put the onus of proving refugee status onto the Asylum Seekers. The evidence of this is seen in the line of questioning of the immigration officials and repeated requests for proof of persecution from the Asylum Seekers, according to human rights lawyers who handled cases where Asylum Seekers were wrongfully screened out. The government's and therefore the immigration department's starting assumption was that the Vietnamese were economic migrants.

²⁰⁴ David Ford, Hong Kong Legislative Council, 15 June 1988, www.library.legco.gov.hk

The basis of the screening process was to determine whether a person was a political refugee who had suffered “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion,”²⁰⁵ or whether the person was an economic migrant. An economic migrant was classified as someone who had left Vietnam simply in search of a better existence. It was the first time this distinction was made in a refugee screening situation, and the semantics of these definitions were clearly aimed at reducing the numbers of Vietnamese being accepted for resettlement. It was widely asserted in government and UNHCR circles that many Vietnamese had fled as a result of the economic malaise in the wake of the collapse of the Soviet Union and the withdrawal of its support to Vietnam. The UNHCR in 1997 summarised the situation as follows:

Confronted with growing social problems at home, and claiming that many of these Asylum Seekers are actually economic migrants, the governments of the industrialized states have introduced an array of different measures intended to prevent or deter people from seeking refuge on their territory.²⁰⁶

The debate about whether a person is a political refugee or an economic migrant remains controversial to this day. Among those who should have been obviously eligible for refugee status were a group of ethnic Nung soldiers and relatives of soldiers, who had served both the French and US armed forces in Vietnam, and suffered persecution post-1975 because of their ethnicity and past military service. In 1992, Asia Watch conducted a series of interviews with the Nung Asylum Seekers in Hong Kong and identified them as at risk of persecution if they were returned to Vietnam. Under the Communist Vietnam government the Nung were excluded from public office, state sector jobs and tertiary education. They were forced to move to special economic zones, where conditions were close to servitude. They were forced to donate free labour to the zone and live under tough restrictions. Fatalities were

²⁰⁵ United Nations, Convention and Protocol Relating to the Status of Refugees, 1951 (updated 1967), <http://www.unhcr.org/p.s/49da0e466.html>

²⁰⁶ UNHCR, “The State of the World’s Refugees, A Humanitarian Agenda,” 1 January 1997, <http://www.unhcr.org/cgi-bin/texis/vtx/home>

high, both from explosions caused by undetonated munitions left behind during the war, and from malnutrition. One of the Asia Watch interviewees estimated that 50 out of 400 in a settlement might die each year. They were screened out by the Immigration Department and the RSRB in 1990:

Many Nung were processed under the notorious “fast-track” procedure of early 1990, whereby people were given cursory interviews and expedited appeals shortly after their arrival in Hong Kong. The Nung generally complain that interviewers were unsympathetic and bullying and that they were not able to communicate with the immigration authorities or their translators in either fluent Vietnamese or fluent Cantonese. Furthermore, neither the Hong Kong Immigration Department nor the Refugee Status Review Board are [sic] familiar with the Nung people, their record during Vietnam’s long war, or their treatment subsequently.²⁰⁷

In spite of Asia Watch’s attention in 1992—which included a report called “Refugees at Risk”—it was not until July 1997 that the Nung were finally resettled in the US following the intervention of some of their former army colleagues and a special mandate of refugee status from the UNHCR.

Other groups such as the fishermen from Traco, a town on the border between Vietnam and China, were not so fortunate. After the Sino-Vietnam War in 1979, they were also ordered to move to a Special Economic Zone in the hills and were deprived of their freedom and livelihood. Many died before they finally managed to flee to Hong Kong. They were told by the Immigration Department, the RSRB and the UNHCR that they were economic migrants and forcibly repatriated to Vietnam.

Human Rights Watch Asia summarized the failings of the screening process in its 1997 report:

Some of the key flaws of the determination procedures include inadequate interpretation services, a lack of necessary guidance for Asylum Seekers throughout the process, uninformed and poorly trained interviewers, the failure to provide applicants with access to their files, inadequate notification of the right to appeal, and a general failure throughout the system to resolve credibility questions in favor of the

²⁰⁷ Dinah PoKempner and Sidney Jones, “Refugees at Risk,” *Asia Watch*, 2 August 1992, <http://www.hrw.org/reports/pdfs/h/hongkong/hngkng928.pdf>

asylum seeker, as international norms direct.

Another point made in a 1990 report by David Clark and three other lawyers was that the Asylum Seekers did not have any legal representation when they attended the first interview with the immigration officer.²⁰⁸ The first formal announcement about the screening process received by the boat people was the provision of information by the UNHCR about what the Asylum Seekers would face. In the first year after the policy was introduced, this often took the form of a UNHCR field worker with a megaphone bellowing into a crowded hut telling the Asylum Seekers that they would have to go through an interview with the Hong Kong Immigration Department. Months, and often even years, could pass before the immigration department called a person to screening. Some Asylum Seekers waited as long as three years. The length of time the process took faced criticism from lawyers and aid workers.²⁰⁹

Language and translation difficulties were amongst the biggest challenges facing the immigration officers conducting the interviews.²¹⁰ The asylum seeker would speak in Vietnamese which would then be translated into Cantonese by an interpreter, and then written down in English by the Hong Kong Chinese immigration official. Questions would be asked in Cantonese and translated into Vietnamese. Unfortunately much was lost in this complex translation process. As in the clinics, most of the immigration department's interpreters were

²⁰⁸ David Clark, Ann Jordan, Carol Peterson and Harriet Samuels, "The Flaws in the Vietnamese Refugee Screening Process in Hong Kong," A Lawyers' Report, Hong Kong, June 25, 1990.

²⁰⁹ Arthur Helton, Testimony to the "Comprehensive plan of action for Indochinese Asylum Seekers: hearing before the Subcommittee on International Operations and Human Rights of the Committee on International Relations," House of Representatives, One Hundred Fourth Congress, first session, July 27, 1995, p. 99,
http://www17.us.archive.org/stream/comprehensivepla00unit/comprehensivepla00unit_djvu.txt

²¹⁰ Hong Kong High Court, Judicial Review of Do Giau, "R v. Director of Immigration and Refugee Status Review Board ex parte Do Giau and others," Supreme Court of Hong Kong High Court, 19 November 1990 to February 18 1991, p. 10,
<http://www.unhcr.org/refworld/pdfid/4f1e8a1e2.pdf>

ethnic Chinese, and spoke a southern Vietnamese dialect, many of the subtleties of which had been lost over ten or more years living in Hong Kong. The majority of Asylum Seekers being screened—over two thirds—were from north Vietnam, and often found it too difficult to communicate with the interpreters.

The Asylum Seekers frequently noted that the interpreter had not fully translated what they had said to the immigration officer. Sometimes the mistakes in translation did not come to light until the Review Board stage, at which point if the asylum seeker restored the truth, he or she was adjudged to have an inconsistent story and the application was thrown out on grounds of a lack of credibility.

The case of Nguyen Dinh Tu highlighted many of these issues. He had worked as a war correspondent and assistant editor of the daily newspaper, *Chinh Luan*, as well as being a stringer for the *New Yorker* magazine from 1969-71. In 1975 he was arrested by security forces, detained without trial and held for thirteen years. He eventually escaped, arriving in Hong Kong on 15 October 1989. This is an extract from a letter he wrote while in San Yick detention centre:

All of us, of course had known roughly about the screening process before we started our journey to Hong Kong. My interview with an officer of the CSD [sic] went as follows:

Immigration Officer: Date of birth?

Nguyen Dinh Tu: Hanoi, North Vietnam, 1924.

IO: Profession?

NDT: Reporter.

IO: How much money did you bring with you?

NDT: None.

IO: You are an “economic migrant”. You may go back to San Yick and wait for repatriation.

NDT: But I'm a political refugee.

IO: I know. But for the time being you've got no financial resources to live on in Hong Kong. Consequently, you are an economic refugee, good for repatriation.

NDT: But after I was arrested in Vietnam, everything I owned was confiscated by the VC authorities: house, books, savings, clothes, shoes, sandals, chopsticks, nail clippers, razors, blades, dishes etc... that clearly explains why I have no money now.

IO: That does not matter, because you came to Hong Kong to make a better living, to look for a better living.

NDT: Quite right. I am seeking a better living. Let me draw your attention to the

etymology of the word “living.” It comes from “to live” and “life.” These words do not exclude mental and spiritual ideas. I'm seeking freedom. Freedom in itself is not a living.

IO: Let's stop arguing. It will not lead anywhere. You are an economic refugee.²¹¹

Mr. Tu was rejected for refugee status by the Immigration Department, but with the help of some of his American magazine friends who verified his background, his case was reviewed and he was resettled in America. The above interview, however, is symptomatic of the preconceptions that immigration department officials had of Vietnamese people arriving in Hong Kong. Each was assumed to be an economic migrant, and unless they could prove otherwise, that is what was written down in the screening report.

The UNHCR continued to defend the screening process despite its increasingly obvious flaws. “Generally the indications are that the criteria in screening are being applied in the way we would like to see them applied, in a humanitarian spirit,” said Dennis McNamara, the deputy director of UNHCR's Refugee Law and Doctrine Division, as quoted in the *South China Morning Post* on June 21, 1990.²¹²

A group of human rights lawyers in Hong Kong disagreed with Mr. McNamara's statements, and they published a report entitled “The Flaws in the Vietnamese Refugee Screening Process in Hong Kong”²¹³ on 25 June 1990. “The screening process is so seriously deficient that no faith can be placed in it,” the report stated amid growing concerns that the Asylum Seekers were being legally cheated out of their rights to refugee status.

The interview by the immigration officer was supposed to follow a questionnaire, which had been drawn up between the Hong Kong government and the UNHCR. According to the 25 June 1990 report by David Clark et al, the questionnaire was never translated into

²¹¹ Nguyen Dinh Tu, *Barbed Wire Newsletter*, p. 1, December 1989.

²¹² Fiona MacMahon, “UNHCR official backs screening procedures,” *South China Morning Post*, 21 June 1990, p. 3.

²¹³ David Clark, Ann Jordan, Carol Peterson and Harriet Samuels, “The Flaws in the Vietnamese Refugee Screening Process in Hong Kong,” A Lawyers' Report, Hong Kong, June 25, 1990.

Vietnamese and never shown to the applicants. Two-thirds of the questionnaire dealt with personal matters and the last third which deals with the most relevant areas is “often passed over in a hasty manner.”

Many of the questions in the questionnaire are misleading. For example, applicants are asked if they were ever deprived of a registration card. Most say no, including those who were never granted one. The question should be: did you ever have a registration card? If so, was it ever taken away from you? If no card was ever granted, why not?”²¹⁴

The report notes that the Immigration Officers did not ask many questions and never explored the reason behind a statement, meaning they only heard a simplistic story, which was inadequate to determine a person's refugee status.

By October 1992, Arthur Helton, who led the Lawyers Committee for Human Rights' refugee program from 1982-1994, had also identified a series of problems with the screening process:

- Demeanour assessments and implausibility assessments, due sometimes to ignorance on the part of the adjudicator of known facts about the country of origin;
- Failure to give the benefit of the doubt;
- Failure to treat all relevant factors and focus on minor factual discrepancies;
- Misapplication of criteria, such as imputed political opinion not considered.²¹⁵

The crucial question, in Helton's opinion, was whether Asylum Seekers had been given the “benefit of the doubt” in the screening process. He identified a lack of training in the techniques of handling interviews and more disturbingly a lack of knowledge about Vietnam on the part of the Immigration Officers. Verifying information about re-education camps, forced labour and the confiscation of property was next to impossible, but as seen above in the interview between Nguyen Dinh Tu and the immigration officer, the benefit of the doubt was not given as a matter of course. Helton suggests that the screening was an

²¹⁴ Ibid.

²¹⁵ Alan Nichols and Paul White, “Refugee Dilemmas, Reviewing the Comprehensive Plan of Action for Asylum Seekers,” LawAsia Human Rights Committee, Manila, 1993, p. 29.

“immigration process rather than refugee status determination.”²¹⁶ Asylum Seekers also reported that intimidatory tactics were employed by immigration officers, such as shouting, banging on the tables and abusing the interviewees. The Asylum Seekers regularly complained to agency workers about such abuses, but nothing was done.

In 1995, Helton presented his criticism to the US House of Representatives alongside other refugee advocates, arguing “The essence of the CPA was ungenerosity.” Helton also noted that the UNHCR had conceded the existence of corrupt practices in the refugee screening processes, and that some Asylum Seekers who did not participate may have been unfairly screened out. Helton said:

The procedures to determine refugee status under the CPA proved to be seriously flawed in several respects, and thousands of genuine refugees were wrongfully rejected. Among the documented inadequacies were:

- Misapplication of criteria;
- Narrow application of criteria, including insufficient attention to the individuals' experiences of past persecution and the current human rights situation in Vietnam;
- Inconsistent application of criteria; like cases were treated differently depending upon the place of reception;
- Lack of uniform standards and effective quality control. The recruitment and training of adjudicators and interpreters varied with the place of reception and contributed to arbitrary outcomes; Hong Kong proved to have the most systematically restrictive adjudication procedures;
- Erroneous credibility determinations. Any ambiguities in the case presentations were typically resolved against applicants for refugee status;
- Inadequate counseling, legal assistance, and interpretation.²¹⁷

The case of Section 9 in Whitehead underscores the above information. Between November 1988, when screening began in the section, and June 1992, a total of 5,600 people went through the screening process. Of these, only 17 were screened in. With family reunions

²¹⁶ Ibid.

²¹⁷ Arthur Helton, “Comprehensive plan of action for Indochinese Asylum Seekers: hearing before the Subcommittee on International Operations and Human Rights of the Committee on International Relations,” House of Representatives, One Hundred Fourth Congress, first session, July 27, 1995, p. 99, http://www17.us.archive.org/stream/comprehensivepla00unit/comprehensivepla00unit_djvu.txt

the total number of people in section 9 who gained refugee status in this period was 35, or 0.7 per cent of those screened.²¹⁸ It was not surprising then that there was strong resistance from the people of Section 9 to going to the screening interviews, and it took violent threats from a *dai goh* named Chong A Sinh, to make people attend. Many of the people in Section 9 complained of bias in the immigration officers' approach to the interviews. Fearing retribution, few complained about the intimidation from the *dai goh*. The threats to the Vietnamese Asylum Seekers were a further abuse of their human rights.

They are also a further demonstration of the UNHCR's inability to monitor or protect their charges. The lack of a UNHCR presence during the screening interviews was key to this. Although the CPA stipulated the "UNHCR will participate in the process as an observer and in advisory capacity,"²¹⁹ in practice this meant that on average one UNHCR official would oversee five or six interviewees at any one time, and in some cases no UNHCR official was present.

Dr. Le Xuan Xhoa, Chairman of the Indochina Resource Action Centre (IRAC) in Washington D.C., reported several other problems related to the screening process including the long delays in the notification of screening results, which was contrary to the CPA's requirement that advice of results must be given promptly. "These unnecessary delays increase the sufferings of vulnerable people, who are seriously at risk," said Dr. Le. He also said that Asylum Seekers, who had sought independent legal advice were subject to intimidation and interrogation.²²⁰

Another area of confusion was that of readbacks. In theory, the immigration officer was supposed to read back to the asylum seeker the contents of the interview, but in practice

²¹⁸ Information taken from a confidential CFSI report, dated June 1992. Document with author.

²¹⁹ Appendix 3.

²²⁰ Alan Nichols and Paul White, *Refugee Dilemmas, Reviewing the Comprehensive Plan of Action for Asylum Seekers*, LawAsia Human Rights Committee, Manila, 1993, p. 42.

in the early days at least, this was not standard procedure and the Asylum Seekers only noticed the discrepancies when they received their first refusal. The lack of readback was cited in the judicial review of Do Giau as a key reason why the asylum seeker won the right to be re-screened.²²¹ In the early days of screening, the interview notes were not read back to Asylum Seekers, and this often caused discrepancies at a later date, because the immigration officer had made a mistake or failed to note down all the relevant information.

Readback was one of the topics addressed by the *Freedom Magazine* editors in a list of questions sent to refugee coordinator Clinton Leeks in 1992. The answers Mr. Leeks gave to these questions were factually incorrect in several areas. He stated “every screened out asylum seeker is seen by an AVS lawyer,” and “the UNHCR inform people whenever their case has been considered for mandate” for refugee status—neither of which were true. In addition, he attempted to formalise the notion that past acts of persecution are no longer considered reason to grant refugee status. This is neither the moral intent nor the legal practice of any of the extant refugee or human rights covenants. The legal test, according to Harriet Samuels is “a well-founded fear of persecution.”²²²

In response to the criticisms, the UNHCR said it “was inevitable both that problems would arise and that some inconsistencies would occur from one country to the next.”²²³ The “inconsistencies” were often huge—overall screening in rates, for instance, varied from 15 per cent in Hong Kong to almost 50 per cent in the Philippines. Other complaints about screening listed by the Asylum Seekers included the fact that the immigration officers only listened to the male head of the household, ignoring the wife's history.

²²¹ Hong Kong High Court, “R v. Director of Immigration and Refugee Status Review Board ex parte Do Giau and others,” Supreme Court of Hong Kong, 19 November 1990 to February 18 1991, pp. 10, 28, 32, <http://www.unhcr.org/refworld/pdfid/4f1e8a1e2.pdf>

²²² David Clark, Ann Jordan, Carol Peterson and Harriet Samuels, “The Flaws in the Vietnamese Refugee Screening Process in Hong Kong,” Hong Kong, 25 June 1990, p. 19.

²²³ UNHCR Public Information Services, *Special Report, Comprehensive Plan of Action, The Indo-Chinese exodus and the CPA*, June 1996, p. 9.

There is little concrete evidence of overt corruption in the screening process in Hong Kong, in spite of Helton's earlier comment that the UNHCR had conceded the existence of corruption in the screening processes. However, in Indonesia, Malaysia and the Philippines there is documented evidence of how the system was abused.²²⁴

The Second Stage of Screening—The Refugee Status Review Board

The Asylum Seekers' second chance in the screening process in Hong Kong was the Refugee Status Review Board. It has been criticized by lawyers even more fiercely than the first stage. "Lies are legion," said Francis Blackwell,²²⁵ OBE, chairman of the Refugee Status Review Board (RSRB) at a press conference in mid-1989, just before the board began to sit in judgment of the Vietnamese Asylum Seekers. It came as no surprise, then, to either the Vietnamese or neutral observers, that the RSRB consistently found a "lack of credibility" in the appeals that were sent to them by the Asylum Seekers. As Harriet Samuels pointed out, "What faith can anyone have in such a process when the people who run it are so obviously anti-Vietnamese?"²²⁶

The membership of the RSRB and its methods were shrouded in mystery. Stephen Lau, who served as chief executive officer of the RSRB for several years, was unable to remember whether there were five or six two-person boards serving in May 1994.²²⁷ In fact, there were six boards at the time.²²⁸ The Vietnamese were quick to rate their chances of success with the board, noting that when they came up in the early days against Hong Kong

²²⁴ Simon Jeans et al, "Report on Corruption in the Screening Process under the Comprehensive Plan of Action in Galang Camp, Indonesia," 20 August, 1994, <https://groups.google.com/forum/?fromgroups#!topic/soc.culture.vietnamese/Hd8B4OUwY2w>

²²⁵ Rob Stewart, "The Lottery," *Executive Magazine*, May 1994, p. 42.

²²⁶ David Clark, Ann Jordan, Carol Peterson and Harriet Samuels, "The Flaws in the Vietnamese Refugee Screening Process in Hong Kong," Hong Kong, 25 June 1990, p. 16.

²²⁷ Ibid.

²²⁸ Fiona MacMahon, "Deadline to end screening," *South China Morning Post*, 30 November 1992, p. 4.

Chinese members, it was best “to feign sickness and hope that we got another western board member the second time round.”²²⁹ The Chinese board members finished their tenure at the end of 1993, but the overall statistics suggest that their disappearance did not increase the chances of being screened in. The Board reviewed a total of 23,073 cases (or 48,758 people as one case often represented a family) and just over 1,000 of these cases (2,865 people) were screened in, representing just under four per cent.^T

The cost of the RSRB was very high, when compared to other solutions that have been put forward (notably by Refugee Concern—see page 114). The RSRB spent HK\$19 million (US\$2.4 million) on screening in 1991.²³⁰ In the same year, the Immigration Department allocated an additional HK\$42 million (US\$5.4 million) to the RSRB to pay for an extra 112 officers and 65 interpreters.²³¹ The 1993-94 session of the RSRB cost the Hong Kong taxpayer a total of HK\$28.3 million, which included flying the board members out to outlying islands to interview the Asylum Seekers, even though there were daily boats. Francis Blackwell collected HK\$137,000 (US\$17,500) per month for chairing the board, while deputy chairmen earned around HK\$80,000 (US\$10,250) per month and members, HK\$60,000 (US\$7,700) per month.

The refusals of refugee status caused tremendous stress for the Asylum Seekers. The refusals of what were regarded as legitimate refugee claims led to great mental anguish and dire consequences in some cases when people were persecuted after repatriation to Vietnam. Shep Lowman, director of international refugee affairs at the U.S. Catholic Conference, spoke about the psychological impact of the flawed screening process on the “psychology of the

²²⁹ Rob Stewart, “The Lottery,” *Executive Magazine*, May 1994, p. 42.

²³⁰ Jonathan Braude, “Governor to cut housekeeping bills,” *South China Morning Post*, 18 March 1992, p. 3.

