

HONG KONG

Abuses Against Vietnamese Asylum Seekers in the Final Days of the Comprehensive Plan of Action

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I. SUMMARY AND RECOMMENDATIONS

One hundred and fifty-five years of British colonial rule will come to an end in Hong Kong on July 1, 1997. As agreed in the 1984 Sino-British Joint Declaration on the Question of Hong Kong, the territory will revert to Chinese rule and become a Special Administrative Region (SAR) of China. Even before the changeover, China is increasingly exercising its authority over the territory on a number of issues and has directed, for instance, that all the Vietnamese be cleared from Hong Kong before July 1. Such pressure has spurred the Hong Kong government to redouble its efforts to resolve the Vietnamese situation, which has embroiled the territory in controversy for over twenty years.

On January 3, 1997, the government came one step closer to its goal of evicting the Vietnamese from its territory with the closure of Whitehead Detention Center. The largest of the camps used to detain Vietnamese asylum seekers, Whitehead, which held about 1,700 boat people at the end of 1996, contained 29,000 people at the height of the refugee influx in the aftermath of the Vietnam War. With only about 5,600 asylum seekers left in the territory today,¹ the history of the Vietnamese boat people in Hong Kong has clearly reached a new stage. Refugee Coordinator Brian Bresnihan reaffirmed this view, calling the Whitehead closure “a watershed in the whole Vietnamese migrant saga, signaling the beginning of the end of the problem.”² While this may indeed be the “beginning of the end,” significant concerns regarding detention, repatriation, and the responsibilities of the Hong Kong government and the United Nations High Commissioner for Refugees (UNHCR) have developed in this last phase precisely as a result of the haste to bring this situation to a close.

For the last fifteen years, human rights organizations have focused on the treatment of the Vietnamese asylum seekers by raising questions about the fairness of the procedures used to determine refugee status and by expressing concern about conditions in the camps where they were detained. Those concerns were heightened after an international agreement known as the Comprehensive Plan of Action (CPA) was adopted in 1989 leading to a focus on repatriation back to Vietnam for those deemed not to be refugees. Given the well-documented flaws in the screening process, the focus on repatriation left open the possibility that some genuine refugees would be sent back. Human rights groups also noted that Hong Kong authorities appeared to be deliberately seeing that conditions in the camps deteriorated as a way of “encouraging” people to return.

All of these issues came to a head in 1996, due to the scale and intensity of repatriation efforts. With the completion of refugee status determination procedures in March 1995, Hong Kong, like countries throughout Southeast Asia which had participated in the CPA and had given the boat people first asylum, began to shift its energies to clearing the Vietnamese from its camps. Reflecting larger trends in the international protection of refugees, this shift in favor of repatriation as the most desirable durable solution to the “boat people” crisis not only exacerbated already intolerable conditions within Hong Kong’s detention camps but also led to violence by both government forces and camp inmates and resulted in security forces using disproportionate force in operations to transfer the Vietnamese to other detention facilities to prepare for the trip home.

¹ Of this number, approximately 1,000 people are considered “post-CPA cases” as they arrived in Hong Kong after June 15, 1996 and the expiration of the Comprehensive Plan of Action (CPA). Although they are placed in detention by the Hong Kong government and will be sent back to Vietnam through the orderly repatriation program, they will not undergo screening for refugee status. It should be noted that the majority of these recent arrivals are looking for work and do not seek asylum.

² Lucia Palpal-latoc, “Whitehead Closure ‘Beginning of End’ for Boat People Saga,” *Hong Kong Standard*, December 6, 1996.

While Human Rights Watch/Asia does not, in principle, oppose the policy of closed camp detention, it does uphold principles established by the UNHCR itself which stipulate that as a general rule, asylum seekers should not be detained.³ Human Rights Watch/Asia remains concerned about the conditions in which the Vietnamese boat people are held in Hong Kong, many of which run counter to UNHCR's own standards. In addition, many involved in the territory's detention facilities, including nongovernmental organizations (NGOs) and Hong Kong government employees, have drawn a link between a general degradation in camp conditions and the emphasis on repatriation. This has thrown into question the ability of the UNHCR and the Hong Kong government to effectively carry out their dual and often conflicting roles of both providing for the welfare of the camp populations and running the repatriation program.