²³¹ *South China Morning Post*, “\$42m to Help Vietnamese Screening,” 28 October 1991.

people in the camps” which could “create a very dangerous situation.”²³²

A report by the Lawyers Committee for Human Rights analysed 132 decisions made by the Refugee Status Review Board in 1990 and 1991 “in terms of procedures, criteria, and philosophy of decision-making, and evaluate[d] those matters in terms of the international refugee protection standards which are to govern determinations under the CPA.”²³³ The analysis led Helton to conclude, “This process remains hostile to genuine refugees. In all of these cases, refugee status was denied. Settled international standards were ignored. In general, the Review Board decisions lack adequate explanation for their conclusions.”²³⁴

Legal and human rights groups have also questioned the suitability and qualifications of the RSRB to make life and death decisions on specific points of international refugee law, which few if any were technically qualified to rule on. Several members of the RSRB board—including Tom Webb, Wilma Croxon, Dr. Patrick Hase and Nisha Bismillah—were not legally trained.²³⁵ Lawyers David Clark et al. recommended:

The present RSRB should be replaced by competent personnel. No panel should sit unless a legally trained chairman is present. No chairman should sit who does not have a thorough background in refugee law. No lay member of a panel should sit who has not had a thorough briefing in refugee law.²³⁶

²³² Shep Lowman, “Comprehensive plan of action for Indochinese Asylum Seekers: hearing before the Subcommittee on International Operations and Human Rights of the Committee on International Relations,” House of Representatives, One Hundred Fourth Congress, first session, July 27, 1995, p. 50,

[http://www17.us.archive.org/stream/comprehensivepla00unit/comprehensivepla00unit_djvu.t
xt](http://www17.us.archive.org/stream/comprehensivepla00unit/comprehensivepla00unit_djvu.t
xt)

²³³ Wendy E. Connuck and Beth S. Grossman, *Report on Screening of Vietnamese Boat People in Hong Kong*, edited by Arthur C. Helton, Lawyers Committee for Human Rights, 1992.

²³⁴ Arthur Helton, Comprehensive plan of action for Indochinese Asylum Seekers: hearing before the Subcommittee on International Operations and Human Rights of the Committee on International Relations, House of Representatives, One Hundred Fourth Congress, first session, July 27, 1995, p. 104-105,

[http://www17.us.archive.org/stream/comprehensivepla00unit/comprehensivepla00unit_djvu.t
xt](http://www17.us.archive.org/stream/comprehensivepla00unit/comprehensivepla00unit_djvu.t
xt)

²³⁵ Rob Stewart, “The Lottery,” *Executive Magazine*, May 1994, Hong Kong, p. 42.

²³⁶ David Clark (NZ), Ann Jordan (US), Carol Peterson (US) and Harriet Samuels (UK), “The Flaws in the Vietnamese Refugee Screening Process in Hong Kong,” June 25, 1990, p. 21.

There are numerous examples of how RSRB's incompetence played out in practice.

An applicant told the RSRB that he was a member of an anti-communist organisation in Vietnam who had written articles against the Vietnamese government. The board found:

...that he is not being truthful in many aspects of his account of life in Vietnam. The Board does not accept such claims. The Board does not believe the claim that he helped to collect information for an anti-government organisation. The sort of information which he said he collected did not appear to the Board to be useful for anti-government activities. And he did not convince the Board he had access to such information.²³⁷

The RSRB's decision is arbitrary and is not based on first-hand knowledge of the individual's situation in Vietnam. There is no sense of benefit of the doubt in this decision, rather the board picked on apparent inconsistencies that were the result of misinterpretations or misunderstandings because of poor lines of questioning.

In that case, the RSRB at least interviewed the applicant in person. In many other cases, the RSRB deemed it unnecessary to interview the asylum seeker in person, preferring to consider only the file of the Immigration Department and a statement/submission from the AVS lawyer representing the case. An often-repeated phrase in a RSRB refusal letter was:

It was appreciated that there were differences between what had been recorded by the Immigration Officer and what had been submitted by or on behalf of the Applicant in support of his application for a review. These differences were noted and taken into consideration by the Board.

Basically, the board created cover-all phrases that allowed them to dismiss criticisms of their process by saying they had considered the issue. The Asylum Seekers frequently complained that they did not understand the reasons given by the RSRB for the refusal of refugee status as the language was deliberately complex and legalistic. The following is the standard wording of an RSRB refusal letter:

Pursuant to your application under Section 13F(1) of the Immigration Ordinance for a

²³⁷ The letter of refusal from the RSRB in the case of Nguyen Manh Hung. Document with author.

review of the decision of the Director of Immigration whereby he determined your status not be that of a refugee within the meaning of the terms of the United Nations Convention of 1951, the Refugee Status Review Board has fully taken into account all the facts and circumstances of your case which have been advanced by you or on your behalf and has fully reviewed the Director of Immigration's decision in the light thereof. On review the Board finds:

(1) That you are not a refugee within the meaning of the provision of Article 1A (2) of the United Nations Convention of 1951 and the Protocol of 1967.

(2) That you continue to be detained by virtue of Section 13D (1) of the Immigration Ordinance pending your removal from Hong Kong.

In all other respects the Board confirms the Director of Immigration's determination. As provided for in Section 13F (8) of the Immigration Ordinance the above decision is not subject to a review or appeal in any Court.²³⁸

The language is aimed at covering the RSRB in a possible lawsuit, rather than at providing the Asylum Seekers with an adequate rationale for refusing their refugee status. This is a contravention of the wording and intent of the CPA.

While the board said it considered the cases carefully, it still held any disparities against the Asylum Seekers, even though the cause was usually a misunderstanding or misinterpretation. The Lawyers Committee for Human Rights gave details of several of the 132 cases they examined that had been screened by the RSRB. The following are two examples that were also used in a submission to the US House of Representatives in 1995.

In one case, the applicant told the immigration officer that he had not been sent to a New Economic Zone, but did not affirmatively volunteer that he had been ordered to go, had refused, and had been fined and his labor conscripted for that refusal. When an AVS counselor presented those claims—presumably after being the first person to explain to the applicant that those details were important and that no harm would befall him for admitting them—the Review Board rejected them as not credible because they had not been earlier volunteered.

In another case, the applicant was arrested while carrying explosives in Vietnam. He told the immigration officer that the explosives were for fishing, but admitted to the AVS counselor that he had been intending to blow up a bridge. Instead of understanding that the applicant might be reticent to admit such an intent to the

²³⁸ The author received several RSRB refusal letters from Asylum Seekers.

immigration officer, the Review Board summarily rejected the claim made in the AVS submission.²³⁹

The David Clark et al report came to a series of conclusions which found that “procedures in Hong Kong are flawed in several basic respects and that hundreds—perhaps thousands—of Vietnamese refugees have been wrongly screened out.” Solutions put forward included the conducting of the interviews in a manner that is not “threatening, hostile or intimidating,” and that immigration officers should give “detailed, specific reasons for his or her recommendation.” The report goes on to note “the Review Board must recognise that a protection claim can be based on punishment for an allegedly ‘criminal’ act which is in reality political in character.” The meaning of this becomes apparent when a series of examples are discussed, such as a person who is persecuted for fleeing or attempting to flee the country may make that the grounds for claiming asylum. Equally, “the deprivation of food, housing, employment and education on the basis of religion, membership in a particular social group...can be persecution and give rise to a valid claim for refugee protection.”

Further criticisms are laid at the door of the RSRB over the refusal to accept the validity of submissions “where the applicant claims that the investigative officer failed to record material information.” In some cases the RSRB notes that because of the importance of the nature of the facts, it is “unlikely” that the immigration officer would have forgotten to record them, but according to the Asylum Seekers this is exactly what happened. The report notes that there is a widespread “failure to accord the benefit of the doubt” in the screening process.

In another decision, the Review Board discounted any fear of persecution on the part

²³⁹ Arthur Helton, “Comprehensive plan of action for Indochinese Asylum Seekers: hearing before the Subcommittee on International Operations and Human Rights of the Committee on International Relations,” House of Representatives, One Hundred Fourth Congress, first session, July 27, 1995, p. 109-110, http://www17.us.archive.org/stream/comprehensivepla00unit/comprehensivepla00unit_djvu.txt

of the applicant, even though the applicant had already been arrested once. The applicant was engaged in giving aid to ethnic Chinese, despite the laws against such activity. The Review Board, in a brief explanation, concluded that the applicant did not have a political motivation for aiding the Chinese, and, therefore, did not have a well-founded fear of persecution. The benefit of the doubt was not given.

The report concluded that:

The entire screening and review procedures remain seriously flawed. The interview, upon which the initial decision is based, is unlikely to induce an applicant, who is uninformed and unrepresented, to disclose the most significant facts about his or her past. The procedures for filing an appeal are equally unlikely to produce quality submissions - and when it does, and claims are first raised then, the Review Board is likely to evaluate those claims with often insurmountable skepticism.

The appeals procedure does not rectify any of these problems. The Review Board virtually requires the applicant to prove himself or herself credible, although international refugee law requires that it presume credibility. International refugee law also mandates that the Board grant the applicant the benefit of any and all doubts. In practice, the Review Board fails to do so and, instead, expects the applicant to corroborate all aspects of his or her claim. It also consistently discounts the amount of abuse an applicant may suffer if repatriated and thus often finds that disproportionate punishment is not excessive. The Review Board misapplies the international criteria for screening claims for refugee protection. Those Vietnamese refugees who face repatriation as a result of the Review Board's distorted decisions will be victims of persecution.²⁴⁰

The RSRB considered itself the final arbiter of Asylum Seekers refugee status and was defensive of its role. A leaked internal memorandum, dated 29 April 1994 and sent by Francis Blackwell to all RSRB deputy chairmen, board members and the CEO, reveals the RSRB's dislike for the UNHCR's mandate committee and its capacity to "insult" the RSRB by reviewing its decisions and trotting "out a ritualistic jingle dismissing the Board's findings." Blackwell did confirm that the UNHCR's mandate was simply a useful tool for the Hong Kong government, and was "tolerated" because it could help the government extricate itself from tricky or embarrassing situations. The UNHCR's position as a fig leaf for the Hong Kong government is underscored by the comments.

²⁴⁰ David Clark, Ann Jordan, Carol Peterson and Harriet Samuels, "The Flaws in the Vietnamese Refugee Screening Process in Hong Kong," June 25, 1990, p. 21.

The Third Stage of Screening—the UNHCR mandate

The UNHCR also played a part in the screening process under the CPA. It had the power to grant a mandate of refugee status, but this power was equally flawed. Critics argued that the UNHCR compromised its neutrality when it became an arbiter of Asylum Seekers' refugee status. The authority invested in the agency was a double-edged sword. On the one hand, according to the UNCHR, “the authority to recognise refugees under its mandate provided an important safety net for ensuring that no person with a valid claim was egregiously screened out and returned to Vietnam.”²⁴¹ On the other hand, it effectively ended its position as a neutral protection agency. It forced the Asylum Seekers to accept its decisions, its failure to protect them in the face of government aggression and the conditions of detention, in the fear that if they upset the UNHCR, they would lose their last hope of freedom. The UNHCR went from being the protector of the human rights of the Asylum Seekers to being perceived as the enemy.

According to Hong Kong government figures, some 1,601 mandates were granted, all in Hong Kong. That is about 1 per cent of the total number of Asylum Seekers in the region after the June 1988 cut-off date. The fact that UNHCR held the right to grant refugee status also compromised the agency's role as a protector of the Asylum Seekers. James Hathaway said that the “UNHCR seemed to tolerate human rights violations in Vietnam by refusing to accept them as reasons for refugee status.”²⁴²

Legal representation greatly improved an asylum seeker's chance of gaining refugee status.²⁴³ However, the UNHCR failed to ensure the Asylum Seekers were able to gain

²⁴¹ UNHCR, “Special Report, Comprehensive Plan of Action, The Indo-Chinese exodus and the CPA,” *UNHCR Public Information Services*, June 1996, p. 10.

²⁴² Alan Nichols and Paul White, *Refugee Dilemmas, Reviewing the Comprehensive Plan of Action for Asylum Seekers*, LawAsia Human Rights Committee, Manila, 1993, p. 31.

²⁴³ The Legal Subcommittee of Refugee Concern, “Unjust Screening Practices,” *Refugee Concern Newsmagazine*, Issue 1, March/April 1994, p. 10.

adequate access to lawyers. Indeed, 97 per cent of Asylum Seekers did not have legal representation when making submissions for the UNHCR mandate. This was even less than in the previous round, when approximately 80 per cent of Asylum Seekers had to write their own appeal to the RSRB. This was in complete disregard of the UN Basic Principles on the Role of Lawyers.”²⁴⁴ The UNHCR denied this, arguing that the AVS lawyers provided adequate support for the legal needs of the Asylum Seekers.

UNHCR also consistently stated that it was interested in providing the best screening process for Asylum Seekers. However, when opportunities for improvements were proposed, they were blocked. In February 1994, Refugee Concern Hong Kong proposed a fast-track rescreening proposal that could be completed in one year. It involved the UNHCR employing a team of 60 independent lawyers and support staff to write the appeals to the mandate section of the UNHCR in every case where the person refused to voluntarily repatriate. The report continued:

The benefits of the proposal are two-fold if the system is administered fairly. First, genuine refugees who have been screened out will be recognized rather than being returned to face further persecution in Vietnam. Second, non-refugees will be far more inclined to return peacefully to Vietnam if they have had their cases properly heard, determined justly, and are provided with consistent and rational reasons. The rescreening proposal pays for itself if just 9 per cent of the camp population currently refusing to voluntarily repatriate do so after having their cases rescreened. This is achieved by savings made in the cost of forced repatriation flights. [The cost of a flight was HK\$1 million for 60 people].²⁴⁵

The proposal was rejected, showing that UNHCR was both unwilling to fight for the rights of the Asylum Seekers in terms of improving the screening process, and also that it was powerless to change the policy of the governments that controlled its budget. The UNHCR screened in 1,601 Vietnamese Asylum Seekers or 2.2 per cent of those who arrived in Hong

²⁴⁴ Principle 2 of the UN Basic Principles on the Role of Lawyers. Reproduced in Amnesty International, “Hong Kong: Arbitrary detention of Vietnamese Asylum Seekers,” AI Index: ASA 19/04/94.

²⁴⁵ The Legal Subcommittee of Refugee Concern, “Unjust Screening Practices,” *Refugee Concern Newsmagazine*, Issue 1, March/April 1994, p. 10.

Kong after the cut-off date in 1988.

Judicial Reviews

A fourth and final resort of a screened out asylum seeker was to seek redress in the law courts. If such legal redress succeeded, the asylum seeker won the right to be rescreened. While it was initially expected that there would be hundreds of judicial reviews of screening cases in Hong Kong, in practice the numbers were few.

The low numbers of judicial reviews was because most Asylum Seekers did not have enough money to afford lawyers and had little or no access to the lawyers to employ them. In addition, the government made it clear it would fight each and every legal proceeding on an individual basis, arguing that no precedents were going to be set and each case had to be dealt with on individual merit. That made it expensive for independent lawyers, who worked on a low fee or pro bono basis, to challenge the government.

In a further negative development, the CSD made it difficult for Asylum Seekers to access lawyers. In a statement made after she had finished working in the camps, former UNHCR and Save the Children field worker, Tran Thi Thuc Hanh, complained about the CSD's treatment of lawyers and their clients in detention, saying: "Camp management has harassed independent lawyers and the few Asylum Seekers who are able to obtain their service, because they are accused of interfering with voluntary repatriation by giving Asylum Seekers 'false' hope [that they may gain refugee status]."²⁴⁶ This CSD's harassment directly contravened Principle 18 of the Body of Principles for the Protection of all persons under any form of Detention or Imprisonment, which states:

The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be

²⁴⁶ Statement of Tran Thi Thuc Hanh, sworn before Marie Jeannot, notary public State of New York, 17 December 1990.

specified in law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order.²⁴⁷

In early 1991, Pam Baker, who was then a senior Legal Aid lawyer with the Hong Kong government, was banned from detention centres by Hong Kong's Security Branch because it was claimed she was a "disruptive influence."²⁴⁸ It was claimed she had been advising Asylum Seekers not to volunteer to return to Vietnam. No written notice was given to Mrs. Baker.

An even worse situation was that the provision of Legal Aid to the Asylum Seekers was a rare occurrence. From the time that Pam Baker, then of Legal Aid, instructed the Boat 101 case in 1990, it was five years until another case was granted Legal Aid. And even then, according to Mrs. Baker, "those that were granted legal aid were usually the first to be put on ORP flights."²⁴⁹

The Hong Kong Legal Aid department was consistently remiss in processing applications from Asylum Seekers as they were nervous about ending up with another no-win situation such as had occurred in the Boat 101 case, in which the government had had to pay not only for the litigation but also damages. Legal Aid was not forthcoming in the vast majority of cases, and for many years the department just sat on cases refusing to decide whether to grant them funding, leaving the applicants in limbo. In the end the cases were usually rejected or expired because the applicant had been forced back to Vietnam.

The Agency for Voluntary Service (AVS) lawyers were paid for out of UNHCR funds. Their role was to provide those Asylum Seekers who had failed the initial screening

²⁴⁷ Principle 18 of the Body of Principles for the Protection of all persons under any form of Detention or Imprisonment. General Assembly of the UN, Agenda Item 138, Document A/43/889: Report of the Sixth Committee, 2 December 1998.

²⁴⁸ *Amnesty International*, "Hong Kong: Arbitrary detention of Vietnamese Asylum Seekers," AI Index: ASA 19/04/94, p. 12. See also:

South China Morning Post, "Profile-Refugee Lawyer Pam Baker," 13 March 1994, p. 14.

²⁴⁹ From an interview between Pam Baker and the author in Hong Kong on June 21, 1997.

test with legal advice and help in the preparation of a submission to the RSRB. In practice only around 20 per cent of Asylum Seekers managed to receive help from an AVS lawyer. This was partly because the lawyers chose their cases carefully, and partly because there was simply not enough time to visit and help everyone. AVS lawyers did not handle cases concerning the conditions of detention, nor could they bring a judicial review of a screening case.

The AVS lawyers faced an uphill task. They were understaffed and under-funded, and so were always struggling to keep up with the cases in hand. There was never any doubt that the majority of AVS lawyers were conscientious and caring about their clients. However, the fact remains that their coverage of the cases was not complete enough. In 1990, at the height of the screening, there were only 10 AVS lawyers. At this time only ten per cent of cases were referred to an AVS lawyer.

The very fact that around 80 per cent of the Asylum Seekers did not receive the help of an AVS lawyer was part of an informal rating system that was aimed at weeding out “hopeless” cases and not wasting the time of the RSRB or the mandate committee. This was unethical and in breach of international legal standards. Independent lawyers, such as Rob Brook, further criticised the AVS lawyers for breaching client confidentiality standards.²⁵⁰ He cited the passing of notes made during client interviews to the UNHCR for consideration in mandate applications. “AVS has kept these practices a secret from their clients, who would be horrified to learn of them, and justifiably feel cheated,” said Mr. Brook. The AVS response was to shelter behind the argument that they were “hired and fired” by the UNHCR so there was no breach of confidentiality.

Other criticisms of the AVS lawyers stem from the time constraints that were placed on them. Most interviews would take between fifteen minutes and one hour, much of which

²⁵⁰ Rob Brook, “AVS Conflict of Interest,” *Refugee Concern Newsmagazine*, Issue 1, March/April 1994.

was spent answering the client's questions about why they failed the first interview, according to the report by David Clark et al. They add that the AVS lawyers do not tell the applicant the reason for the denial of refugee status, and also that many clients “remain in the dark as to whether they have been represented by the AVS lawyers or not.”

Over the years, a few of the AVS lawyers gained the trust of the Asylum Seekers, but the general rule was that the Vietnamese felt that their AVS representatives were working for the government and not acting in their interests.

Relatively few cases ever got to judicial review, with the first occurring in April 1990. It failed. One of the best documented is that of Do Giau,²⁵¹ which raised a bevy of questions as to the validity of the screening process and specific matters such as the right of readback of notes. The ruling in the plaintiffs favour on the matter of readback changed the nature of the screening interviews and necessitated more care from immigration officers.

In another case brought to court in June 1993, Le Tu Phuong and his wife, Dinh Tho Bich, won the right to be rescreened, following a High Court ruling that an earlier decision to deny them refugee status had been made unfairly. Justice Liu pointed out that the statements taken from them during the screening and the appeal, went through double translation and were not read back to them. As a result of the lack of readback, issues of race, loss of nationality and imputed political opinion—each of which could found a claim to refugee status—were not considered by the immigration officer or the appeal board, according to a 1995 Hong Kong Human Rights Commission submission. The judge said that if the statements had been read back it was likely some of these issues would have been identified and that what the officer wrote down was a “sweeping statement, without analyzing the issues

²⁵¹ Arthur C. Helton, “Judicial Review of the Refugee Status Determination Procedure for Vietnamese Asylum Seekers in Hong Kong: The Case of Do Giau,” *Brooklyn Journal of International Law*, Vol. XV11:2, 1990.

or evaluating the evidence on the issues.”²⁵² Le Tu Phuong, his wife and three children were rescreened and granted refugee status.

The overall result, however, of the judicial reviews for individuals was on the whole negligible. Even if the case was won, all the court could do was direct the immigration department to rescreen the plaintiff. Usually the second application also failed. An example is the group of Asylum Seekers from Ha Tuyen in north Vietnam²⁵³ Of this group, who were essentially telling the same story to immigration officials, 291 were screened in and 120 screened out. Although they took the case to judicial review, the judge refused to listen to the arguments of women who claimed they had been raped by officials, saying they were unable to prove it was because they were ethnic Chinese, and that they had suffered no more than other Vietnamese. “The judgment plainly fails to address properly the legal issues raised by the case,” said lawyer Matthew Gold.²⁵⁴ “Put simply the applicants argued that as they were forced into exile and to live in what were persecutory conditions, this should be sufficient to establish their refugee status. The court did not accept this argument.” The 120 Asylum Seekers from Ha Tuyen were forcibly repatriated to the concentration areas from which they had fled. Their 291 friends and relatives were resettled in America.