Human Rights Watch/Asia is also concerned by the possibility that some of the 2,300 Vietnamese who as of late February 1997 had not been cleared for return to Vietnam would still be in Hong Kong by July 1. As some of these people are ethnic Chinese who hold passports from Taiwan and others are Vietnamese who fled first to China before entering Hong Kong, their situation may be particularly precarious.

This report updates previous work on Vietnamese asylum seekers in Hong Kong.⁴ The experience of Hong Kong's boat people in this final stage offers some insights into the various dimensions of protection and of the adverse consequences of contradictory agendas of international organizations and governments.

Recommendations

In light of the human rights concerns associated with the Vietnamese boat people in Hong Kong, Human Rights Watch/Asia makes the following recommendations:

To the Government of Hong Kong

- The Hong Kong government must fully respect its obligations under the Comprehensive Plan of Action, the 1988 Statement of Understanding signed with the UNHCR, and the International Covenant on Civil and Political Rights (ICCPR) to respect basic human rights, and make every effort to improve the conditions of its Vietnamese detention centers.
- The Hong Kong government should immediately end the detention of those asylum-seekers that the government of Vietnam has refused to take back and make provisions either for their resettlement in other countries before July 1 or for their integration into the Hong Kong community on the basis of permanent residence.
- To fully uphold its responsibilities under the Convention on the Rights of the Child, which was extended to Hong Kong by the government of the United Kingdom in September 1994, the Hong Kong government must protect the rights of Vietnamese children in the territory and ensure that secondary schooling, which was recently reinstituted in the camps after a one-year suspension, continues to operate as long as there are children who need it.
- As a matter of urgency, the Hong Kong government must immediately address complaints of hunger in the detention camps by investigating abuses of the food distribution system and by exploring other systems, such as the food ticket system utilized in the voluntary repatriation centers, in which the distribution of food rations is directly controlled and supervised by Correctional Services Department personnel.

³ UNHCR guidelines on the Detention of Asylum Seekers, UNHCR, published in *Detention of Asylum Seekers in Europe* (Geneva: United Nations, 1995) Vol.1, No.4.

⁴ See Asia Watch (now Human Rights Watch/Asia), "Indefinite Detention and Mandatory Repatriation: The Incarceration of Vietnamese in Hong Kong," *A Human Rights Watch Short Report*, vol. 3, no. 24, December 3, 1991; and Asia Watch, "Refugees at Risk: Forced Repatriation of Vietnamese from Hong Kong," *A Human Rights Watch Short Report*, vol. 4, no. 21 (August 2, 1992).

- In the interest of promoting press freedom, government accountability and the fair and humane treatment of Vietnamese boat people, the Hong Kong government should remove all restrictions on the press and provide journalists with free access to all Vietnamese detention facilities. In addition to allowing admission to the camps, the government should permit members of the press to speak to and interview Vietnamese inmates.
- The Hong Kong government should also conduct an evaluation of its administration and management of the Vietnamese boat people from the beginning of the outflow from Vietnam in 1975 to the present. Such an evaluation should include a critical examination of the methodologies adopted by camp management and also an independent inquiry into allegations of the employment of Vietnamese gangs by Correctional Services Department staff.
- In accordance with the repeal of Part IIIA of the Immigration Ordinance (the section pertaining to Vietnamese refugees), the Hong Kong government should establish a comprehensive policy to unify its treatment of all asylum seekers. In formulating such a policy, the government should ensure that the 1951 Refugee Convention and the 1967 Protocol forms the basis of a clear and transparent system which guarantees asylum seekers a safe landing in Hong Kong which allows them to exercise their right to seek asylum and a fair screening for refugee status. The Hong Kong government should also request that China, which is itself a signatory to the Refugee Convention, extend both documents to the Hong Kong Special Administrative Region (HKSAR). Finally, the government should request that the restrictions in Hong Kong concerning the application of the ICCPR and the Convention on the Rights of the Child be removed, and that interpretation of both treaties be extended to include immigration and asylum cases.

To the United Nations High Commissioner for Refugees

- Given the noted shortcomings of the screening procedure and the subsequent danger of *refoulement*, the UNHCR should exercise its mandate authority and review the cases of Vietnamese asylum seekers with compelling refugee claims.
- In the interest of maintaining trust and cooperation with NGOs, the U.N. agency should respond quickly to requests for information or other inquiries submitted by such groups.
- To address concerns among NGOs and Vietnamese asylum seekers regarding the effectiveness of the UNHCR's protection of returnees, the agency should establish an independent evaluation team to monitor the activity and performance of its monitors in Vietnam. UNHCR should also be held to its own description of its mandate to "monitor the status of returnees in the country of origin and intervene on their behalf if necessary."⁵
- The UNHCR should institute more transparency in the monitoring of returnees to Vietnam by publishing periodic reports on its monitoring activities and by making the policies and methodologies which guide its monitoring activities in Vietnam available to the public. In addition, should UNHCR in the country of origin learn of human rights abuses which may be relevant to potential returnees, the agency should transmit such information to those returnees.
- The UNHCR should also explore ways to make its protection role more effective through cooperative work with independent nongovernmental organizations who are not funded by the UNHCR. In addition to considering joint monitoring projects with such organizations, the UNHCR should engage in dialogue with nongovernmental groups to examine new strategies for monitoring and refugee protection.

To the international community

- In the spirit of the burden-sharing arrangement set forth by the Comprehensive Plan of Action, the international community should make every effort to find resettlement in third countries for the refugees remaining in Hong

⁵ UNHCR, *UNHCR Handbook on Voluntary Repatriation: International Protection* (Geneva: United Nations, 1996), p.6.
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Kong. To facilitate such efforts, Human Rights Watch/Asia calls for a special meeting to be held before July 1, 1997 of CPA member countries and states which are party to the Statelessness Convention to discuss the resettlement of Vietnamese refugees and the protection of stateless persons among the Vietnamese boat people population.

II. HISTORICAL BACKGROUND

To understand the significance of recent developments concerning Hong Kong's Vietnamese detention camps and the repatriation programs, it is important to be aware of the historical context from which such developments emerge.

In the aftermath of the Vietnam war, hundreds of thousands of Vietnamese began to leave the country. Most of these people took to the seas in search of haven in countries throughout Southeast Asia. Hong Kong, which is located roughly 540 miles northeast of Vietnam, has received a steady influx of Vietnamese seeking asylum. In 1975, one boat alone brought 3,743 refugees to the territory's shores. People continued to leave Vietnam and arrive in Hong Kong at an increasing rate throughout the late seventies. In 1979, for instance, a total of 199,945 Vietnamese fled the country. Of these, 68,748 landed in Hong Kong.

To deal with the growing dimensions of the refugee problem, the United Nations sponsored an international conference in July 1979. Attended by sixty-five countries, the 1979 Geneva Conference sought to resolve the crisis by granting temporary asylum to Vietnamese arriving in countries throughout Southeast Asia, providing permanent asylum to the boat people already in these countries, and establishing an orderly departure program for legal emigration out of Vietnam.⁶ Although the Geneva agreement stemmed the flow of refugees in the years immediately following the conference, the situation reached another impasse in the mid-eighties as asylum seekers continued to arrive at a steady rate, while resettlement in third countries began to decline.⁷ An international conference was convened in June 1989 to deal with this situation, and the Comprehensive Plan of Action, which established a system for refugee status determination and set forth a plan for the voluntary and forced return to Vietnam of those found not to be refugees, was adopted.

⁶ The Orderly Departure Program (ODP) was established to stem the flow of people departing from Vietnam and to provide them with a safe and dignified means of departure. Three main categories of people benefited from this program: those who had served three or more years of re-education, those with family abroad, and Amerasians.