Conclusion

In spite of considerable criticism at both local and international levels, the Hong Kong government and the UNHCR continued to defend the screening process. Appeals to re-think

²⁵² Hong Kong Human Rights Commission, “Submission to the United Nations Human Rights Committee on the Fourth Periodic Report by Hong Kong under Article 40 of the International Covenant on Civil and Political Rights (ICCPR),” Hong Kong, 1995, http://www.hkhrc.org.hk/content/publications/UN_reports/1995iccprrreport/iccp9504.htm See also: Hong Kong Supreme Court, *In the Matter of Le Tu Phuong and Dinh Thi Bich Chinh*, No. 2368 (1992), Hong Kong, 23 June 1993, <http://www.unhcr.org/refworld/docid/3ae6b68930.html>

²⁵³ Tran Nhat Mui, “Persecution Continues in the Chinese Concentration Areas in Ha Tuyen,” *Refugee Concern Newsmagazine*, Issue 7, October/November 1996, p. 12.

²⁵⁴ Ibid.

the system were made by Amnesty International and Refugee Concern Hong Kong. Detailed critiques of the process were written by the Lawyers Committee for Human Rights as well as a series of individual lawyers. Yet from beginning to end nothing seriously changed in the screening process. In the latter years the process was refined, but the lack of safeguards and the determination of the government to ignore humanitarian codes or to give reasonable “benefit of the doubt” to Asylum Seekers continued to blight screening. David Clark et al wrote in their report on screening:

The discrepancies between what we have found and the 'official' view from the top, is so great that we are forced to conclude that the UNHCR and the Hong Kong government have no real idea of what is actually happening on the ground. They are so caught up in their own fond notions of how the process is supposed to work, that they have lost touch with the rather grim reality that an inside knowledge of the process inevitably presents.”²⁵⁵

The key point is that because the screening process was “fatally flawed,” it was impossible for the Hong Kong government and the UNHCR to know for sure whether all or any of the boat people were genuine refugees. Given this, two paths faced them: first, to rescreen the Asylum Seekers or find some equivalent method of determining their refugee status. Secondly, to stall its policy of forced repatriation until it was certain that its methodology for determining refugee status was secure. Neither of these paths was in the interests of the Hong Kong government, and therefore in spite of the best international legal, political and humanitarian advice available, the government continued down its chosen path abetted by the UNHCR.

The screening process was carried out as deterrent to Vietnamese Asylum Seekers arriving and staying in Hong Kong. It was never professionally carried out nor were the majority of those executing the policy trained professionals. Its critics were never countenanced and suspicions continue that the whole process appeared rigged from the

²⁵⁵ David Clark, Ann Jordan, Carol Peterson and Harriet Samuels, “The Flaws in the Vietnamese Refugee Screening Process in Hong Kong,” Hong Kong, June 25, 1990, p. 4.

beginning. That almost exactly 15 per cent of the Asylum Seekers were screened in, with a perception that many more southerners and Chinese speakers passed the tests than their northern counterparts, simply increases the doubts about the reliability and unbiased nature of screening. The screening process within the CPA can be viewed as an experiment that failed categorically to safeguard human rights and therefore should never be used again in other situations around the world.

There should have been group screening as it would have been cheaper and fairer. Group screening would also have speeded up the whole process and helped reduce the amount of human rights abuses that occurred in the camps. In terms of cost, it would have paid for itself, by reducing the necessity for so many forced repatriation flights, saving millions of dollars.

A final indicator of the inadequacy of the screening process and of the UNHCR's failure to protect or find solutions for the Vietnamese Asylum Seekers comes from the success of the United States' Resettlement of Vietnamese Refugees (ROVR) programme. As of 4 February 1999, of the 19,926 former Vietnamese Asylum Seekers who had returned to Vietnam and were eligible to apply for the programme, 16,129 had been interviewed, 14,222 or 88 percent, had been approved and 11,089 had already been resettled in the United States. By 2004, all but 20 of the cases had been processed and the success rate stayed at the high levels recorded in 1999.²⁵⁶

All of those accepted under ROVR were refused refugee status under the screening process of the Comprehensive Plan of Action. The ROVR program requires evidence of previous persecution, which was easier to prove than those screened under the CPA where the judgment was based on a more subjective decision by an immigration officer or UNHCR

²⁵⁶ Bureau of International Information Programs, U.S. State Department, "Refugee Admissions Program for East Asia-January 16 State Department fact sheet," U.S. State Department Press Releases and Documents, 16 January 2004, <http://www.state.gov/>

official as to whether the person had “a well-founded fear of persecution.” This distinction should not account for any, let alone all, of the refusals under the CPA when compared to the ROVR programme, according to Trung Doan, the General Secretary of the Council of Vietnamese Refugee Supporting Organisations in Australia (COVRSOA). Trung continued:

We refer to ROVR to show that there were indeed major problems associated with the CPA screening process. These figures support our view that the CPA process and the UNHCR indeed did allow disproportionate numbers of Vietnamese Asylum Seekers, deserving refugee status and therefore protection from the international community, to be rejected.

UNHCR’s role in relation to the CPA screening process was both as a monitor and a safety net, providing training, support and monitoring its effectiveness, and using its review power to rescue deserving but denied refugees. Clearly, UNHCR has failed in its role.²⁵⁷

²⁵⁷ Trung Doan, in a letter to Margaret Piper of the Refugee Council of Australia, *Council of Vietnamese Refugee Supporting Organisations in Australia (COVRSOA)*, 24 February 1999.

6.1 Forced Repatriation at Kai Tak Airport



Chapter Six

Forced Repatriation

The result of a screening policy which determined 85 per cent of the Vietnamese Asylum Seekers to be non-refugees was that the Hong Kong government had to find a solution for those people left in detention. The Asylum Seekers would not willingly return to a country where they feared they would be persecuted. Therefore, according to the Hong Kong government, the only solution was forced repatriation. However, this was not a simple task, partly because of the resistance of the detainees and partly because the Vietnamese government initially refused to accept people who were returning against their will. Large sections of the international community, notably the U.S. government, were also unwilling to set such a precedent on the non-refoulement (non-return) of refugees. Hong Kong's so-called "Orderly Repatriation Programme" was in direct conflict with a fundamental aspect of refugee law, the non-refoulement of refugees.²⁵⁸

In the end, 9,605 people or 14.3 per cent of the 67,005 Vietnamese Asylum Seekers in Hong Kong who returned to Vietnam were forcibly repatriated.²⁵⁹ The cost of the forced repatriation operations and the consequent damage to Hong Kong's reputation as pictures of police in riot gear firing tear gas at passive demonstrators circled the world was not enough to stop the process indefinitely. The trauma inflicted on the Asylum Seekers was immense, and the psychological scars on all involved—Asylum Seekers, police, Correctional Services staff and agency workers—remain to this day.

This chapter makes three overall points. First, it argues that while the theory of the Comprehensive Plan of Action (CPA) was developed with good intentions and involved strong international cooperation, the execution of the plan was flawed, allowing the Hong

²⁵⁸ James C Hathaway, *The Law of Refugee Status*, Butterworths, Toronto, 1991, pp. 24-27.

²⁵⁹ See Table 6.1, p. 158.

Kong authorities too much latitude to abuse the rights of the Asylum Seekers and making the CPA an unacceptable model for dealing with influxes of refugees, Asylum Seekers and migrants. Secondly, forced repatriation was, at best, in contravention of the spirit and practice of every humanitarian convention and protocol written in the 20th century and, at worst, illegal according to human rights lawyers. Thirdly, this chapter demonstrates that the UNHCR failed in its responsibility to protect Vietnamese Asylum Seekers from forced repatriation. The UNHCR supported the Hong Kong government's policy and at times actively participated in arranging for the forced repatriation of the Asylum Seekers.

The first part of this chapter is a timeline from the June 1988 cut-off date to the first forced repatriation flight in December 1989, highlighting the tensions that arose between members of the international community. Part II focuses on forced repatriation being in contravention of the principle of non-refoulement of refugees. In Part III of this chapter I will analyze the role of the UNHCR in forced repatriation, which is full of dilemmas given its mandate as the protection agency for refugees, Asylum Seekers and migrants.²⁶⁰

PART I—Timeline leading to the first forced repatriation flight

15 June 1988 to 12 December 1989 and beyond

As early as 8 July 1988, less than a month after the cut-off date when boat people arriving in Hong Kong were no longer automatically granted refugee status, the Hong Kong government began negotiations with Vietnam about the repatriation of those screened out as economic migrants. Initially the focus of the talks was on Vietnam accepting voluntary returnees, and the Vietnamese authorities indicated that this might be possible. A Hong Kong delegation left for Hanoi on 8 August 1988. The talks centred on the resumption of foreign

²⁶⁰ *UNHCR*, "Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention," Geneva, 2012, <http://www.unhcr.org/refworld/docid/503489533b8.html>

aid to Vietnam in return for its acceptance of returnees. By 12 October 1988, the British and Hong Kong governments stated that they were willing to provide financial aid to Vietnam, if the authorities agreed to accept the return of the boat people.²⁶¹

By January 1989, the main countries involved—including the United States, Great Britain, Thailand and Malaysia—had drafted the fundamentals of the Comprehensive Plan of Action. According to the draft, “when voluntary repatriation was impossible, other actions compatible with international practices” would be considered.²⁶² All attention focused on the impending UN conference on IndoChinese refugees to be held in Geneva on 13-14 June 1989. On 16 May 1989, British Prime Minister Margaret Thatcher and the British Foreign Secretary, Sir Geoffrey Howe, urged the UNHCR to ensure that the conference was a “success.” A week later Sir Geoffrey warned Vietnam that it would “remain an outcast” until it solved the boat people problem. Hong Kong Secretary for Security, Geoffrey Barnes, warned that if Hong Kong did not get its way at Geneva, then “the question of suspending first asylum would inevitably arise.”²⁶³

On 27 May 1989, the Hong Kong government postponed its decision on forced repatriation, essentially as international commitment for the flights, particularly from the U.S., was still not forthcoming. In addition, the Vietnamese government had not yet agreed to accept forced returnees, and Hong Kong was waiting for approval of the Comprehensive Plan of Action. As tensions grew during the summer of 1989 and rumours about the imminent forced repatriation of screened out boat people circulated on a regular basis within the detention centres, so the number of peaceful demonstrations by the Vietnamese against forced repatriation increased. Already, at the end of 1988, the boat people had handed a petition against forced repatriation signed in blood to members of the International Committee of the

²⁶¹ Leonard Davis, *Hong Kong and the Asylum Seekers from Vietnam*, Cambridge University Press, Hong Kong, 1991, p. 202.

²⁶² Ibid, p. 203.

²⁶³ Ibid, p. 204.

Red Cross (ICRC). On 1 June 1989, some 2,000 people in Section 1 of Whitehead Detention Centre started a hunger strike to express their fears about returning to Vietnam and highlighting their plight to the international community.²⁶⁴

The CSD officers in Whitehead increased the pressure on the Asylum Seekers by threatening community leaders and others that they would be forced back to Vietnam if they did not behave. The Geneva Conference in June saw each of the relevant parties stating their case. Vietnam's Vice-President and Foreign Minister Nguyen Co Thach said he came in the "spirit of negotiation," but that any decision on mandatory repatriation would be linked to economic aid. The Americans reaffirmed that they were opposed to forced repatriation of non-refugees, but the British threatened to end the policy of first asylum in Hong Kong unless mandatory repatriation went ahead.²⁶⁵

On 25 June 1989, Secretary for Security Barnes and the Hong Kong Governor's political adviser, Richard Clift, flew to Hanoi for further negotiations. On 30 June, Hong Kong and British Foreign Office officials announced that the first group of mandatory returnees could be sent within one month.²⁶⁶ The Americans stood firm, arguing that forced repatriation was against the accepted principle of non-refoulement of refugees. Therefore the first mandatory repatriation flight of Vietnamese Asylum Seekers from Hong Kong was delayed. The non-government organisations in Hong Kong warned that if the negotiations were conducted under "a veil of secrecy," then the outrage factor amongst NGOs and the international community would be huge.²⁶⁷

²⁶⁴ Chris Peterson, "Boat People Refuse Food in Protest against Hong Kong Policy," *Reuters News Agency*, 1 June 1989.

²⁶⁵ Leonard Davis, *Hong Kong and the Asylum Seekers from Vietnam*, Cambridge University Press, 1991, p. 206.

²⁶⁶ Ibid, p. 207.

²⁶⁷ Steve Muncy, "Asia: Refugees Need Solutions, Not Assumptions," *The Wall Street Journal*, 20 December 1989.

On 29 July 1989, Adrie van Gelderen, the coordinator of International Social Services (ISS) in Hong Kong, warned of mass suicides if forced repatriation flights started.²⁶⁸ Tensions in the camps rose. An editorial in the U.K. newspaper, *The Independent*, likened the return of the boat people to “one of the most shameful events in modern British history”—the decision made by the British Government to send Cossacks back to Russia after World War II.²⁶⁹ Inside Whitehead, the Asylum Seekers were quick to use this editorial, painting the following slogan on the side of a hut in Section 1:

Cossacks 1945, Vietnamese 1988, Hong Kong 1997
 Hong Kong Remember
 Our Today is Your Tomorrow²⁷⁰

The struggle continued through the second half of 1989 with the British and Hong Kong authorities soliciting support for the mandatory repatriation policy and the Asylum Seekers continuing to protest. The Vietnamese Government continued to stall, accusing the British foreign office of “incorrect propaganda” on the state of the mandatory repatriation talks. On 10 September 1989, the then British Foreign Secretary John Major visited Washington to canvass support from the U.S. Soon after, Lord David Ennals, chairman of the Asia Committee of the British Refugee Council, suggested that Hong Kong drop the term “mandatory” or “forced” repatriation and refer to the “orderly return” of screened out boat people.²⁷¹ In Chi Ma Wan detention centre, which was where those already screened out were being held, an Asylum Seeker threatened self-immolation if he were forcibly repatriated.

²⁶⁸ “Vietnamese refugee camps 'will explode' if deportations start,” *The Independent*, London, 25 July 1989, p. 12.

²⁶⁹ Editorial, “John Major and the Boat People,” *The Independent*, London, 1 August 1989, p. 14.

See also: Editorial, “First Cossacks, Now Boat People, Shamefully Repatriated by British,” *The Independent*, London, 13 December 1989, p. 18.

²⁷⁰ *The Seattle Times*, “Refugees’ Warning,” 16 December 1989, p. A2.

²⁷¹ Fiona MacMahon, “Council Backs Repatriation,” *South China Morning Post*, 15 September 1989, p. 2.

By 20 September it became public that a group of 20 boat people, all screened out, had been moved to Phoenix House, a halfway house run by the CSD. When asked by the UNHCR why they had held the group of 20 in isolation for the 10 weeks since 7 July, the Hong Kong government refused to comment.²⁷² Later in September, Geoffrey Barnes announced that an agreement between Britain and Vietnam on mandatory repatriation was close to completion. As it became obvious that a forced repatriation flight was about to take place, so opposition to it grew. Hunger strikes and peaceful demonstrations were routine in the detention centres in the second half of the year. By October, more than 8,000 Asylum Seekers were on hunger strike against forced repatriation in Whitehead, Upper Chi Ma Wan and Sek Kong detention centres.²⁷³ On 15 October 1989, the Catholic bishops of countries at the Geneva Conference on IndoChinese refugees called for “international opposition to the mandatory repatriation of boat people.”²⁷⁴ Newly appointed Hong Kong Refugee Coordinator Mike Hanson declared Hong Kong was prepared to take a unilateral stand and go ahead with repatriation.²⁷⁵ British Prime Minister Margaret Thatcher accused the Americans of hypocrisy, but at the same time continued to urge the U.S. to endorse forced repatriation.²⁷⁶

Hong Kong continued to justify the need for the policy, with Geoffrey Barnes telling the Legislative Council that it was necessary to have the “deterrent value of repatriation”²⁷⁷ in place before the boats began to arrive again in the next sailing season. Rumours started flying around the camps that Vietnam, for so long the stumbling block to forced repatriation, had

²⁷² Fiona MacMahon, “Screened boat people isolated for 10 weeks,” *South China Morning Post*, 21 September 1989, p. 2.

²⁷³ Simon Macklin, UNHCR acts to cut Viet refugee numbers, *South China Morning Post*, 17 October, 1989, p. 1.

²⁷⁴ Leonard Davis, *Hong Kong and the Asylum Seekers from Vietnam*, Cambridge University Press, Hong Kong, 1991, p. 211.

²⁷⁵ Fiona MacMahon, “Hong Kong Takes Tougher Line on Viet Repatriation,” *South China Morning Post*, 20 October 1989, p. 1.

²⁷⁶ Glenn Frankel, “Thatcher Backs Warning on Hong Kong Refugees,” *The Washington Post*, 27 October 1989, p. a24.

²⁷⁷ Geoffrey Barnes, Hong Kong Legislative Council Speech, 26 October 1989, www.library.legco.gov.hk

agreed to accept those who “acquiesced” in their departure. However, at the end of October, Hong Kong’s Governor, Sir David Wilson, announced that there was no agreement with Hanoi.²⁷⁸

Over the next month, the UNHCR accused the CSD of using “undue force” in a series of camp movements. Inside Chi Ma Wan Detention Centre, the Vietnamese accused the CSD of using violent methods to remove them, including the use of armlocks, nerve grips and a variety of martial arts techniques which had knocked children unconscious.²⁷⁹ The government dismissed the UNHCR’s allegations as “unfounded”²⁸⁰ and simply ignored the Vietnamese in detention. There was no follow up by the UNHCR and the government escaped censure.

On 26 November 1989, the *South China Morning Post* reported that Hong Kong Marine Department officials were in London trying to charter ferries for use in mandatory repatriation.²⁸¹ The Archbishop of Canterbury, Dr. Robert Runcie,²⁸² U.S. Congressman John Porter²⁸³ and French human rights groups, all added their voices to the condemnation of the policy of forced repatriation of Vietnamese boat people. In response there were further calls in Hong Kong’s Legislative Council to disband the policy of being a port of first asylum. Oxfam then withdrew its support for the government’s non-voluntary repatriation programme, arguing there were no guarantees for the safety of those sent back.

²⁷⁸ Jimmy Leung, “Refugees will not be separated at centre,” *South China Morning Post*, 31 October 1989, p. 3.

²⁷⁹ Fiona MacMahon, “Probe urged on treatment of refugees,” *South China Morning Post*, 25 November 1989, p. 3.

²⁸⁰ Fiona MacMahon, “Use of ‘undue force’ on boat people denied,” *South China Morning Post*, 21 November 1989, p. 1.

²⁸¹ Joyce Nip, Dean Nelson and Nigel Rosser, “Ferry-hire plan to send back Viets,” *South China Morning Post*, 26 November 1989, p.1.

See also: Lloyd’s List International, “Hong Kong asks Sealink for Vietnam refugee ship,” 30 November 1989.

²⁸² Peter Guildford in Brussels and Andrew McEwen, “Veiled attack by Runcie on repatriation of Vietnamese boat people,” *The Times*, 28 November 1989.

²⁸³ Daphne Cheng, “Politician warns against HK Viets policy,” *South China Morning Post*, 7 December 1989, p. 2.

Finally, all the pieces of the jigsaw came into place. Importantly, Hong Kong officials had reached agreement with the Vietnamese government in the weeks before the first flight. The exact terms of this arrangement remain secret, but it seems likely that they were directly linked to the announcement in May 1990 by the British government of a US\$13 million aid package to Vietnam, in direct contravention of the existing U.S. aid embargo.²⁸⁴ A further US\$50 million package was arranged in 1991.²⁸⁵

The British had also successfully persuaded the U.S. Government that the Vietnamese Asylum Seekers were not refugees and therefore the principle of non-refoulement should not apply. The first forced repatriation flight of Vietnamese boat people took place on 12 December 1989. Amidst an international outcry, 51 Asylum Seekers—8 men, 17 women and 26 children—were removed under duress from Phoenix House just before dawn, forced aboard a waiting Cathay Pacific airliner and dispatched to Vietnam. For several days beforehand the international media had filmed the despairing looks of the targeted group through the barred windows of Phoenix House.²⁸⁶

Forced repatriations were very expensive. In addition to the cost of flights to Vietnam, there were significant costs involved in Hong Kong. In January 1990, the Hong Kong Finance Committee was asked to approve HK\$6 million to pay for the repatriation of 1,000 people, with another HK\$6 million being covered by the British Government, according to the *South China Morning Post*. HK\$7 million of the total HK\$12.14 million would be spent on transportation, HK\$4.9 million would be paid to the Vietnamese authorities to cover the cost of “re-integrating the returnees into their communities,” and HK\$240,000 would be given

²⁸⁴ *Associated Press*, “Britain Welcomes U.S. Offer to Resettle Refugees,” 17 March 1990.

²⁸⁵ *Associated Press*, “Boat people to be forced back home,” as used in *Houston Chronicle*, 29 October 1991, p. 11.

²⁸⁶ Jonathan Braude and Chris Dobson, “Public Relations Top Priority as Govt Plans ‘Operation Transparency,’” *South China Morning Post*, 3 November 1991, p. 1.

to the returnees in cash, with each adult receiving HK\$235 and each child HK\$120, according to the newspaper which cited unnamed Hong Kong government officials.²⁸⁷

In July 1989, the *Sunday Times* had written that Britain must pay GBP600 (US\$1,000) to Vietnam for every person forcibly repatriated²⁸⁸—that would amount to GBP5,763,000 if it was paid for all 9,605 forced returnees. That was equivalent to holding an Asylum Seeker in a Hong Kong detention centre for 208 days at US\$4.60 per person per day.²⁸⁹

The forced repatriation process was also violent. Hong Kong University lecturer, Leonard Davis, wrote in his book *Hong Kong and the Asylum Seekers from Vietnam*:

On a personal level, the events of 12 December confirmed for the author in a frightening way the ruthlessness of a non-accountable administration intent on preserving the status quo: about man's inhumanity to man; about the ability of certain groups to carry out blindly orders from others; and about the determination to implement policy in a way in which the feelings of those most affected could be ignored.²⁹⁰

Davis also wrote of his concerns about the excessive violence used for mandatory repatriations and the fact that the flight on 12 December 1989 caused repercussions for many years to come. However, the most interesting point was his comment that the Hong Kong government used a time-cherished practice of the British government by using “carefully leaked advanced information” to whip up “hostility towards the Vietnamese population.”²⁹¹ Davis noted that the British orchestrated the whole affair perfectly, blaming all that went wrong subsequently on the Hong Kong administration, saying that it was only following the wishes of the Hong Kong people.

International outcry against Hong Kong's action in forcing the 51 Asylum Seekers back to Vietnam was strong. The United States' State Department Deputy Secretary Lawrence

²⁸⁷ *South China Morning Post*, “\$6m sought to send Viets back home,” 18 January 1990, p. 7.

²⁸⁸ *The Sunday Times*, “Vietnam in refugee deal,” 23 July 1989.

²⁸⁹ *Hong Kong Government Information Services* factsheet, June 1997.

²⁹⁰ Leonard Davis, *Hong Kong and the Asylum Seekers from Vietnam*, Cambridge University Press, Hong Kong, 1991, pp. 27-28.

²⁹¹ *Ibid* p. 28.

Eagleburger told Congress in February 1990 that Hong Kong's action was viewed with "abhorrence" by the top levels of President Bush's administration.²⁹² The outcry also scared off the Vietnamese authorities, who by February 1990 were refusing to accept any more forced repatriation flights. Cathay Pacific, which provided the plane for the forced repatriation flight, was getting cold feet following the international reaction, but it was not until August 1992 that it pulled out of its contract to fly the Asylum Seekers home, diplomatically citing security concerns.²⁹³ The airline, which benefited from a 1991 air services agreement that saw it gain access to the lucrative Hanoi and Ho Chi Minh City to Hong Kong routes through a joint venture with Vietnam Airlines,²⁹⁴ had faced pressure and the threat of a boycott from Vietnamese lobby groups in the US.²⁹⁵

By June 1990, no further forced repatriation flights occurred, and there were rumours in Hong Kong that the Comprehensive Plan of Action might fall apart as its signatories bickered about the policy of forced repatriation. Hong Kong again threatened to drop its role as a port of first asylum if it was not allowed to continue mandatory repatriation.²⁹⁶

The thrust and counter-thrust continued through the summer, with the Asylum Seekers in Whitehead protesting against forced repatriation hoping that international opinion would force Hong Kong to stop its forced repatriation policy and also review its screening policy. A July meeting of the CPA signatories thrashed out the issues and finally Hong Kong prevailed through a mixture of threats and promises. The United States reluctantly agreed to drop some

²⁹² Ibid, p. 217.

²⁹³ Paul Harrington, "Cathay calls off returnee flights," *South China Morning Post*, 9 August 1992, p. 2.

²⁹⁴ Giselle Militante, "Bilateral Vietnam air deal sealed," *South China Morning Post*, 18 September 1991, p. 1.

See also: Giselle Militante, "Cathay expects busy services to Vietnam," *South China Morning Post*, 2 October 1991, p. 3.

²⁹⁵ Michael Chugani, "Rights lawyers challenge to policy on Vietnamese," *South China Morning Post*, 12 January 1990, p. 1.

²⁹⁶ Simon Macklin, "Talks on threat to first asylum," *South China Morning Post*, 6 July 1990, p. 3.

of its objections and the repatriation flights from Hong Kong to Hanoi started again before the end of 1990. The flight comprised a group of 41 Asylum Seekers who had not volunteered, but did not object to being sent back to Vietnam, according to the UNHCR.²⁹⁷ This time there was not so much outcry from the international community. It took until 19 June 1992 before a second forced repatriation flight took off from Hong Kong, with 38 people forced back to Vietnam.²⁹⁸

A total of 9,605 Asylum Seekers were forcibly repatriated from Hong Kong to Vietnam before 31 December 1996,²⁹⁹ almost two-thirds of the total number of 15,000 Asylum Seekers forced back from around the region. This indicates that Hong Kong had the harshest policy in respect to mandatory repatriation of Asylum Seekers.

²⁹⁷ Simon Macklin, "List of new returnees sent for Hanoi approval," *South China Morning Post*, 2 November 1990, p. 3.

²⁹⁸ *Agence France-Presse*, "Hong Kong deports 38 back to Vietnam," 19 June 1992.

²⁹⁹ Hong Kong Government Information Services, Hong Kong, June 1997.

6.2 Removal from Whitehead, 7 April 1994



PART II—Forced Repatriation in Contravention of Non-Refoulement

The camp movement policy and forced repatriation centres

With the number of Asylum Seekers screened out as economic migrants rising rapidly and forced repatriation a reality, the boat people were faced with an impossible situation. The options for those screened out were simple as far as the Hong Kong government and UNHCR were concerned—voluntary repatriation or forced repatriation.

The camp movement policy in Whitehead was inaugurated in the Spring of 1993 by the Hong Kong government in direct consultation with the UNHCR. The officials told the Asylum Seekers in Whitehead that they were to be removed and placed in another section either in the same camp or in another camp, depending on the space requirements of the government. The Asylum Seekers were told they had no choice over where they were sent, but if they volunteered to return to Vietnam, they were told they could avoid any problems associated with the move.

“The UNHCR seemed to abandon us overnight,” said Mr. Giao, a community leader in Section 1. “The whole direction and purpose of the CPA was aimed at repatriating us to Vietnam. What could we do, we were caught like rats in a trap.”³⁰⁰ In Whitehead, the people in Section 1 coordinated the most concerted response to the threat of forcible repatriation. The other sections were too well-controlled by the CSD and the *dai goh* system to protest. In Section 1, the Asylum Seekers staged regular peaceful protest demonstrations against the forced repatriation policy—as they had done against the screening process before—in the hope that the international community would heed their plight and show sympathy.

The government response to Section 1 was to exert more pressure, especially on the Section’s leadership. Leaders were tempted with bribes by the CSD and when those failed the CSD resorted to threats and vilification. The leaders of Section 1 were told that if they did not

³⁰⁰ Conversations with the author, June 1993.

comply with the CSD and stop demonstrating against the Hong Kong government, they would be removed to the prison camp of Upper Chi Ma Wan and from there forcibly repatriated to Vietnam. The tensions continued for more than two years up until 1993, with Section 1 protesting and the government repatriating Asylum Seekers from other camps around Hong Kong. Most returnees were from the remote island camp of Nek Kwu Chau, a former drug rehabilitation centre that had been converted into a detention camp and holding centre for those waiting for forced repatriation.

In 1993, Vietnam only accepted 100 Asylum Seekers a month by forcible repatriation, making the return of all the Asylum Seekers in Hong Kong a long, slow process. After the Hong Kong government emptied Nek Kwu Chau camp, all the attention was focused on Whitehead. The camp movement policy that had been used to isolate Asylum Seekers in the remote island camps of Chi Ma Wan and Nek Kwu Chau was now inaugurated in Whitehead. The government's aim was to separate small groups of people from the general population of the camp and move them to Chi Ma Wan or more often to High Island, from where they would be forcibly repatriated. The Asylum Seekers were told the policy was "for their own good" as it would reduce the effects of institutionalisation. The CSD also told the community leaders that the camp movement policy was aimed at encouraging voluntary repatriation. The Hong Kong government and the UNHCR argued that the stability and high quality of life in the Sections at Whitehead was encouraging the boat people to stay on in Hong Kong. The aim of the camp movement policy, according to the UNHCR, was to disrupt the community spirit that, only two years previously, had been fostered by the NGOs and authorities when they set up Community Forums and Peace and Order Committees in Whitehead.

The first key targets for the camp movement policy in Whitehead were the people in Section 1. They had a long history of refusing to cooperate with the authorities on the issue of screening—for several years the whole section refused to attend screening interviews, saying

the process was unfair. They also stood up for their rights in detention and most importantly for what they perceived as their right to be resettled as refugees. They quickly saw the failings of the UNHCR and found it immoral that the UNHCR should be encouraging them in contravention of the 1951 Convention to go back to a country where they had a genuine fear of persecution. They said they could see little difference between the voluntary repatriation programme (known as volrep) and the orderly repatriation programme (ORP). They cited examples of UNHCR officials counseling rape victims in Whitehead by telling them to go back to Vietnam, because “this would not have happened over there.”³⁰¹

“Volrep was not a choice, it was the only option,” said the Asylum Seekers en masse, parodying the words the UNHCR favoured in their campaigns to promote voluntary repatriation.³⁰² People were pressurized, bullied and psychologically tormented into voluntary repatriation as a result of the conditions in the camps and the persistent reiteration of the message by UNHCR officials. Yet still the majority chose to stay in detention. That people chose to live without freedom behind barbed wire, rather than return to Vietnam speaks volumes about their perceived fears of returning.

On 10 May 1993, Robert Van Leeuwen, then Hong Kong UNHCR chief of mission, visited Section 1 of Whitehead in an attempt to calm rising tensions as the Asylum Seekers passively resisted the camp movement policy.³⁰³ In answer to a question on why the camp movement policy was set up, Van Leeuwen answered, “it is the Hong Kong government who decides where to accommodate you,” not the UNHCR. He then gave the people a traditional speech about voluntary repatriation, saying it was not safe for their children in detention and Vietnam was improving economically. He also promised to talk to the Hong Kong Governor

³⁰¹ Conversations between the author and Mr. Giao, a community leader in Section 1 of Whitehead, June 1993.

³⁰² Scott McKenzie, “UN plans pullout from camps,” *South China Morning Post*, 11 September 1995.

³⁰³ See Photo 3.1, p. 33. UNHCR’s Robert Van Leeuwen addresses Asylum Seekers in Section 1 of Whitehead Detention Centre, 10 May 1993. Photo by unnamed asylum seeker.

about the dangers of moving camps. At this point an Asylum Seeker asked, “You said you could help and protect us when we return to Vietnam, but even in Hong Kong you cannot help us. Why do you convince us to return and promise those things?” A second question was asked: “You said you do not have the right to decide or help this situation, because you are the UNHCR, not the Hong Kong government. So when we return to Vietnam, will you say you cannot help because you are the UNHCR not the Vietnamese government?” Three protesters slashed their stomachs in anger and frustration at Van Leeuwen’s speech. “I think they over-reacted to an explanation about their future,” a UNHCR spokesman told the *South China Morning Post* on the day of Van Leeuwen’s visit. “The Hong Kong government has the right to move them within and between detention centres.”³⁰⁴ Stung by the criticism and “ungrateful behaviour” of the Asylum Seekers in Whitehead, Van Leeuwen told the press a week later that the UNHCR was considering pulling out of the camps as funding had dried up.³⁰⁵

Moving sections within detention was a dangerous time for Asylum Seekers. *Dai gohs* would demand money from the new arrivals simply to allow them to enter the new Section. Often there were tensions between different groups, and this led to numerous fights and stabbings. The people of Section 1 of Whitehead were particularly vulnerable as they had resisted the *dai goh* system for so long. If they were placed in other sections, they would be the targets of the CSD via the *dai gohs*.

The most obvious purpose of the camp movement policy was to isolate groups of Asylum Seekers before forced repatriation flights. First Nek Kwu Chau detention centre and then High Island detention centre were used for this purpose. Both camps were in isolated areas, away from easy press coverage and non-government organisation access. The camps

³⁰⁴ Paul Tyrrell, “Whitehead Inmates Cut Stomachs in Protest,” *South China Morning Post*, 11 May 1993, p. 1.

³⁰⁵ Chris Dobson, “UN May Pull Out of Camps,” *South China Morning Post*, 16 May 1993, p. 1.

were small and “decanting” (the government’s official terminology for removing boat people from a Section) Asylum Seekers was much simpler than in larger Whitehead. The potential for escalation in Whitehead to include protests across all 10 Sections and 25,000 people was huge. Hong Kong’s Refugee Coordinator Brian Bresnihan spoke about the potential of closing one of the detention centres in January 1994 in the following terms: “We would simply decant people from one to the other as the capacity in High Island allowed— if it was the one to stay open. We will only be transferring people into camps as others move out under the repatriation and re-settlement programmes.”³⁰⁶

People selected to move camps resisted desperately as they did not want to be forcibly repatriated. Over the years, the people in a Section grew into a community and their willingness, especially in the case of the 2,500 Asylum Seekers in Section 1, to protect each other and their rights was strong. The resistance to the camp movement policy and forced repatriation was for the main part peaceful—protest marches around the Sections, hunger strikes and Buddhist-led sit-ins—up until 1994. At this point, some of the *dai gohs* realised that they would not gain freedom or any more advantages from the CSD, so a small group responded with violence, most notably on 9 and 10 May 1996. On the night of 9 May, the *dai gohs* in Sections 3 and 4 broke down fences and set fire to parts of the camp, while more than 100 Vietnamese escaped from the camp and disappeared into the night.³⁰⁷

The Attack on Section 7 of Whitehead, 7 April 1994

On 7 April 1994 a combined CSD and police contingent, numbering 1,349 officers, entered Section 7 of Whitehead detention centre in a bid to move 1,526 people to High Island

³⁰⁶ Scott McKenzie, “Closure Plan to Leave Two Camps,” *South China Morning Post*, 6 January 1994, p. 3.

³⁰⁷ Jonathan Mirsky, “Boat People Stage Mass Breakout and Riot in Hong Kong,” *The Times*, 11 May 1996.

Detention Centre to await forced repatriation. Some 67 per cent (1,018 people) were women and children. The wife of a community leader in the section reported:

A few of us tried to demonstrate peacefully and in a non-violent way, but the police and CSD used weapons to attack us. They [came] right up to us and sprayed a pungent gas [mace] into our faces, even into the eyes of our children, pregnant women and women holding babies. My husband was holding our 16-month-old baby and I am six months pregnant, but the police still sprayed mace in our faces. Women and children were crying as they ran away. Then the police used their batons and shields to force my family and everybody else into the huts. When we were inside, they fired tear gas through the windows of the hut and into the passages between them. We began to choke, some coughed up blood, others vomited on the ground. A lot of people fainted. The police and CSD had cut all the electricity and water off when they came into the section, so everything was in chaos, dark and crowded in the huts, and nobody could stand the tear gas. It was spooky. We panicked. Everybody was climbing up onto the roof to escape from the tear gas, but the police kept on firing more tear gas. It landed on our heads, on our clothes and on our legs. The canisters set fire [to] people's clothes and many of us were burnt. Some people fell off the roof—they just could not hold on. Everyone was screaming and shouting for someone to save us. We begged the police to stop firing. We waved an SOS flag made out of our white head bands...but the police just fired more tear gas. It was barbarous, inhuman. I could not stand the tear gas any more. I was coughing and writhing about on the roof.³⁰⁸

A total of 5,956 grenades and cartridges were fired during the three rounds of CS tear gas that were aimed at the boat people in Section 7 on 7 April 1994.³⁰⁹ A pepperfog machine³¹⁰ was also used in the third round, but it was soon abandoned as it was having little success. All this had happened in less than forty minutes at a rate whereby approximately three canisters every second were landing in the midst of this small group of people (only 426 people made it to the roofs). The police, who were in command of the operation, also called in a helicopter to hover above the section to ensure the tear gas was compressed down onto the boat people below.³¹¹

³⁰⁸ This account was written in Vietnamese by the wife of one of the community leaders in Section 7 on 14 April 1994, one week after the police attack.

³⁰⁹ See Appendix 4 for details of the weaponry used by the CSD to propel the CS gas on 7 April 1994.

³¹⁰ A type of machine used to disperse CS gas.

³¹¹ Scott McKenzie, "Officials Admit Hundreds Hurt in Camp Raid," *South China Morning Post*, 14 April 1994, p. 1.

In Hong Kong there is no legislation about the use of tear gas and it continues to be used to control crowds. Guidelines for the use of tear gas were scarce in practice. While only specially trained officers in the Hong Kong police force were supposed to fire the tear gas canisters, in practice during attacks on Asylum Seekers in Whitehead detention centre the CSD also operated the cannons, despite the fact they had no formal training in this area.³¹²

The CSD and police used tear gas on a regular basis in Hong Kong's detention centres throughout the post-15 June 1988 period. In the early days of the detention centres it was used to quell disturbances caused by the poor conditions, fights between northern Vietnamese and their southern counterparts, and tensions caused by the screening and forced repatriation policies. From 1990 onwards tear gas was regularly used to effect removals of screened out Asylum Seekers for forced repatriation flights, though its use did not gain international or media attention until it caused such serious injuries on 7 April 1994 in Whitehead.

Tear gas is neither safe nor effective when used in confined spaces and so had the impact of terrorising the detainees and forcing them into more risky behaviour (such as climbing on the roofs of huts) and generally making it harder for the security forces to remove them from the camps. The Refugee Concern report into the events of 7 April 1994 found:

...that a significant factor driving the decision of the officers in charge of the operation to fire and throw an extraordinary, and unprecedented, number of tear gas canisters and grenades during the third rounds, was the intention to flood the roof with so many canisters, grenades and sub-munitions that it would be impossible for the people on the roof to move out of their way, to avoid being hit, or to be able to kick away all the scalding sub-munitions that would land near them.³¹³

Tear gas is typically used to disperse crowds. Tear gas was not intended for use in prison or detention centres, where the targets could not disperse. In Whitehead detention

³¹² Andrew Li and David Todd, *Report of the Justices of the Peace on the Inquiry into the Events surrounding the Removal of Vietnamese Migrants from the Whitehead Detention Centre on 7 April 1994*, Hong Kong, 10 June 1994.

³¹³ Refugee Concern Hong Kong, *Report of Refugee Concern into the events surrounding the transfer of Vietnamese Asylum Seekers from the Whitehead detention centre on 7 April 1994*, 8 July 1994, p. 141.

centre, there was nowhere to flee. Worse still, having tear gas fired at people sitting on roofs with nowhere to go but a 15 feet drop to the ground, was irresponsible at best, criminal at worst. “Our assessment is that the security forces underestimated this risk,” wrote the JPs in their report about 7 April. “Their training and experience has been with the use of tear gas to disperse crowds on level ground and they had no experience of this special situation of a crowd on a slanting roof.”³¹⁴

While the JPs criticized the police for using tear gas against people on a roof, they did not query the firing of tear gas into the confined spaces of the huts in Section 7. On 7 April 1994 in Whitehead, and on several other occasions, tear gas was pumped directly into closed and locked huts with the express aim of forcing the people inside to come out. This is against all international codes and conventions on the use of tear gas—indeed, marked on the side of the tear gas canisters imported from South Korea in 1995 when Hong Kong police stocks were low, was a message saying: “Do not use in confined spaces.” Refugee Concern was critical of the usage: “We find that the use of tear gas in this manner, against people attempting to flee the chemical mace sprayed on them by the riot officers, was outside the guidelines and law regarding the use of criminal force.”³¹⁵

Over the two weeks following the 7 April removal, the British Red Cross at High Island attended to 276 patients with injuries, some multiple, related to the Whitehead attack. These consisted of the following:

- 98 people with burns/scalds, including 15 children under the age of five years.
- 36 people with accident-related injuries.
- 72 people with alleged assault injuries.

³¹⁴ Andrew Li and David Todd, *Report of the Justices of the Peace on the Inquiry into the Events surrounding the Removal of Vietnamese Migrants from the Whitehead Detention Centre on 7 April 1994*, Hong Kong, 10 June 1994, p. 106.

³¹⁵ Refugee Concern Hong Kong, *Report of Refugee Concern into the events surrounding the transfer of Vietnamese Asylum Seekers from the Whitehead detention centre on 7 April 1994*, 8 July 1994, Hong Kong, p. 132.

- 202 people with poisoning from the CS gas.

Two of the burns victims were hospitalised, including a six-year-old girl, who suffered second degree burns to 8 per cent of her body, mainly on her legs. She was kept in hospital for 19 days and her mother was not allowed to stay with her only visiting her twice for short periods. Another two-year-old boy was kept in hospital for 33 days, suffering burns to his arm and a third degree burn to his right thigh, which required skin grafts. He was only admitted to hospital nine days after the raid. His mother was also not allowed to stay with him in the hospital as the CSD feared she might try to escape.

According to the Report of the Justices of the Peace into the 7 April 1994 raid on Whitehead:

Of the 36 people treated at High Island for accident injuries, 15 stated that they had been struck by tear gas sub-munitions or grenades. Five stated they fell from the dormitory roofs, including the woman who was hospitalised directly from Whitehead. Two stated they fell from bunks within the huts.³¹⁶

While the burns from the red hot CS gas cartridges caused many injuries, the most debilitating after-effect of the operation was the tear gas poisoning. All the people—426—who were left on the roof in the second and third rounds of tear gas suffered at least some long-term discomfort, while those with a predisposition to respiratory and other problems had serious conditions exacerbated. “One person had blood in her sputum, and another with a history of rheumatic heart disease had heart failure. Another person is believed to have experienced a chemical pneumonitis (inflammation of the lungs).”³¹⁷

³¹⁶ Andrew Li, and David Todd, *Report of the Justices of the Peace on the Inquiry into the Events surrounding the Removal of Vietnamese Migrants from the Whitehead Detention Centre on 7 April 1994*, Hong Kong, 10 June 1994, p. 92.

³¹⁷ Ibid, p. 92.

The Attack on Section 1 of Whitehead, 20 May 1995

In spite of the extensive recommendations in the JPs' report into the events surrounding the removal of Section 7, similar attacks were repeated. A year later on 20 May 1995, another group of boat people in Section 1 of Whitehead were targeted. This time some 3,600 sub-munitions (individual gas grenades, cartridges and canisters) were fired at the Vietnamese. Unofficial estimates of those adversely affected by either tear gas inhalation or baton attacks on 20 May 1995 are that more than 300 people were injured among the group moved to High Island not including those suffering from what is now recognised as "post-traumatic stress disorder."³¹⁸

A key feature of the attack on 20 May 1995 was that the boat people refused to seek medical attention unless they were seriously in need. They cited their fear of being singled out for immediate forced repatriation if they were identified as having an injury. They reasoned that the Hong Kong government would target for forced repatriation anyone who might be in a position to take legal action against them. This belief resulted from the expediency with which the Hong Kong government continued to forcibly repatriate the people from Section 7 of Whitehead following the 7 April 1994 attack, even though they had a series of claims pending in the Hong Kong Small Claims tribunals and the High Court of Hong Kong.³¹⁹

Attacks similar to those on 7 April 1994 and 20 May 1995 occurred repeatedly between 1994 and 1997 as the Hong Kong government continued its camp movement policy and increased its focus on forced repatriation flights. Interviews with six Vietnamese refugees now living in Australia, who were subjected to tear gas attacks in Hong Kong, suggest that recurrent nightmares and a high incidence of stress are still part and parcel of their daily lives. Those interviewed directly associate the trauma experienced in the tear gas attacks with their

³¹⁸ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 3rd Edition, Arlington, 1981.

³¹⁹ Harriet Clompus, "Small Claims, Big Issues," *Refugee Concern Hong Kong Newsmagazine*, Issue 4, Feb/March 1995, p. 4.

current stresses, though it should be noted that the fact of living in detention centres for several years could also be a factor causing the stress and nightmares.

Monitoring in Hong Kong

One of the recommendations of the JPs' report into the events of 7 April 1994 was "the government should seriously consider having present at an operation for camp transfer a team of monitors. Personnel from the UNHCR and the NGOs who have extensive experience of working with VMs in the detention centres would be particularly suitable."³²⁰

As the summer of 1994 progressed, the debate over monitoring of camp transfers in Hong Kong developed. The first question that arose was whether monitors were needed at all operations—camp movements, transfers, removals for forced repatriation and ORP flights—or only at times when there was a perceived problem. This was never resolved, but because of the nature of the confrontations, the monitors were to be used extensively over the following years in all types of situations, though not comprehensively.

Few of the NGOs wanted to become monitors. The government's security branch had approached the UNHCR, but no agreement was reached as the UNHCR demanded that Asylum Seekers should be given advance warning of any operation and the government refused to do so arguing it was a safety risk for the officers involved.

The UNHCR vacillated in its response to the violence showing the dilemma it had: having to support the government while also needing to protect the Asylum Seekers. Jahanshah Assadi, the UNHCR's chief of mission in Hong Kong, was roundly criticised in the press and amongst NGOs for his initial support of the government's actions on 7 April 1994.³²¹ In a *South China Morning Post* article on 8 April,³²² Assadi said he was "not

³²⁰ Andrew Li, CBE, QC, JP, and Professor David Todd, CBE, JP, *Report of the Justices of the Peace on the Inquiry into the Events surrounding the Removal of Vietnamese Migrants from the Whitehead Detention Centre on 7 April 1994*, Hong Kong, 10 June 1994, p. 120.

³²¹ Steve Ball, "Whitehead Raid Slammed," *South China Morning Post*, 13 May 1990, p. 3.

surprised” that the government had chosen to act. Refugee Concern slammed Assadi for his actions:

Not only did the UNHCR fail to suggest alternatives to the planned operation at Whitehead of which they were forewarned, not only did the UNHCR fail to monitor the operation as it was taking place, but the UNHCR's chief of mission, Mr Assadi, gave encouragement to the 7 April attack, both implicitly and explicitly, before and after the attack.³²³

In an Executive Council investigation into the events, Assadi performed a volte-face, blaming the Hong Kong government for the excessive use of force, even though he had been pre-warned of the raid by the refugee coordinator on 6 April and could have taken steps to prevent it. Now he faced a dilemma: face a hostile press and agency community by supporting the Hong Kong government or stand with the majority of the international community on the high ground and condemn the government's use of force. He took the latter option. By 20 April 1994, Assadi said, “If someone had told me beforehand that tear-gas would be used and there would be 200 or so injuries, obviously we would have vigorously protested [against] it.”³²⁴ In reality, the UNHCR did not want to take on the added burden of monitoring, a role for which its Hong Kong staff were ill-equipped. And so Assadi took the stance that the government should give advance warning to the Asylum Seekers of future movements.³²⁵ Security branch could not or would not bring itself to accept this condition. The government then approached other NGOs for help, but most of the agencies followed the lead of their paymaster—the UNHCR—and refused to monitor if there was no advance warning given to the Vietnamese.

³²² Scott McKenzie and Kathy Griffin, “Vietnamese threatened with Prison Relocation,” *South China Morning Post*, 8 April 1994, p. 1.

³²³ Refugee Concern Hong Kong, *Report of Refugee Concern into the events surrounding the transfer of Vietnamese Asylum Seekers from the Whitehead detention centre on 7 April 1994*, 8 July 1994.

³²⁴ Louis Ng, “Whitehead Raid ‘Hurt Efforts to Calm Viets,’” *South China Morning Post*, 20 April 1994, p. 5.

³²⁵ Scott McKenzie, “Deportees may not be warned,” *South China Morning Post*, 14 January 1995.

Other agencies refused to monitor for different reasons, arguing that they would likely be compromised if they were to monitor government actions. Those agencies receiving government funding for other projects in Hong Kong felt particularly vulnerable, sensing that they could not afford to endanger their lucrative purse strings and jeopardise important community work.

Only Refugee Concern offered its services to the government. The government effectively ruled out the participation of genuinely independent monitors when it refused the offer. In keeping with security branch's official non-recognition of this group, Refugee Concern was informed indirectly that it was "unsuitable" because of its pro-asylum seeker, active lobbyist stance.

Two NGOs, Christian Action and Oxfam, eventually began negotiations with the Government over monitoring.³²⁶ Serious debate took place between lawyers, refugee workers, agencies, doctors and the Vietnamese themselves, to come up with three key elements, which were regarded as essential if any serious monitoring was to be effective:

- Monitors would have to have free access to all areas involved in the operation;
- The monitors would use video cameras throughout the operation and have the right to make on the spot observations to the operation's commanding officers;
- After the event, the monitors would quickly submit a report to the government, which would also be freely available to the Vietnamese and the public.³²⁷

The government was unwilling to agree to any of these conditions, but nevertheless it was beholden to comply with the JPs' recommendations from the report on 7 April 1994 or face even harsher criticism from the press and agencies. A deal was struck and Oxfam and

³²⁶ Scott McKenzie, "Response Sought on Viet Monitors," *South China Morning Post*, 23 August, 1994, p. 2.

³²⁷ NGOJC meetings, May and June 1995. The author attended the meetings.

Christian Action agreed to monitor future operations. Unfortunately, because of the secretive nature of the discussions—a situation that allowed the government to dictate terms—a compromise was what eventuated. The deal between the two agencies and the government entailed two monitors, one from each agency, working in tandem with two Justices of the Peace at each operation where it was deemed necessary by the government to use monitors. The monitors were allowed limited access, no input to the commanding officers at the operation and they were not allowed to use video cameras. Refugee Coordinator Brian Bresnihan had objected to this suggestion, saying that the CSD taped the operation and it was unnecessary for the monitors to duplicate it. The government withheld the monitors' right to release any report on an operation to the public.

The government had tacitly chosen confrontation over negotiation. By appointing monitors the Government had chosen a course of action confirming it would continue the violent operations rather than seek peaceful solutions, which would not need monitoring. The agencies had overcome their reservations and decided it was better to have a limited presence during such operations rather than none at all.

The first test of the monitors came on 19 and 20 September 1994, when once again the authorities targeted the group of Vietnamese (formerly of Section 1 and then Section 7 at Whitehead), now housed in North camp of High Island detention centre. For the monitors, the two-day stand-off was an ordeal greater than anything they had expected. One of the monitors said the experience of monitoring the High Island removal raised more questions for him than it answered—he declined to monitor another removal.³²⁸

The operation at High Island was scheduled more than a week in advance. The four monitors—two Justices of the Peace and two agency workers—were advised there would be an operation to remove around 80 Asylum Seekers for forced repatriation on Monday, 19

³²⁸ Scott McKenzie, “‘Isolated Abuse’ in Camp Action,” *South China Morning Post*, 24 September 1994.

September 1994. For the first time, journalists with telephoto lenses would be privy to a forced repatriation exercise.

The operation began early in the morning. After an hour of trying to negotiate with the Asylum Seekers at High Island using a megaphone, the CSD and police in riot gear moved into the camp to “decant” the 80 individuals. They were met with passive resistance and the Asylum Seekers worked hard to prevent the targeted group from being captured. At one point a policeman dragged a woman across the playground by her hair, seemingly in front of a monitor. At the time, the monitor had believed the action was within the bounds of “reasonable force,” but after seeing the photo emblazoned on page three of the *South China Morning Post* the next day, the monitor in question expressed shock. The point was that it was very difficult for the monitors on the ground in the middle of a violent attack to assess clearly and accurately whether there had been any transgressions.

The struggle in High Island detention centre went on for more than ten hours that Monday. The police fired several rounds of tear gas into the camp, but the Asylum Seekers held their ground. Eventually, at seven o’clock that night the police commander called off the operation, saying the government forces has shown “admirable constraint” and adding that they would return in the morning.³²⁹ The Vietnamese stayed awake all night fearing a midnight raid when no one was watching. Early on Tuesday, 20 September 1994, the police returned, more purposeful this time. An armoured car crashed through the barbed wire at the same time as a force of riot police entered through the main gate at the opposite end of the camp. The four monitors were positioned around the camp, but they later said it was impossible for them to see all that was going on and they had not been allowed to bring in

³²⁹ *South China Morning Post*, “Viets Repel Attempts to Remove 12,” 20 September 1994, p. 1. The author also attended the press conference on the reservoir above High Island Detention Centre on the evening of 19 September 1994.

video cameras to tape the operation.³³⁰ The Vietnamese were gradually herded into their huts, while a group targeted for forced repatriation climbed up onto the roof and tied themselves together. A set of portable steps for boarding aircraft was brought into the camp, a large inflatable cushion was spread on the ground below the hut and finally the police rushed the Asylum Seekers and captured them all, though not before two slashed their stomachs and one jumped off the roof.³³¹

For the monitors, issues such as whether their presence actually alleviated the amount of violence used by the CSD and police, or whether they attracted more desperate actions from the Vietnamese, were compounded by the stinging criticism they received on the release of their first report. Many quarters, notably human rights lawyers and some agency workers, felt that the presence of the monitors shielded the government from criticism. The monitors' criticism of an operation was never harsh as they did not want to anger the government and be excluded from future operations. As such, the government could justify its actions hiding behind the reporting of the independent witnesses. All in all the operation on 19 and 20 September 1994 was a draining experience not only for the Vietnamese, but also for the four monitors involved.³³²

The monitors did continue in their roles, though few of the operations after 1995 required such high levels of participation. This was because on a few occasions before official operations could commence, tensions boiled over into a full-scale riot as the *dai gohs* unleashed their anger and frustration at being betrayed by the CSD. This meant that the monitors were not allowed into the camps as it was too dangerous. The most notable occasion was when the Vietnamese *dai gohs* in Sections 3 and 4 rioted through Whitehead on 10 May

³³⁰ Scott McKenzie, "'Isolated Abuse' in Camp Action," *South China Morning Post*, 24 September 1994.

³³¹ Scott McKenzie, "CSD Raid Ends Camp Standoff," *South China Morning Post*, 21 September 1994.

³³² Andy Gilbert, "Monitors Condemn Delay Over Camp Riot," *South China Morning Post*, 10 June 1995.

1996, burning CSD cars and property. The monitors were not called until seven hours after the riot had broken out and then were not given access into the Sections.³³³

Forced Repatriation Flights

The horrors of a forced repatriation flight were largely hidden. The Hong Kong officials who ordered them did not witness them, and the public was unable to watch them close up because the TV crews were kept far away. Many of the targets for forced repatriation had been through a traumatic, violent episode within a week of their removal to Vietnam and the shock and physical wounds were often still unhealed.

An example of this was the ORP flight following the removal of 1,526 Vietnamese Asylum Seekers from Whitehead Detention Centre on 7 April 1994. Some 276 Vietnamese were treated for wounds after they were violently removed from the camp by a combined police and CSD force.³³⁴ A week later some of the group were forced back to Vietnam.

On the morning of the forced repatriation flight, the targets were woken at four o'clock, though most did not sleep the night before. There were frequent reports from the Asylum Seekers that some were drugged or sedated before the flight. Indeed, Acting Secretary for Security, Ken Woodhouse, admitted as much later at an airport press conference in 1995, when he said some people were "sedated for their own protection."³³⁵ Two issues come out of this. First, it is against aviation rules to carry an unwilling and drugged passenger—and questions of insurance were also raised at the time.³³⁶ Secondly, it is in direct contravention of Article 5 of the Universal Declaration of Human Rights, Articles 7 and 10 of

³³³ Billy Wong Wai-Yuk, "Response to Monitors' Riot Report 'Nonsense,'" *South China Morning Post*, 15 May 1996.

³³⁴ Andrew Li, and David Todd, *Report of the Justices of the Peace on the Inquiry into the Events surrounding the Removal of Vietnamese Migrants from the Whitehead Detention Centre on 7 April 1994*, Hong Kong, 10 June 1994.

³³⁵ The author attended the press conference with Mr. Woodhouse in 1995.

See also: *The Independent*, "Angry HK Exit for Boat People," London, 23 September 1994.

³³⁶ *South China Morning Post*, "Crash Insurance," 18 January 1995.

the International Covenant on Civil and Political Rights (ICCPR), and Principle 6 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, all of which refer to cruel, inhuman or degrading treatment.³³⁷

Approximately one hundred CSD officers were present at the airport to ensure there were no problems putting the Vietnamese on board the plane. Two solid ranks of CSD officers lined the path to the plane, effectively blocking any views of the boat people as they were carried aboard or frogmarched in a nerve hold onto the plane. The press, when they were allowed to attend these flights, were located in a pen, about 200 metres from the plane, out of earshot. Even so, pictures of straitjacketed Asylum Seekers being carried horizontally onto the aircraft were splashed across international newspapers. After the first flight, the *Wall Street Journal* condemned the Hong Kong government, stating: “If you do not want the free world to see you doing something disgusting, why do it at all?”³³⁸

The international furore and consequent government inquiry into the events at Whitehead were enough to cause a five-month cessation of forced repatriation flights. Once in Hanoi, the operation continued with the CSD officers often having to force people to leave the aircraft. In December 1995, the Hong Kong officers accompanying the returnees to Hanoi were criticised by the Vietnamese authorities for using violence against Vietnamese people on Vietnamese soil, as they removed them from the aircraft.³³⁹ The complaints from Vietnam threw the future of forced repatriation flights further into jeopardy.

³³⁷ International Covenant on Civil and Political Rights, adopted on 16 December 1966 by Resolution of the General Assembly of the United Nations, <http://www2.ohchr.org/english/law/ccpr.htm>

³³⁸ Editorial, “Whose Tomorrow?,” *The Wall Street Journal*, 13 December 1989, p. A14.

³³⁹ Rajiv Chandra, “Vietnam-Refugees: A Slow Boat Home for Boat People,” *Inter Press Service*, 12 December 1995.

PART III—UNHCR and Forced Repatriation: Compromised Values

The Figleaf

By refusing to stand up against the forced repatriation of Asylum Seekers from Hong Kong, the UNHCR failed to meet its mandate under international law of protecting the displaced and the persecuted. The UNHCR could not be certain that all those forcibly repatriated were not refugees as it claimed and should therefore have followed the “humanitarian spirit” of the 1951 Geneva Convention, and given the people the benefit of the doubt, while standing up for their right to non-refoulement. Instead, the UNHCR argued that a comprehensive screening process had taken place and that the UNHCR could not interfere in the rightful actions of a sovereign state, namely Hong Kong (as a colony of the U.K.). The Hong Kong government was able to hide behind the figleaf of the UNHCR, arguing that because the UNHCR did not object, then the forced repatriation flights must be acceptable to the international community. Leonard Davis originally used the term “figleaf” in his 1990 book, *Hong Kong and the Asylum Seekers from Vietnam*, arguing that the Hong Kong government was using the UNHCR as a figleaf to give screening legitimacy. The term was used more widely by NGO workers and Asylum Seekers to apply to any situation where the Hong Kong government legitimised its actions by saying the UNHCR did not object.

The UNHCR attempted to disassociate itself from the forced repatriation flights by following the Hong Kong government’s semantic argument that those Vietnamese Asylum Seekers who had been screened out were not refugees and therefore not subject to the rule of non-refoulement. The UNHCR had failed to deal with any of the criticisms of the screening process as outlined in the previous chapter, which indicated that it was possible that genuine refugees had been screened out, and the UNHCR equally refused to say that forced repatriation was wrong.

By maintaining a daytime presence in the camps at a time of repeated, brutal government attacks on Asylum Seekers aimed at forced repatriation and by not criticising these attacks, the UNHCR effectively condoned the Hong Kong government policy. The government was able to argue that it had followed UNHCR humanitarian principles in its dealings with the boat people because the UNHCR had not criticised it when the police and CSD used violence to remove their targets. In fact, the UNHCR was rarely present when the government used violence, as its field workers were under orders to withdraw if the situation became too tense. In April 1994, following the “get-tough” tear gas raid on Section 7 of Whitehead, the UN High Commissioner for Refugees, Mrs. Sadako Ogata, said in order to clear the camps it “would probably be necessary for forced repatriation to be used.”³⁴⁰ The UNHCR’s expanded role as the protector of Asylum Seekers was effectively over. Now it had a new role: to expedite the removal of Asylum Seekers to suit the requirements of donor countries.

Elsewhere in the region, the UNHCR played an even more active role in forced repatriation. A Boat People SOS report in February 1996 on events in the Philippines, says the UNHCR played “an omnipresent role in the planning, financing and carrying out”³⁴¹ of the forced repatriation of Vietnamese boat people in the Philippines. The UNHCR was active in assisting the forced repatriation, according to the report. It helped the Philippines government to charter Vietnam Airlines aircraft, suggested the Philippines police be issued with anti-riot gear as part of the cost of the UNHCR-funded repatriation exercise, and made “available its expertise and resources” to the Philippines government. The UNHCR also

³⁴⁰ *Refugee Concern Newsmagazine*, “UNHCR and forced repatriation,” Issue 6, Oct/Nov 1996, p. 2.

³⁴¹ Boat People SOS, “Report on role of UNHCR in forced repatriation in the Philippines,” February 1996, <http://www.freeviet.org/tynan/news1/bp032096c.html>

provided the list of 119 men, women and children to be targeted for forced repatriation from the Philippines.³⁴²

A range of alternative solutions—see Chapter Seven—were put forward by NGOs, lawyers and supporters of the Asylum Seekers, yet all were blocked by the UNHCR predominantly on the grounds that the Asylum Seekers did not have refugee status.

“Interested organisations such as Amnesty International, Human Rights Watch and Refugees International have been calling for alternative solutions,” said lawyer Peter Barnes in 1996.

“Regrettably, by far the most powerful body, the UNHCR, has set its face against anything other than repatriation, even if that entails violence against those the UNHCR was created to protect.”³⁴³ The UNHCR could have fulfilled its mandate as laid out in the Comprehensive Plan of Action to protect the Asylum Seekers by urging the Hong Kong government to stop the forced repatriation flights. This would have increased the pressure on the government to end the flights at a time when international opinion was already strongly opposed to the process. However, the UNHCR in Hong Kong was compromised. It was financially in debt to the Hong Kong government—by 1997, it owed the government more than HK\$1 billion for its share of the costs accrued for the accommodation and upkeep of the Asylum Seekers and refugees in the Territory.³⁴⁴ Dependent on contributions from member nations, including the United Kingdom but principally the United States, the UNHCR was not in a position to pay back its debt or to put pressure on the nations to which it owed money. This thesis argues that the UNHCR failed to adequately protect the Asylum Seekers. In this case, the UNHCR was unwilling to defy the policy of Hong Kong and so did not advocate or actively pursue alternative solutions to repatriation.

³⁴² Ibid.

³⁴³ Peter Barnes, “UNHCR and forced repatriation,” *Refugee Concern Newsmagazine*, Issue 6, Oct/Nov 1996, p. 2.

³⁴⁴ *Hong Kong Government Information Services*, June 1997.

Monitoring in Vietnam

The UNHCR employed seven monitors to care for all the needs of the more than 100,000 boat people who were returned to Vietnam between 1989 and December 1996 (see table 6.1).³⁴⁵ The seven monitors conducted 360 missions in this period, visiting in their estimation between 20-25 per cent of all returnees. A mission was a visit by the monitor to an area where a number of returnees were concentrated, to check on allegations of abuses, provide counseling to vulnerable individuals and offer help where practicable.

The UNHCR defended its system of monitoring in Vietnam. According to the UNHCR's *Special Report, Comprehensive Plan of Action, The Indo-Chinese exodus and the CPA* written in June 1996:

UNHCR's monitoring in Vietnam offers by far the most sophisticated, far-reaching and systematic follow-up of any repatriation operation to date. Some of the returnees have encountered practical difficulties in resuming their former lives. Most complaints stem from economic difficulties. To date monitoring has revealed no indication that returnees have been persecuted for leaving their country illegally.³⁴⁶

In fact, the monitoring had some serious flaws. While the UNHCR claimed its seven monitors all spoke Vietnamese, the reality between 1992 and 1995 was that only four were bilingual.³⁴⁷ The UNHCR's picture of the monitoring of returnees also contrasts with the letters and information received by members of Refugee Concern Hong Kong and by the Asylum Seekers in detention.

While the UNHCR reports that 88 returnees were imprisoned on their return, the agency gives no mention of the thousands who were returned to the new economic zones from which they had left. All returnees were sent back to the city, town, village or condition from which they had originally come. So, in the case of the people from Ha Tuyen, "home" was an

³⁴⁵ Appendix 1d.

³⁴⁶ UNHCR Information Section, *Special Report, Comprehensive Plan of Action, The Indo-Chinese exodus and the CPA*, UNHCR, June 1996, p. 22.

³⁴⁷ Harriet Glompus, "The UNHCR in Hong Kong—Betrayal by the Bureaucrats," *Refugee Concern Newsmagazine*, Issue 6, October/November 1996.

ethnic Chinese concentration area. In some cases, the Vietnamese authorities did not recognise marriages in detention in Hong Kong, and so if the wife and husband originally came from different provinces, they were sent back to these separate locations. The application to reunite with their spouses could take between several months and several years to process.

Table 6.1

Departures from places of first asylum 1979 to June 1997

Hong Kong	Resettled	144,007	(Over 106,000 resettled before 1988)
	Repatriated	67,005	(9,605 forced)
Malaysia	Resettled	225,794	(Over 220,000 resettled by the end of 1990)
	Repatriated	9,162	
Indonesia	Resettled	111,238	(Over 99,000 resettled before 1988)
	Repatriated	12,549	
Thailand	Resettled	98,036	(Over 94,000 resettled by the end of 1990)
	Repatriated	11,914	
Philippines	Resettled	46,031	(Over 36,000 resettled before 1988)
	Repatriated	2,146	
Singapore	Resettled	30,528	(Over 30,000 resettled by the end of 1990)
	Repatriated	105	
Macau	Resettled	7,583	(Over 7,000 resettled before 1988)
	Repatriated	Nil	

(Source: Hong Kong Government Information Services, June 1997)³⁴⁸

Allegations have been made that returnees had their goods confiscated on arrival in Hanoi, and that bribes were demanded by Vietnamese officials to ensure a smooth

³⁴⁸ Appendix 1d.

reintegration process. Christians wrote that their bibles were confiscated by authorities on arrival. Following each repatriation flight several people were held in detention at the airport for up to five days for “debriefing.” For some this was routine as they awaited transport to a distant location. For others it amounted to an interrogation about people and activities in the camps in Hong Kong. Some were asked to give guarantees about their attitudes and to criticise their own actions.

Several letters reported that individuals known to have been politically active in Hong Kong or who had “suspect” family backgrounds in Vietnam were told to report to the local Public Security Bureau. Here they were questioned about membership in political groups overseas such as the American-based Vietnamese Democracy Movement, religious affiliations and so on. Many returnees were arrested for alleged offences committed before they left and were offered no support by the UNHCR in such cases. “Returnees are not exempt from prosecution for criminal offences under the law,” said the UNHCR.³⁴⁹

There is little detailed information about the fate of the returnees in Vietnam. The UNHCR’s monitoring system was inadequate and it was in no one’s interest to raise issues. Leonard Davis wrote in 1991:

There has been limited information about those who returned. A great deal of research remains to be undertaken. If the scrappy monitoring system cannot guarantee that the lives of those who returned could be protected, or that no petty official takes revenge, how can it hope to heal the emotional bruises of a young man finding his way back home carrying the flag of failure?³⁵⁰

The interviews of returnees were not properly carried out. The UNHCR monitors claimed, “it was possible to gauge whether there were any problems in an area by talking to one person in the street. If that person was alright then we assumed that the rest of the street

³⁴⁹ UNHCR Information Section, *Special Report, Comprehensive Plan of Action, The Indo-Chinese exodus and the CPA*, UNHCR, June 1996, p. 22.

³⁵⁰ Leonard Davis, *Hong Kong and the Asylum Seekers from Vietnam*, Cambridge University Press, Hong Kong, 1991, p. 30.

was in a similar condition.”³⁵¹ However, the assumption was wrong for the following reasons. Vietnamese Government officials or interpreters were usually present at interviews between the monitors and the returnees, making it difficult for any real concerns to be voiced. Monitors were therefore unaware of the real situation in Vietnam as the interviewees were too scared of the consequences to tell them about any persecution or problems they faced.

In August 1996, Refugee Concern reported it had received letters from Vietnam complaining of the returnees’ treatment and the failure of the UNHCR to adequately monitor their plight:

One family arriving back in Vietnam managed to see a UNHCR monitor at Dong Ngac. They told the monitor they were not provided household registration as promised, or a place to live. The UNHCR officer showed them an address which made them laugh; it was where their parents had lived during the French colonial regime! Both their home and their registration there had been cancelled many years prior. That was the best the UNHCR could do. The family had their luggage piled on a pedicab and was dumped on the streets of Haiphong. The cadres tell them they will be sent to China in the near future.

Another family, forced back to Vietnam in June 1996, was promised help by UNHCR before they left Hong Kong. They have no home, no work, no school for the children. They applied for accommodation in flats paid for with UNHCR and EC [European Commission] money. UNHCR told them they could only have that accommodation through the Vietnamese authorities. The cadres told them, “You betrayed the Motherland, why should you get anything? We, the contributors to the Revolution, cannot get a flat in that building—so why do you?” They met a UNHCR monitor, who was accompanied by two public security officials, so they dared not tell him of their true situation. They just said they had no household registration and that because of this they could not find legal employment.³⁵²

The monitoring of returnees in Vietnam was a limited operation because of the lack of personnel and it had the potential to become a dangerous precedent if the UNHCR thought it was successfully executed. In tandem with the UNHCR public relations machine, it was in the interests of the monitors to paint a picture of life and conditions in Vietnam that would promote voluntary repatriation from the detention centres around the region and allay the concerns of both the Asylum Seekers and the international community. For instance, in the

³⁵¹ From conversations between the author and a monitor in 1993.

³⁵² *Refugee Concern Newsletter*, “Returnees suffering discrimination and persecution: not the return in dignity and safety promised by UNHCR,” Issue 6, Oct/Nov 1996, p. 7.

regular UNHCR Information Bulletin that was circulated in the Hong Kong camps, information was heavily slanted toward increased business investment in Vietnam. Information Bulletin No. 13, for instance, only cited one paragraph of the October 1993 Amnesty International Report, *Socialist Republic of Vietnam, Continuing Concerns*, highlighting that “there is no substantiated evidence to show that returnees have been persecuted, although those accused of serious crimes may be prosecuted.”³⁵³

The UNHCR bulletin did not include much of the “negative” information in the Amnesty report. Amnesty gave detailed information about “a number of existing legal and political practices and policies which violate the civil and political rights of its citizens such as the use of administrative detention and unfair political trials.” The report said Amnesty was concerned with the continued detention of at least 60 political prisoners, including prisoners of conscience, such as Doan Viet Hoat, Doan Thanh Liem and Dr. Nguyen Dan Que, all accused of activities aimed at overthrowing the Vietnamese Government.³⁵⁴

In the UNHCR booklet, “Information for Vietnamese Asylum Seekers in Hong Kong,” there are four paragraphs under the section, “Is it safe to return to Vietnam?” The UNHCR told Asylum Seekers that “you will not be punished for having left Vietnam illegally and that you will be treated by the officials exactly the same way as any other Vietnamese in your local community.”³⁵⁵ The Vietnamese returnees report that their household registration cards were marked to denote they had been in Hong Kong. Other returnees say that they have been unable to find jobs as employers are unwilling to hire them because of their connection to Hong Kong.

³⁵³ UNHCR, “So Tin,” *Information Bulletin*, No. 13, Hong Kong, 15 December 1993, p. 2.

³⁵⁴ Amnesty International, *Socialist Republic of Vietnam, Continuing Concerns*, October 1993, AI Index: ASA 41/06/93.

³⁵⁵ UNHCR, “Information for Vietnamese Asylum Seekers in Hong Kong,” *Office of the Chief of Mission, UNHCR*, Hong Kong, 1990, pp. 13-14.

At the end of the day, the UNHCR monitors did not have the personnel, the resources or the will to find out what was happening to the returnees.

The Stateless

Those not repatriated to Vietnam also suffered, with some languishing in Hong Kong's detention centres for more than 10 years, unwilling to volunteer to return, and living in constant fear of violence in the camps. "In mass migration movements, there usually at the end is a small untidy mess," said Brian Bresnihan, Hong Kong government coordinator for Vietnamese refugees in July 1996.³⁵⁶ Bresnihan's dismissive statement ignored the pain, suffering and unacceptable precedents that had been created along the way, and reflected the government's sense of achievement that their objective of ridding the city of the majority of the asylum seekers by 1 July 1997 had been largely achieved. More than 3,000 refugees and stateless boat people remained in Hong Kong and the Philippines in 1999, offering a chance for the UNHCR to redeem itself. But yet again, the agency failed to act. It took a further nine years and the campaigning efforts of Australian lawyer Hoi Trinh to finally resettle the remaining refugees.³⁵⁷

The 1,400 remaining Vietnamese in Hong Kong were all granted residency by the Hong Kong authorities in 2000, with the closure of Pillar Point Refugee Camp in July 2000 bringing to an end the local boat people saga.³⁵⁸ Of this group, approximately 150 families or 514 Vietnamese boat people³⁵⁹ were classified in 1999 as non-nationals and could not therefore return to Vietnam. As they had been screened out as refugees, and in 1993 attempted

³⁵⁶ Marcus W. Brauchli, "Dissidents Uneasy as Colony's Clock Ticks," *Asian Wall Street Journal*, 30 July 1996.

³⁵⁷ David Nason, "Refugees wait on Vanstone's word - Fall of Saigon: 30 years on," *The Australian*, 30 April 2005, p. 6.

³⁵⁸ *Xinhua News Agency*, "World's last Vietnamese refugee centre closed," Beijing, 19 July 2000.

³⁵⁹ UNHCR, "Vietnamese Boat People in Hong Kong—Some Statistics," *UNHCR Information sheet*, 19 June 1999.

to repatriate to Vietnam but were rejected by the Vietnamese authorities, they were technically stateless. Some 15 of these families had close family ties in Australia—parents or siblings—who were willing to provide financial and social support if the Australian government agreed to accept their relatives under its Humanitarian Special Assistance Category Program. A further 17 families had wider family links to Australia, who had all pledged support for their relatives, according to the Council of Vietnamese Refugee Supporting Organisations in Australia's Trung Doan. However, Hong Kong's decision to grant residency to the refugees, solved part of the problem. Many of the 32 families with Australian connections continue to try to link up with their relations to this day.

Many of the 2,500 stateless Vietnamese boat people and refugees living in the Philippines also had direct family links with Australia and believed they might be eligible for resettlement because the Australian government had set up a Special Assistance Category Programme for Vietnamese boat people. This had allocated places for the Vietnamese that had not been filled as the programme was terminated in 1997 after operating for two years. The original purpose of the programme was to encourage Asylum Seekers in Hong Kong and around the region to return to Vietnam where their cases would be examined. If they were accepted, they would be fast-tracked to resettlement in Australia. In the 1997-98 financial year, some 2,450 Special Assistance Category Places were allocated but left unfilled.³⁶⁰ Australia resettled approximately 10,000 Vietnamese boat people and refugees from Hong Kong between 1975 and 1997, making it the fourth highest resettlement destination behind the United States (65,835), Canada (25,677) and the United Kingdom (15,442).³⁶¹

In November 2008, the Vietnamese Canadian Federation said that after five years of lobbying, the remaining 237 stateless Vietnamese living in the Philippines (many of whom had been transferred as refugees from Hong Kong) gained permission to immigrate to

³⁶⁰ Ibid.

³⁶¹ Appendix 1f.

Canada.³⁶² Some 2,300 stateless Vietnamese stranded in the Philippines after the CPA ended were resettled in Australia, Norway and the United States by 2008.³⁶³

Conclusion

Hong Kong's programme of forced repatriation was against the principle of non-refoulement of refugees. In addition, this policy involved considerable violence and trauma against the Asylum Seekers. This thesis also argues that the UNHCR failed in its duty to protect the Vietnamese Asylum Seekers. The fact 9,605 people were forcibly repatriated from Hong Kong to Vietnam, including the Nung minority group, such dissidents as Nguyen Van Kha and others, who had a well-founded fear of persecution in their homeland, demonstrates the UNHCR's failure. This failure highlights the lack of implementation or even the most tightly worded international human rights treaties. There is no regional or national human rights court in Asia and the European human rights court refuses to hear cases outside its jurisdiction. The UNHCR cannot be expected to protect the rights of Asylum Seekers when its paymasters (the states that make up its membership) are the very people who are transgressing the policies they have laid down.

In the final chapter, I will discuss the inadequacies of the Comprehensive Plan of Action, the failings of the Hong Kong government and the merits of developing an Asian Human Rights Commission to safeguard against future human rights abuses of Asylum Seekers in the region.

³⁶² Can D. Le, "Freedom for Vietnamese," *The Ottawa Citizen*, 13 November 2008, p. C4.

³⁶³ Jennifer Yang, "Vietnamese families finally find homes: Local association sponsors refugees after nearly 20 years stranded in Philippines," *The Edmonton Journal*, 19 June 2008, p. B3.

Chapter Seven

Conclusion

The Comprehensive Plan of Action (CPA) changed the course of refugee history and rights overnight. By endorsing a screening process and then accepting a stringent interpretation of the term refugee, putting the onus on the asylum seeker to prove their case and minimising the norm of giving people the “benefit of the doubt,” the administrators of the CPA changed the rules about refugee status. The phrase “Asylum Seeker” has come into common usage and the term “economic migrant” has been added to the UN’s lexicon, adding more and as yet unclear concepts to the already cluttered terminology referring to refugees.

UNHCR High Commissioner Sadako Ogata’s words describing the Comprehensive Plan of Action as a success had a hollow ring to them for the stateless Vietnamese boat people in Hong Kong and the Philippines who required a further 12 years to gain their freedom. “The plan’s commitment to a common search for peaceful, humanitarian solutions may well be felt for years to come,” Ogata said.³⁶⁴ Unfortunately, it is the negative impact of the Hong Kong government and UNHCR’s interpretation and implementation of three aspects of the Comprehensive Plan of Action—detention, screening and forced repatriation—that will be felt for many years to come in the lives of the more than 74,000 Vietnamese boat people who arrived in the Territory after 15 June, 1988.

As demonstrated in the previous chapters, Hong Kong was more interested in ridding itself of an unwanted problem ahead of the return of the colony to China in 1997 than it was in dealing with Vietnamese boat people humanely. While the United Kingdom had ratified all the key treaties and protocols on refugees and human rights in the previous 50 years, only the International Covenant on Civil and Political Rights had been extended to Hong Kong and

³⁶⁴ UNHCR Information Section, *Special Report, Comprehensive Plan of Action, The Indo-Chinese exodus and the CPA*, UNHCR, June 1996, p. 23.

that with some reservations. Yet, Hong Kong was a British colony subject to British law and in spite of the fact that Hong Kong representatives were on the committee that helped draft and then agreed to the Comprehensive Plan of Action, this thesis has shown that the Territory, and by association the British government, failed to implement the plan in a humane and legal manner.

There were many reasons to criticise the CPA, the Hong Kong government and the UNHCR over the handling of the influx of Vietnamese boat people after 15 June 1988. These include the deliberately-created, appalling conditions in detention centres and the corruption that riddled the camps. Another criticism was the unprofessional, perhaps illegal, approach to the screening of Asylum Seekers, allegedly aimed at limiting the number screened in as refugees to a pre-set quota. In addition, critics voiced concern (and anger) at the violence that was used during the camp movement and subsequent forced repatriation policies. All these transgressions of international human rights codes reveal the shortcomings of the CPA, the Hong Kong government policies and actions as well as the inadequacy of the UNHCR to prevent such abuses. Hong Kong placed political expediency over humanitarian concerns. The Hong Kong authorities had already decided on an outcome before embarking on the process of detention, screening and forced repatriation to arrive at a result whereby the majority of Asylum Seekers were repatriated to Vietnam.

The British-led Hong Kong administration failed to live up to its liberal ideals during the episode. This happened in spite of then Hong Kong Governor Christopher Patten's championing the rights of the individual and of the Hong Kong people in advance of a perceived lessening of democracy when the Territory reverted to Chinese rule on 1 July 1997. On 22 November 1993, Patten said:

What does the rule of law amount to? Independent courts. Equality before them—for Governor and governed alike. It means the Bill of Rights and all that it contains. It means not being able to lock people up on a whim. It means a free press, free to enquire and free to ask difficult questions. It means laws properly and fairly enacted

by the legislature to which the Executive is accountable...A fundamental component of the rule of law is a proper regard for human rights.

The best protection for human rights in Hong Kong—now and beyond 1997—lies in the strength and integrity of Hong Kong’s legal system and its institutions. That is why I am so concerned to ensure that they are maintained; frankly, I am inclined to regard that task as more important than trying to establish new bodies, such as a Human Rights Commission. If your human rights are infringed in Hong Kong, remedies and means of redress already exist.³⁶⁵

For the Vietnamese in Hong Kong this was not the case. Legal redress was available only to a small minority of Asylum Seekers. While Patten expounded the virtues of a free press, the Hong Kong media were restricted when reporting on the camps. The practical effect of this is that the media is unable to fulfill the watchdog role it should play in a free society.”³⁶⁶ This disrespect both for the rule of law and for the freedom of the press set dangerous precedents for when the Chinese took over the Territory in 1997.

This episode in refugee history also showed the failings of the international governance system for human rights in Asia. The issue of setting up a Human Rights Commission, either in Hong Kong alone, or for the whole of Asia, was pertinent to the treatment of the Vietnamese Asylum Seekers in Hong Kong. Would the Asylum Seekers have received better treatment and would the final outcome of their exodus from Vietnam have been any different if there had been an independent human rights body—akin to the European Court of Human Rights—to which Asian governments, including Hong Kong, were answerable?

Supporters of the Vietnamese Asylum Seekers sought legal redress in other jurisdictions, namely Europe. Attempts were made in 1990 by the French Vietnamese Boat

³⁶⁵ Amnesty International, “*Hong Kong and Human Rights: Flaws in the System, A call for institutional reform to protect human rights*,” AI Index, ASA 19/01/94 April 1994, p. 30. See also: Chris Patten, “Synergy of Robust Rights and Robust Development, *Sydney Morning Herald*, 24 November, 1993, p. 15.

³⁶⁶ Rob Brook, “Media Censorship,” *Refugee Concern Newsmagazine*, Issue 6, Oct/Nov 1996, p. 23.

People Defence Commission to initiate an action in the European Court of Human Rights against the British Government. The group claimed the screening process in Hong Kong was flawed and the indefinite and arbitrary detention of Vietnamese Asylum Seekers in Hong Kong was unlawful.³⁶⁷ The case was never heard as it was ruled to be outside the Court's jurisdiction.

Amnesty International was vociferous in its advocacy of the need for the Hong Kong government to establish a Human Rights Commission and an effective complaints system. In 1994, it put forward 32 arguments in favour of such a commission, the first of which read:

An independent commission could be instrumental in helping the government of Hong Kong, both before and after 1997, fulfill its continuing obligation to implement the international Covenant on Civil and Political Rights (ICCPR) fully, not just in law but in practice. That continuing obligation is recognised by the Joint Declaration and the Bill of Rights.³⁶⁸

For the Vietnamese Asylum Seekers, an independent human rights commission would have provided an alternative form of protection to the UNHCR. The evidence presented in this thesis makes it clear that a stronger advocate for the Asylum Seekers was needed. The UNHCR did not manage to protect the Asylum Seekers in any of the three key areas—detention, screening or forced repatriation—even though the agency's stated mandate under the Comprehensive Plan of Action was to protect the Asylum Seekers.

In its 1991 report, *Defenseless in Detention*, Refugee Concern said, "through incarceration the Hong Kong government effectively removed the refugees' own ability to remove themselves to safety."³⁶⁹ With limited media coverage of events in detention and the Hong Kong government repeatedly saying it wanted to create the worst conditions possible

³⁶⁷ Lindy Course, "Legal threat to repatriation," *South China Morning Post*, 24 February 1990, p. 1.

³⁶⁸ Amnesty International, "Hong Kong and Human Rights: Flaws in the System, A call for institutional reform to protect human rights," AI Index, ASA 19/01/94 April 1994, p. 23.

³⁶⁹ Susan Ann Comerford, Victoria Lee Amour-Hileman and Sharon Rose Waller, *Defenseless in Detention – Vietnamese Children Living Amidst Increasing Violence in Hong Kong*, Refugee Concern Hong Kong, Hong Kong, 14 June 1991, p. 17.

inside the camps to deter more arrivals and encourage those present to repatriate to Vietnam, it was the responsibility of the UNHCR to protect the Asylum Seekers. By agreeing to pay for part of the costs of detention—an amount that went beyond the agency’s initial agreement at Geneva in 1979 to pay for basic maintenance—the UNHCR found itself in a dilemma as it was paying for, and therefore sanctioning, a policy that went against its mandate to protect refugees.

The UNHCR’s financial dependence on its donor countries, including Hong Kong, the United Kingdom and the United States, compromised its value as a protection agency for Asylum Seekers and refugees. In such cases, there is a strong argument to support the transfer of the Asylum Seekers to a jurisdiction where they can receive independent advice, support and protection, either from church groups and non-government agencies, which are not so beholden to the government in question, or from a body such as a human rights commission. The key to success for such a body, whether it be national or international is that it has financial independence and the legal power to fulfill its charter.

The UNHCR has taken to heart the criticisms aimed at it relating to the detention of refugees and Asylum Seekers over the past two decades. On paper, if not always in practice, the UNHCR has improved the guidelines that should better protect Asylum Seekers. In 1999, the UNHCR produced a set of “Detention Guidelines,”³⁷⁰ the first of its kind. They were updated in 2012, outlining 10 fundamental guidelines to detention including the right to seek asylum must be respected, the right to freedom of movement, detention must not be arbitrary and is an exceptional measure, indefinite detention is arbitrary and maximum limits on detention should be established in law, conditions of detention must be humane and dignified, and detention should be subject to independent monitoring and inspection. Unfortunately for

³⁷⁰ UNHCR, Detention Guidelines—Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, <http://www.unhcr.org/505b10ee9.html>

the Vietnamese Asylum Seekers in Hong Kong, the guidelines came too late to offer them any protection either under the law or in practice in the detention centres.

However, there still remains the problem of the UNHCR's weak mandate and its inability to enforce the guidelines in most jurisdictions. The ability of the UNHCR to prevent governments from detaining Asylum Seekers in remote places against their will is almost nil. Hong Kong was willing to go ahead with a policy of detention despite the UNHCR and despite the significant monetary costs.

It did not have to be this way in Hong Kong. Migration has been proven to have a positive effect on an economy. According to Richard Wong at the Hong Kong Centre for Economic Research:

Much of the fear is based on an underlying zero-sum view of the economy. There is only a fixed amount of output and jobs to go around, and any new arrival must necessarily reduce the share of those who are already in the game. That this view should now apparently prevail not only in Hong Kong public opinion but also as a basis of government policy is perhaps surprising. Surely a society of immigrants with a record of economic success such as Hong Kong should understand better than others that the economy is not a zero-sum game. If it were the case, then the 6.5 million people in Hong Kong today would still be trying to survive on the same output as, for instance, the 600,000 people here in 1945. Hong Kong has traditionally welcomed immigrants. Have we not been told many times by government and business leaders that Hong Kong's only resource, apart from its harbour, has been its people? This recognises an important economic fact—people are assets.³⁷¹

Illegal immigrants are attracted to developed countries where cheap labour is in short supply. In California for instance, there were an estimated 2.2 million illegal immigrants in 2000, while a further 1 million were staying illegally in Texas and 489,000 in New York, according to the U.S. Citizenship and Immigration Services.³⁷² Similar statistics were true of

³⁷¹ Richard Y.C. Wong, "Immigration—a Flood or Flow?," *The Hong Kong Centre for Economic Research Letters*, Vol. 55, School of Economics and Finance, The University of Hong Kong, March-May 1999.

³⁷² U.S. Citizenship and Immigration Services, "Field Report," US census, 2000, http://www.statemaster.com/graph/peo_est_num_of_ill_imm-people-estimated-number-illegal-immigrants

Hong Kong, where the Immigration Department estimated illegal migration from China between the 1970s and 1990 amounted to 614,214 people.³⁷³

Even today, Vietnamese people continue to leave Vietnam illegally and head to Hong Kong in search of work on the construction projects that are a constant feature in the city. In 2010, 298 Vietnamese illegal immigrants were arrested and repatriated—a similar number as in the previous five years—which would indicate a population of illegal immigrants from Vietnam of approximately 75,000 living in Hong Kong (the same number as arrived in Hong Kong under the CPA as Asylum Seekers). This number is based on parallels with the Chinese illegal population where 1,500 illegal immigrants from China are arrested and repatriated each year from a known illegal Chinese population of more than 600,000.³⁷⁴

With greater cognizance of the benefits of migration, of the suffering caused by detention and coercive repatriation, and greater respect for human rights and the rights of Asylum Seekers (if not by individual sovereign states, then by a community of states represented by institutions and international law), there may be a path forward that would provide an appropriate solution in the interests of all parties.

³⁷³ Robin Cohen, *The Cambridge Survey of World Migration*, Cambridge University Press, Cambridge, 1995.

³⁷⁴ Hong Kong Government, “Population and Immigration,” Hong Kong Government Yearbook 2011, pp. 424-429, <http://www.yearbook.gov.hk/2011/en/pdf/E20.pdf>

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APPENDIX 1a

Arrivals of Vietnamese boat people in Hong Kong

Year	Arrival in small boats	Ship rescues	Total
1980	5908 in 200 boats	880 in 20 ships	6788
1981	6674 in 235 boats	1796 in 34 ships	8470
1982	7403 in 263 boats	433 in 7 ships	7836
1983	3301 in 142 boats	350 in 7 ships	3651
1984	1888 in 77 boats	342 in 7 ships	2230
1985	1069 in 49 boats	43 in 3 ships	1112
1986	1821 in 102 boats	238 in 5 ships	2059
1987	3291 in 165 boats	104 in 5 ships	3395
1988	18101 in 590 boats	348 in 7 ships	18449
1989	34112 in 797 boats	391 in 5 ships	34503
1990	6409 in 275 boats	186 in 4 ships	6595
1991	20179 in 580 boats	27 in 2 ships	20206
1992	12 in – boats	0	12
1993	94 in 3 boats	7 in 1 ship	101
1994	363 in 16 boats	0	363
1995	460 in 20 boats	0	460
1996	1037 in 10 boats	0	1037
1997 (to June)	1047 in 3 boats	0	1047

Source: Hong Kong Government Information Services, June 1997

APPENDIX 1b

Ethnic origins of arrivals 1979—June 1997

Period	Chinese from				Vietnamese from				Total
	S. Vn	(as %)	N. Vn	(as %)	S. Vn	(as %)	N. Vn	(as %)	
1979	17972	(26.1)	37536	(54.6)	9825	(14.3)	3341	(4.9)	68748 ³⁷⁵
1980	62	(0.9)	43	(0.6)	5599	(82.5)	1084	(16.0)	6788
1981	87	(1.0)	61	(0.7)	6050	(71.5)	2272	(26.8)	8470
1982	91	(1.2)	27	(0.3)	6051	(77.2)	1667	(21.3)	7836
1983	47	(1.3)	11	(0.3)	1904	(52.1)	1689	(46.3)	3651
1984	49	(2.2)	21	(0.9)	1563	(70.1)	597	(26.8)	2230
1985	13	(1.2)	10	(0.9)	687	(61.8)	402	(26.1)	1112
1986	50	(2.4)	25	(1.2)	914	(44.4)	1070	(52.0)	2059
1987	15	(0.4)	23	(0.7)	999	(29.4)	2360	(69.5)	3395
1988	82	(0.4)	162	(0.9)	5012	(27.4)	13072	(71.3)	18228
1989	1717	(5.0)	486	(1.4)	3032	(8.9)	28877	(84.7)	34112
1990	4256	(64.6)	296	(4.5)	1861	(28.2)	182	(2.7)	6594
1991	2319	(11.4)	222	(1.1)	8586	(42.5)	9079	(45.0)	20206
1992	9	(75.0)	0	(0)	1	(8.3)	2	(16.7)	12
1993	0	(0)	4	(4)	0	(0)	97	(96)	101
1994	1	(0.3)	0	(0)	138	(38.0)	224	(61.7)	363
1995	0	(0)	2	(0.4)	25	(5.4)	433	(94.2)	460
1996	0	(0)	0	(0)	8	(0.8)	1029	(99.2)	1037
1997	0	(0)	0	(0)	11	(1.0)	1036	(99.0)	1047
Totals	26768	(14.4)	38928	(20.9)	52266	(28.0)	68509	(36.7)	186545

Source: Hong Kong Government Information Services, June 1997.

³⁷⁵ Includes others from

	S. Vn	(as %)	N. Vn
1979	73	(0.1)	1

APPENDIX 1c

Statistics on Arrivals & Departures of Vietnamese Migrants from Vietnam

Year/ Month	Arrivals			Cumulative	(B)	Cumulative	Repatriation			No. in HK at end of month (see note 2) with ex-China cases	
	(A)			arrivals of (A) since 1975	Resettlement	Resettlement since 1975			Net Intakes		
					(see note 1)		VM	ECVII	(A-B)		
	VR/VM	ECVII	Total				(See note 14)	(See note 14)		included	excluded
1979	68,748	5,735	74,483	80,292	24,377	30,527	0	758	44,371	55,705	50,609
1980	6,788	4,385	11,173	87,080	37,468	67,955	0	6,428	-30,680	24,057	21,657
1981	8,470	3,416	11,886	95,550	17,818	85,813	0	2,725	-9,348	16,207	12,960
1982	7,836	158	7,994	103,386	9,247	95,060	0	2,671	-1,411	12,737	12,627
1983	3,651	91	3,742	107,057	4,200	99,260	0	118	-549	12,868	12,766
1984	2,230	15	2,245	109,267	3,694	102,954	0	14	-1,464	11,941	11,892
1985	1,112	55	1,167	110,379	3,953	106,907	0		-2,841	9,549	9,443
1986	2,059	110	2,169	112,438	3,816	110,723	0	85	-1,757	8,114	8,011
1987	3,395	7,406	10,801	115,833	2,212	112,935	0	7,299	1,183	9,771	9,537
					(see note 3)						
1988	18,328	927	19,255	134,161	2,772	115,707	0	170	15,556	26,602	25,673
					(see note 6)				(see note 5)		
1989	34,108	234	34,342	168,269	4,754	120,461	918	862	29,354	56,039	55,734
					(see note 7)						
1990	6,594	129	6,723	174,863	7,656	128,117	5,452	205	-1,062	52,232	52,025
					(see note 8)						
1991	20,206	90	20,296	195,069	6,467	134,584	7,747	120	13,739	60,149	60,017
					(see note 9)						
1992	12	0	12	195,081	3,439	138,023	12,612	35	-3,427	45,382	45,312
					(see note 10)						
1993	101	2,383	2,484	195,182	2,571	140,594	12,751	1,514	-2,470	32,041	31,092
					(see note 11)						
1994	363	17	280	195,545	1,504	142,098	5,939	542	-1,141	24,754	24,307
					(see note 12)						
1995	460	12	472	196,005	548	142,646	2,638	212	-88	21,954	21,703
					(see note 13)						
1996	1,037	49	1,086	197,042	274		15,101	16	763		
1997	1,047	0	1,047	198,089	19		3,847	7	1,028		
Total	186,545	25,212	211,757	198,089	136,789		67,005	23,781	49,756		
Note 1	Figures including babies born in HK to refugees						Note 9	Excluding 1 ECVII departed for Norway, and 1 ECVII			
Note 2	Figures take into account births and deaths amongst the Vietnamese and ECVII population							Departed for Sweden.			
Note 3	Excluding 1 ECVII departed for USA						Note 10	Excluding 5 ECVIIs departed for New Zealand			
Note 4	Since June 16, migrants from Vietnam are subject to a refugee status determination procedure						Note 11	Excl. 1 ECVII departed for USA and 5 ECVIIs for UK			
Note 5	Excluding 53 Fangcheng and 1 Nanning ECVIIs										
Note 6	Excluding 2 ECVIIs departed for USA						Note 12	Excl 4 ECVIIs departed for Australia and 3 ECVIIs			
Note 7	Excluding 2 ECVIIs departed for Finland						Note 13	Excl 5 ECVIIs departed for UK and 1 ECVII for Canada			
Note 8	Excluding 81 ECVIIs resettled overseas, including 1 in Australia, 9 in France, 39 in Norway,						Note 14	VM = Vietnamese Migrant; VR = Vietnamese Refugee			
	8 in Finland, 3 in USA, 3 in Sweden, 18 in UK							ECVII = Ethnic Chinese Vietnamese Illegal Immigrant			

APPENDIX 1d

Vietnamese Migrants - Regional Situation Monthly Departures from Places of First Asylum

Year	No. of Departures															
	Hong Kong		Malaysia		Indonesia		Thailand		Philippines		Singapore		Macau		Total	
	R1	R2	R1	R2	R1	R2	R1	R2	R1	R2	R1	R2	R1	R2	R1	R2
1979	24377	0	68646	0	18563	0	9305	0	4449	0	5290	0	792	0	131422	0
1980	37468	0	41349	0	35227	0	21051	0	6892	0	9091	0	3007	0	154085	0
1981	17818	0	25652	0	7395	0	20422	0	5402	0	5967	0	2294	0	84950	0
1982	9247	0	16253	0	6865	0	2772	0	6166	0	2784	0	346	0	44433	0
1983	4200	0	9503	0	7117	0	4215	0	3482	0	1758	0	222	0	30497	0
1984	3694	0	10460	0	6901	0	6659	0	2201	0	931	0	110	0	30956	0
1985	3953	0	7993	0	6529	0	2902	0	1900	0	905	0	69	0	24251	0
1986	3816	0	7011	0	5435	0	2688	0	2155	0	911	0	82	0	22078	0
1987	2212	0	8181	0	3242	0	4032	0	2271	0	599	0	121	0	20658	0
1988	2772	0	8516	0	2024	0	8610	0	2226	0	806	0	88	0	25042	0
1989	4754	918	10294	18	1840	0	5249	6	2136	15	1201	0	77	0	25551	957
1990	7656	5452	5697	299	740	289	6271	173	2369	59	227	4	182	0	23142	6276
1991	6467	7747	1810	355	2256	1240	1507	2329	785	71	0	1	141	0	12966	11743
1992	3439	12612	1504	798	1414	1205	608	1233	1573	130	57	0	46	0	8641	15978
1993	2571	12751	1561	1425	3622	1434	854	2217	1250	357	1	1	3	0	9862	18185
1994	1504	5939	958	1262	1983	2009	618	1828	619	761	0	0	1	0	5683	11799
1995	548	2638	294	709	78	2121	287	538	147	143	0	0	1	0	1355	6149
1996	274	15101	112	4296	7	4251	6	3590	8	610	0	99	1	0	408	27947
Total	136770	63158	225794	9162	111238	12549	98036	11914	46031	2146	30528	105	7583	0	655980	99034
(79 - December 96)																

Note: R1 denotes resettlement, R2 denotes repatriation

APPENDIX 1e

Vietnamese Migrants—Regional Situation

Monthly Arrivals at Countries of First Asylum

No. of Arrivals								
Year	HK	Malaysia	Indonesia	Thailand	Philippines	Singapore	Macau	Total
1979	68748	53996	48651	11928	7821	5451	3350	199945
1980	6788	18263	6821	21549	4932	9280	2270	69903
1981	8470	23113	9328	18378	8353	5381	448	73741
1982	7836	14855	7835	6076	3288	2749	59	42698
1983	3651	10930	5761	3534	1759	1566	0	27201
1984	2230	9035	7438	2808	1870	894	0	24275
1985	1112	7393	6229	3310	2646	891	0	21581
1986	2059	7400	2685	3886	2046	729	8	18813
1987	3395	8287	1672	11195	2677	848	3	28077
1988	18328	13312	1660	7082	3826	698	6	44912
1989	34108	16718	6695	4373	6678	1392	0	69964
1990	6594	1326	13833	9054	1108	147	0	32062
1991	20206	0	1260	169	229	6	0	21870
1992	12	1	18	10	0	0	0	41
1993	101	0	23	14	0	0	0	138
1994	363	0	1	0	1	0	1	366
1995	460	0	0	0	5	0	0	465
1996	1035	0	0	0	0	0	0	1035
Total	185496	184629	119910	103366	47239	30032	6145	676817

APPENDIX 1f Resettlement Destinations of Vietnamese Refugees from Hong Kong

Resettlement Destinations	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	Total
Argentina	29	0	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0	30
Australia	834	904	500	414	915	736	557	459	501	364	685	1502	771	421	168	52	122	88	0	9993
Austria	24	318	14	0	0	0	6	0	3	0	16	48	8	8	1	0	0	45	0	491
Belgium	101	29	6	2	2	11	1	0	42	0	1	1	0	0	0	0	0	0	0	196
Bermuda	0	7	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	7
Canada	4801	6548	2070	1088	536	1008	1302	975	766	1009	1449	1513	1562	606	297	90	32	19	6	25677
China	1	33	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	37
Denmark	164	321	220	180	47	49	18	45	5	12	51	185	111	3	0	8	34	21	0	1474
Finland	0	0	0	0	57	54	1	69	30	69	66	72	67	5	17	8	14	6	0	535
France	164	188	362	218	181	65	90	47	61	4	57	193	112	58	60	13	6	2	3	1884
Germany	1629	537	81	45	13	1	45	4	5	61	1	4	3	1	0	1		0	0	2431
Greece	0	42	0	0	0	0	0	0	8	0	0	0	0	2	0	0	0	0	0	52
Hong Kong	74	109	93	52	12	18	41	70	45	17	14	5	3	4	9	5	5	4	2	582
Iceland	0	0	0	0	0	0	0	0	0	0	0	30	30	0	0	1	0	0	0	61
Ireland	109	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	110
Israel	38	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	39
Italy	111	0	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	112
Ivory Coast	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
Japan	15	36	68	11	1	34	52	5	23	25	17	90	142	36	43	11	18	0	0	627
Luxembourg	0	5	0	0	0	0	0	0	26	1	0	0	0	0	0	0	0	1	0	33
Netherlands	261	96	102	110	26	18	13	82	71	69	128	20	46	4	16	0	0	1	0	1063
New Caledonia	32	4	12	21	8	3	0	0	0	0	0	0	0	1	0	0	0	0	0	81
New Zealand	83	217	2	99	16	20	23	26	51	31	92	137	66	47	0	5	3	9	0	927
Norway (direct)	31	180	126	6	4	1	17	14	28	5	17	39	18	11	0	0	37	0	1	535
Norway (via Bataan)	0	0	61	72	2	26	22	100	5	185	0	0	0	16	0	0	0	0	0	489
RTC (via Bataan)	0	0	0	0	0	0	0	0	0	0	0	762	2047	1270	937	682	0	0	0	5698
Spain	1	250	0	0	0	0	0	0	0	0	0	0	0	0	0	1	19	0	0	271
Sweden	8	95	2	13	207	11	0	101	44	15	141	278	351	16	4	15	13	7	0	1321
Switzerland	51	414	97	14	3	9	0	22	8	2	4	37	18	1	1	1	0	1	0	683
Taiwan	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	2	0	0	2
UK	3897	6076	1775	241	101	88	44	474	156	205	194	452	437	477	525	218	37	42	3	15442
USA (direct)	11906	16382	12219	5226	210	301	144	122	67	139	208	1195	429	417	493	394	199	26	4	50081
USA (via Bataan)	0	4671	3	1431	1855	1240	1577	1201	256	548	1606	1083	239	34	0	0	0	0	0	15754
Vanuatu	8	2	0	0	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	12
Vietnam	4	0	2	2	2	0	0	0	1	11	7	10	6	1	0	0	5	2	0	53
Others	0	4	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5
Total	24377	37466	17818	9247	4200	3694	3953	3616	2212	2772	2754	7656	6467	3439	2571	1504	548	274	19	136789

APPENDIX 1g

Vietnamese Migrants—Regional Situation

Population at Countries of First Asylum

Vietnamese Migrants and Refugees Population as at end of month								
Year/Month	Hong Kong	Malaysia	Indonesia	Thailand	Philippines	Singapore	Macau	Total
12/79	50609	34290	32100	5671	5315	882	3487	132354
12/80	21657	12164	4496	7348	3769	1148	2920	53502
12/81	12960	9845	6191	4991	6628	539	1196	42350
12/82	12627	8440	7274	8374	3861	480	966	42022
12/83	12766	10077	6036	8057	2236	286	803	40261
12/84	11892	8853	6703	4339	1960	249	727	34723
12/85	9443	8456	6568	4891	2744	235	677	33014
12/86	8011	9044	3849	6305	2715	61	620	30605
12/87	9537	9120	2453	13627	3219	311	518	38785
12/88	25673	14210	2352	12444	5030	203	440	60352
12/89	55728	20475	7332	11093	9659	324	374	104985
12/90	52030	14858	20561	14061	7902	146	205	109763
12/91	60022	12486	18685	11381	7025	149	61	109809
1992 Jan	58761	12301	18715	11065	6949	149	30	107970
Feb	57631	12199	18548	11066	6427	149	25	106045
Mar	56716	11918	18412	11038	6279	146	25	104534
Apr	55687	11785	18342	10970	6270	136	25	103215
May	54924	11553	18045	10659	6229	120	25	101555
June	53535	11407	17666	10483	6158	100	25	99374
July	52135	11065	16089	10477	6523	94	20	96403
Aug	50846	10970	15796	10327	6327	94	20	94380
Sep	49538	10632	15642	10172	5984	93	20	92081
Oct	48121	10565	15527	9955	5881	93	20	90162
Nov	46401	10359	15447	9376	5747	94	15	87439
Dec	45317	10276	14990	9755	5590	92	15	86045
1993 Jan	44803	10005	14692	9582	5513	94	12	84701
Feb	44287	9741	14342	9507	5383	94	12	83348
Mar	43403	9482	13773	9390	5160	94	11	81313
Apr	42515	9285	13081	9003	5133	93	10	79120
May	41462	8992	12549	8907	5091	81	10	77092
June	40722	8839	12220	8276	4839	92	10	74998
July	39770	8678	11872	8130	4735	92	10	73287
Aug	38847	8405	11495	7929	4692	92	10	71470
Sep	37167	8162	10886	7647	3978	92	10	67942
Oct	35334	7913	10690	7408	4728	93	10	66176
Nov	33113	7604	10358	7176	4685	95	10	63041
Dec	31097	7437	10240	6868	4485	95	10	60232

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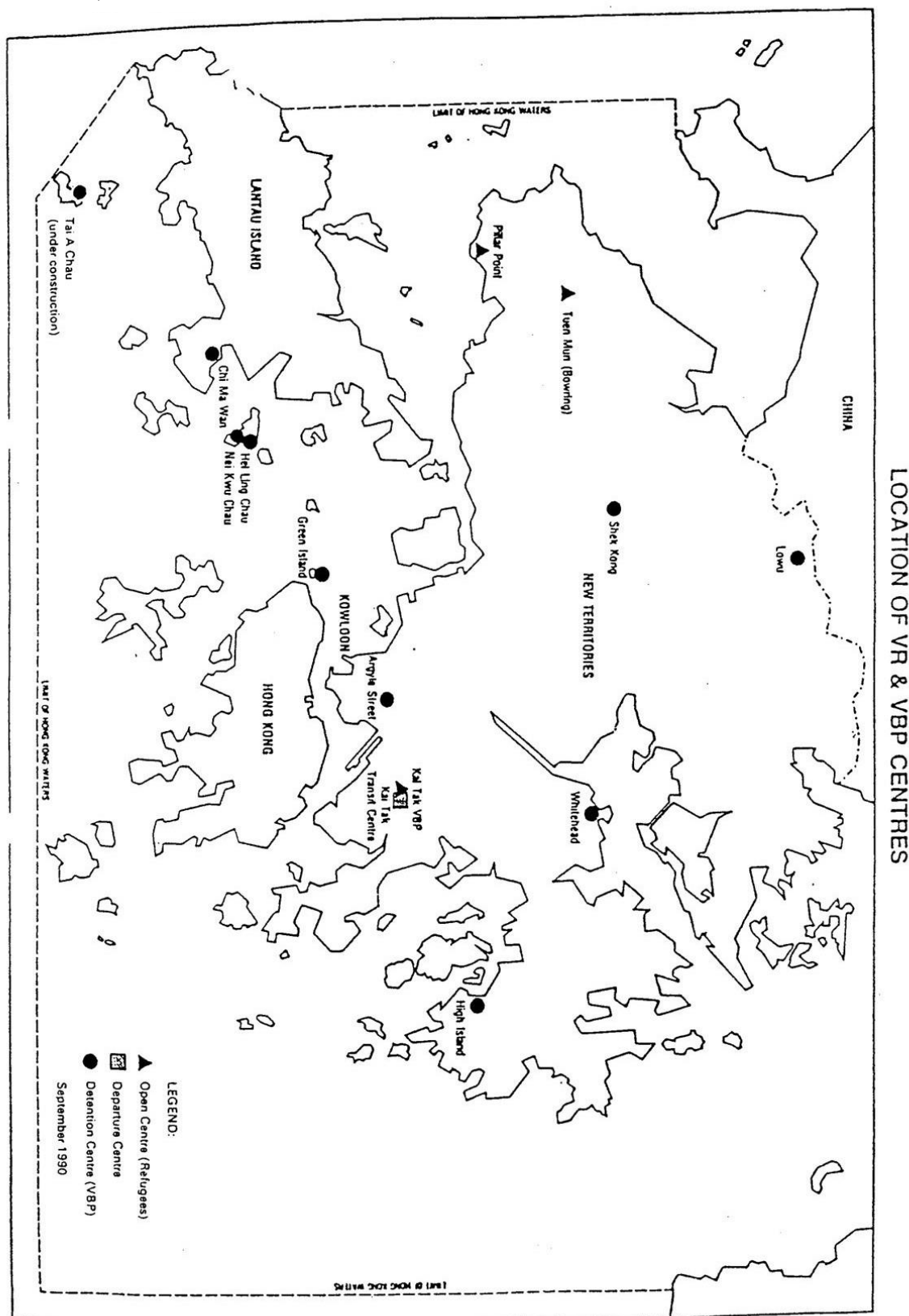
APPENDIX 1g (continued)

Vietnamese Migrants—Regional Situation

Population at Countries of First Asylum

Vietnamese Migrants and Refugees Population as at end of month									
Year/Month	Hong Kong	Malaysia	Indonesia	Thailand	Philippines	Singapore	Macau	Total	
1994 Jan	29117	7224	9853	6645	4432	97	10	57378	
Feb	28002	7125	9398	6435	3961	97	10	55028	
Mar	27473	7004	8873	6445	3866	98	10	53679	
Apr	27136	6912	8523	6393	3687	98	10	52759	
May	26910	6594	8059	6065	3539	97	10	51274	
June	26792	6457	7956	5776	3474	97	9	50561	
July	26530	6250	7841	5559	3225	98	9	49512	
Aug	26238	6087	7645	5477	3152	98	9	48706	
Sep	25795	5867	7500	5188	3041	98	9	47498	
Oct	25647	5666	7373	5033	3032	98	9	46858	
Nov	25080	5528	6958	4738	2899	98	9	45310	
Dec	24307	5339	6618	4556	2854	98	9	43781	
1995 Jan	24026	5198	6025	4459	2781	98	9	42596	
Feb	23606	5024	5701	4386	2752	98	9	41576	
Mar	23329	4867	5290	4278	2739	98	9	40610	
Apr	23259	4817	5175	4205	2696	98	9	40259	
May	23058	4749	4888	4092	2651	99	9	39546	
June	22824	4650	4856	3994	2627	99	9	39059	
July	22626	4641	4825	3963	2631	99	9	38794	
Aug	22549	4576	4773	3916	2636	99	9	38558	
Sep	22454	4543	4774	3872	2630	100	9	38382	
Oct	22176	4541	4656	3806	2633	102	9	37923	
Nov	22051	4508	4577	3788	2633	102	9	37668	
Dec	21703	4421	4491	3783	2631	102	8	37139	
1996 Jan	21257	4401	4495	3736	2615	102	8	36614	
Feb	20950	3797	4346	3703	2512	102	8	35418	
Mar	20286	3232	4293	3671	2478	102	8	34070	
Apr	19456	2105	4242	3627	2443	102	8	31983	
May	18125	553	4037	3334	2399	104	8	28560	
June	16787	96	3500	2784	1947	5	8	25127	
July	15529	80	2588	1896	0	5	7	20105	
Aug	14441	67	526	1729	0	5	7	16775	
Sep	13311	40	22	853	0	5	7	14238	
Oct	11697	37	24	268	0	5	7	12038	
Nov	9584	33	28	193	0	5	7	9850	
Dec	7647	31	29	208	0	5	7	7926	

APPENDIX 2



APPENDIX 3

Declaration and Comprehensive Plan of Action

I. DECLARATION

The Government of the States represented in the International Conference on Indo-Chinese Refugees, held at Geneva on 13 and 14 June 1989,

Having reviewed the problems of Indo-Chinese asylum-seekers in the South-East Asian region,

Noting that, since 1975, over 2 million persons have left their countries of origin in Indo-China and that the flow of asylum-seekers still continues,

Aware that the movement of asylum-seekers across frontiers in the South-East Asian region remains a subject of intense humanitarian concern to the international community,

Recalling United Nations General Assembly resolution 3455 (XXX) of 9 December 1975 and the first Meeting on Refugees and Displaced Persons in South-East Asia held at Geneva on 20 and 21 July 1979 under the auspices of the United Nations to address the problem,

Recalling further, the 1951 Convention relating to the Status of Refugees a/ and its 1967 Protocol, b/ and related instruments,

Noting with satisfaction that, as a result of combined efforts on the part of Governments and international organizations concerned, a durable solution has been found for over 1.6 million Indo-Chinese,

Preoccupied, however, by the burden imposed, particularly on the neighbouring countries and territories, as a result of the continuation of the outflow and the presence of large numbers of asylum-seekers still in camps,

Alarmed by indications that the current arrangements designed to find solutions for asylum-seekers and resolve problems stemming from the outflow may no longer be responsive to the size, tenacity and complexity of the problems in the region,

Recognising that the resolution of the problem of asylum-seekers in the region could contribute positively to a climate of peace, harmony and good-neighbourliness.

Satisfied that the international community and, in particular, the countries directly involved have responded positively to the call for a new international conference made by the States members of the Association of South-East Asian Nations and endorsed by the Executive Committee of the Programme of the United Nations High Commissioner for Refugees at its thirty-ninth session and by the General Assembly of the United Nations at its forty-third session,

Noting the progress achieved towards a solution of this issue by the various bilateral and multilateral meetings held between the parties concerned prior to the International Conference on Indo-Chinese Refugees,

Noting that the issues arising from the presence of Khmer refugees and displaced persons are being discussed, among the parties directly involved, within a different framework and as such have not been included in the deliberations of the Conference,

Noting with satisfaction the positive results of the Preparatory Meeting for the Conference held at Kuala Lumpur from 7 to 9 March 1989,

Realising that the complex problem at hand necessitates the co-operation and understanding of all concerned and that a comprehensive set of mutually re-enforcing humanitarian undertakings, which must be carried out in its totality rather than selectively, is the only realistic approach towards achieving a durable solution to the problem,

Acknowledging that such a solution must be developed in the context of national laws and regulations as well as of international standards,

Have solemnly resolved to adopt the attached Comprehensive Plan of Action.

II. COMPREHENSIVE PLAN OF ACTION

A. Clandestine departures

1. Extreme human suffering and hardship, often resulting in loss of lives, have accompanied organised clandestine departures. It is therefore imperative that humane measures be implemented to deter such departures, which should include the following:

(a) Continuation of official measures directed against those organising clandestine departures, including clear guidelines on these measures from the central government to the provincial and local authorities;

(b) Mass media activities at both local and international level, focusing on:

(i) The dangers and hardship involved in clandestine departures;

(ii) The institution of a status-determination mechanism under which those determined not to be refugees shall have no opportunity for resettlement;

(iii) Absence of any advantage, real or perceived, particularly in relation to third-country resettlement, of clandestine and unsafe departures;

(iv) Encouragement of the use of the regular departure and other migration programmes;

(v) Discouragement of activities leading to clandestine departures;

(c) In the spirit of mutual co-operation, the countries concerned shall consult regularly to ensure effective implementation and co-ordination of the above measures.

B. Regular Departure Programmes

2. In order to offer a preferable alternative to clandestine departures, emigration from Viet Nam through regular departure procedures and migration programmes, such as the current Orderly Departure Programme, should be fully encouraged and promoted.
3. Emigration through regular departure procedures and migration programmes should be accelerated and expanded with a view to making such programmes the primary and eventually the sole mode of departure.
4. In order to achieve this goal, the following measures will be undertaken:
 - (a) There will be a continuous and widely publicized media campaign to increase awareness of regular departure procedures and migration programmes for departure from Viet Nam;
 - (b) All persons eligible under regular third-country migration programmes, Amerasians and former re-education centre detainees will have full access to regular departure procedures and migration programmes. The problem of former re-education centre detainees will be further discussed separately by the parties concerned;
 - (c) Exit permits and other resettlement requirements will be facilitated for all persons eligible under regular departure procedures and migration programmes;
 - (d) Viet Nam will fully co-operate with the Office of the United Nations High Commissioner for Refugees (UNHCR) and the Intergovernmental Committee for Migration (ICM) in expediting and improving processing, including medical processing, for departures under regular departure procedures and migration programmes and will ensure that medical records of those departing comply with standards acceptable to receiving countries;
 - (e) Viet Nam, UNHCR, ICM and resettlement countries will co-operate to ensure that air transportation and logistics are sufficient to move expeditiously all those accepted under regular departure procedures and migration programmes;
 - (f) If necessary, countries in South-East Asia through which people emigrating under regular departure procedures and migration programmes must transit will, with external financial support as appropriate, expand transit facilities and expedite exit and entry procedures in order to help facilitate increased departures under such programmes.

C. Reception of new arrivals

5. All those seeking asylum will be given the opportunity to do so through the implementation of the following measures:
 - (a) Temporary refuge will be given to all asylum-seekers, who will be treated identically regardless of their mode of arrival until the status-determination process is completed;
 - (b) UNHCR will be given full and early access to new arrivals and will retain access, following the determination of their status;

(c) New arrivals will be transferred, as soon as possible, to a temporary asylum centre where they would be provided assistance and full access to the refugee status-determination process.

D. Refugee status

6. The early establishment of a consistent region-wide refugee status-determination process is required and will take place in accordance with national legislation and internationally accepted practice. It will make specific provision, inter alia, for the following:

(a) Within a prescribed period, the status of the asylum-seeker will be determined by a qualified and competent national authority or body, in accordance with established refugee criteria and procedures. UNHCR will participate in the process in an observer and advisory capacity. In the course of that period, UNHCR shall advise in writing each individual of the nature of the procedure, of the implications for rejected cases and of the right to appeal the first-level determination;

(b) The criteria will be those recognized in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, bearing in mind, to the extent appropriate, the 1948 Universal Declaration of Human Rights and other relevant international instruments concerning refugees, and will be applied in a humanitarian spirit taking into account the special situation of the asylum-seekers concerned and the need to respect the family unit. A uniform questionnaire developed in consultation with UNHCR will be the basis for interviews and shall reflect the elements of such criteria;

(c) The Handbook on Procedures and Criteria for Determining Refugee Status issued by UNHCR will serve as an authoritative and interpretative guide in developing and applying the criteria;

(d) The procedures to be followed will be in accordance with those endorsed by the Executive Committee of the Programme of the United Nations High Commissioner for Refugees in this area. Such procedures will include, inter alia:

(i) The provision of information to the asylum-seekers about the procedures, the criteria and the presentation of their cases;

(ii) Prompt advice of the decision in writing within a prescribed period;

(iii) A right of appeal against negative decisions and proper appeals procedures for this purpose, based upon the existing laws and procedures for the individual place of asylum, with the asylum-seeker entitled to advice, if required, to be provided under UNHCR auspices.

7. UNHCR will institute, in co-operation with the Governments concerned, a comprehensive regional training programme for officials involved in the determination process with a view to ensuring the proper and consistent functioning of the procedures and application of the criteria, taking full advantage of the experience gained in Hong Kong.

E. Resettlement

8. Continued resettlement of Vietnamese refugees benefiting from temporary refuge in South-East Asia is a vital component of the Comprehensive Plan of Action.

1. Resettlement Programme

9. The Long-Stayers Resettlement Programme includes all individuals who arrived in temporary asylum camps prior to the appropriate cutoff date and would contain the following elements;

(a) A call to the international community to respond to the need for resettlement, in particular through the participation by an expanded number of countries, beyond those few currently active in refugee resettlement. The expanded number of countries could include, among others, the following: Australia, Austria, Belgium, Canada, Denmark, Germany, Federal Republic of, Finland, France, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland and United States of America;

(b) A multi-year commitment to resettle all the Vietnamese who have arrived in temporary asylum camps prior to an agreed date, except those persons already found not to be refugees under established status-determination procedure and those who express the wish to return to Viet Nam. Refugees will be advised that they do not have the option of refusing offers of resettlement, as this would exclude them from further resettlement consideration.

2. Resettlement Programme for Newly-Determined Refugees

10. The Resettlement Programme for Newly-Determined Refugees will accommodate all those who arrive after the introduction of status-determination procedures and are determined to be refugees. Within a designated period after their transfer to the resettlement area, those determined to be refugees shall receive an orientation briefing from a UNHCR representative that explains the third-country resettlement programme, the length of time current arrivals may be expected to spend in camp awaiting resettlement, and the necessity of adhering to the rules and regulations of the camp.

11. Wherever possible, a pledge shall be sought from the resettlement countries to place all those determined to be refugees, except those expressing the wish to return to Viet Nam, within a prescribed period. It shall be the responsibility of UNHCR, with the full support of all the resettlement countries and countries of asylum, to co-ordinate efforts to ensure that departures are effected within that time.

F. Repatriation/Plan of Repatriation

12. Persons determined not to be refugees should return to their country of origin in accordance with international practices reflecting the responsibilities of States towards their own citizens. In the first instance, every effort will be made to encourage the voluntary return of such persons.

13. In order to allow this process to develop momentum, the following measures will be implemented:

(a) Widely publicized assurances by the country of origin that returnees will be allowed to return in conditions of safety and dignity and will not be subject to persecution;

(b) The procedure for readmission will be such that the applicants would be readmitted within the shortest possible time.

(c) Returns will be administered in accordance with the above principles by UNHCR and ICM, and internationally funded reintegration assistance will be channelled through UNHCR, according to the terms of the Memorandum of Understanding signed with Viet Nam on 13 December 1988.

14. If, after the passage of reasonable time, it becomes clear that voluntary repatriation is not making sufficient progress towards the desired objective, alternatives recognized as being acceptable under international practices would be examined. A regional holding centre under the auspices of UNHCR may be considered as an interim measure for housing persons determined not to be refugees pending their eventual return to the country of origin.

15. Persons determined not to be refugees shall be provided humane care and assistance by UNHCR and international agencies pending their return to the country of origin. Such assistance would include educational and orientation programmes designed to encourage return and reduce reintegration problems.

16. In dealing with Lao asylum-seekers, future measures are to be worked out through intensified trilateral negotiation between UNHCR, the Lao People's Democratic Republic and Thailand, with the active support and co-operation of all parties concerned. These measures should be aimed at:

(a) Maintaining safe arrival and access to the Lao screening process;

(b) Accelerating and simplifying the process for both the return of the screened out and voluntary repatriation to the Lao People's Democratic Republic under safe, humane and UNHCR-monitored conditions.

17. Together with other durable solutions, third-country resettlement continues to play an important role with regard to the present camp populations of the Lao.

E. Implementation and review procedures

18. Implementation of the Comprehensive Plan of Action is a dynamic process that will require continued co-ordination and possible adaptation to respond to changing situations. In order to ensure effective implementation of the Plan, the following mechanisms shall be established:

(a) UNHCR, with the financial support of the donor community, will be in charge of continuing liaison and co-ordination with concerned Governments and intergovernmental as well as non-governmental organizations to implement the Comprehensive Plan of Action;

(b) A Steering Committee based in South-East Asia will be established. It will consist of representatives of all Governments making specific commitments under the

Comprehensive Plan of Action. The Steering Committee will meet periodically under the chairmanship of UNHCR to discuss implementation of the Comprehensive Plan of Action. The Steering Committee may establish sub-committees as necessary to deal with specific aspects of the implementation of the Plan, particularly with regard to status determination, return and resettlement;

(c) A regular review arrangement will be devised by UNHCR, preferably in conjunction with the annual executive committee session, to assess progress in implementation of the Comprehensive Plan of Action and consider additional measures to improve the Plan's effectiveness in meeting its objectives.

Appendix 4

Equipment used by the CSD and Police on 7 April 1994

Reproduced from *The Justices of the Peace Report into the events surrounding the removal of Vietnamese asylum seekers from Section 7 of Whitehead Detention Centre on 7 April 1994*.

The equipment used by the CSD and the police respectively on 7 April 1994 is set out below:

CSD

Mace

i) MKII-B Chemical Mace, an aerosol-type “Mace” spray-cartridge (similar to that used by women in some countries for self-defence, and similar in appearance to a hair-spray cylinder) which on depressing an actuator on the top, sprays a stream of CS in liquid form with a range of about 4 meters.

Gun-Fired Cartridges

ii) The “Federal 565 Cartridge” (Multi-Source), fired up into the air from a “Federal Gas Gun” with a range of around 70 meters. The cartridge is a slim aluminium cylinder 211 mm long and 37 mm in diameter weighing 284 grams, which bursts in the air to discharge 5 sub-munitions (5 aluminium cylinders of about half the size, but not the weight, of D-size flashlight batteries) which emit CS inside a propellant smoke.

iii) No. 17 CS Long Range Projectile (Single Source) fired up into the air from a “Federal Gas Gun,” with a range of about 60 meters. The cartridge is a slim aluminium cylinder 14 cm long and 38 mm in diameter (about the size and shape of a large hair-spray can) which ignites in the air to emit smoke-propelled CS. This means that the CS is emitted from the body of the projectile in contrast to a multi-source grenade where CS is emitted from the multiple sub-munitions.

Grenades

iv) No. 2 CS Tear Smoke Grenade (Single Source), thrown by hand up into the air. The grenade is an aluminium cylinder 15 cm long and 6 cm in diameter (about the size of a beer-can) weighing 435 grams which ignites in the air to emit smoke-propelled CS from both ends.

v) No. 15 Rubber Ball Grenade (Single Source), thrown by hand up into the air. The grenade is in the shape of a light bulb with a diameter of 8 cm and 12 cm in height, made of rubber, weighing 320 grams which discharges CS through four small smoke ports around the circumference of the sphere.

Note: Only a total of 4 grenades of the types in iv) and v) were used on 7 April.

Pepperfog Generator

vi) The Pepperfog Generator, a hand-held device in the shape of a 32 cm by 23 cm box with a long (84cm) nozzle attached, which runs somewhat similarly to a lawn mower motor to operate a carburettor which projects a continuous aerosol-type spray of CS.

Police

Gun-Fired Cartridges

vii) The “Federal 565” Cartridge, as at ii) above.

viii) The “Federal 565-10” Cartridge, (Multi-Source) the same as ii) above, but containing 10 smaller sub-munitions as opposed to 5.

ix) The H&W Multi-Source Cartridge, fired from the same gas gun with a range of 70 meters.

The cartridge is a slim aluminium cylinder 12.7 cm long and 38 mm in diameter (about the size and shape of a large hair-spray can) which bursts in the air to discharge 6 sub-munitions (6 aluminium cylinders of about half the size—but not the weight—of D-size flashlight batteries) which emit the CS inside a propellant smoke.

Note: Only a total of 6 cartridges of the type in ix) were used on 7 April.

Grenades

x) The H&W Multi-Source Smoke Grenade (Rubber Bursting), thrown by hand. The grenade is a rubber cylinder 60 mm in diameter and 175 mm in length (about the size and shape of a beer-can) made of rubber, weighing 630 grams which bursts in the air to discharge 23 sub-munitions (23 aluminium cylinders of about the size and weight of an AA size battery) which emit the CS from both ends inside a propellant smoke.

A version of this grenade can also be delivered by means of a “Grenade Launcher” which is somewhat similar in appearance to a rifle with a short, squat barrel with a shoulder-brace, which can propel the grenade with a range of 60 to 90 meters.