⁷ The United States, Canada, the United Kingdom and Australia have accepted the most Vietnamese refugees, with 65,821, 25,659, 15,415, and 9,970 refugees resettled in each country respectively. Peaking in 1990 and 1991 with 7,656 and 6,467 refugees resettled in each year respectively, the rate of resettlement has since been on the decline.

Long before the CPA was adopted, however, the Hong Kong government began to initiate its own policies to deal with the boat people who arrived on its shores. Recognizing that a significant number of Vietnamese were leaving their country due to the lure of resettlement abroad, the government tried to stem the flow of arrivals by implementing a system of "closed camp" detention for all boat people arriving on or after July 2, 1982. This policy was subsequently followed in 1988 by the announcement that any Vietnamese arriving after June 16, 1988 would be subjected to screening to determine his or her refugee status. Before 1988, all Vietnamese were regarded as *prima facie* refugees.⁸ After this decision, however, all those determined by the screening process not to have legitimate asylum claims would be sent back to Vietnam.

Neither the closed camp policy nor the decision to initiate a refugee screening process helped to stem the exodus from Vietnam. On the contrary, the number of boat people landing on the territory's shores continued unabated and increased dramatically towards the end of the eighties. After peaking at 34,499 arrivals in 1989, another 20,206 Vietnamese landed in Hong Kong in 1991. The decline in Vietnamese arrivals only came once the repatriation of non-refugees began with the government's orderly return program (ORP). Established in 1991 and still in effect, the government's deportation scheme included a guarantee of non-persecution from the Vietnamese government as well as reintegration assistance and monitoring from the UNHCR in Vietnam. In marked contrast to previous arrival figures, since 1992 the number of boat people to land in Hong Kong since the initiation of repatriation has subsided to an average of a few hundred arrivals per year.⁹

The approximately 5,600 Vietnamese who currently remain in Hong Kong represent a significant decline in the territory's population of boat people. The majority of these people have lived in Hong Kong's detention camps for several years. Having been "screened out," i.e. determined by the screening process to be non-refugees, these people will be forcibly deported to Vietnam by the Hong Kong government unless they decide to volunteer to return through the UNHCR's program. It is important to note that among this group, there are approximately 661 applicants and their families (roughly 2,300 people) who have yet to be "cleared," or accepted, for repatriation by Vietnam. These people risk becoming stateless if Vietnam refuses to accept them, and they are also denied the right to remain in Hong Kong or settle in a third country.

III. DETENTION

Upon landing in Hong Kong, all Vietnamese asylum seekers are immediately placed in detention pending an evaluation of their applications for refugee status. If their applications are successful, they are transferred to one of the territory's open camps.¹⁰ If they are rejected, however, they are held in closed camps—facilities that are heavily guarded, allow minimal access to outsiders, and from which inmates cannot leave—until they are returned to Vietnam. The vast majority of Hong Kong's Vietnamese population has been denied refugee status. They are held in detention camps where many have lived for over eight years. Some Vietnamese have been held in such detention due to Vietnamese or Hong Kong government administrative inefficiencies. Some have waited in the camps as they appeal the decision concerning their refugee status through legal channels. Still others have simply refused to return to Vietnam in spite of the fact they face no chance of being resettled abroad.

⁸ In spite of the fact that Vietnamese who arrived in Hong Kong prior to 1988 were considered refugees, they were nonetheless kept in detention until they were resettled in a third country. After signing the Statement of Understanding with the UNHCR in 1988, the Hong Kong government agreed to progressively open the closed centers holding refugees and set up an open refugee center under UNHCR management.

⁹ According to Hong Kong government figures, there were twelve arrivals in 1991, 101 arrivals in 1992, 363 arrivals in 1994, 460 arrivals in 1995 and approximately 800 arrivals as of October 1996.

¹⁰ Hong Kong currently maintains two open refugee camps: Pillar Point Refugee Center in Tuen Mun, New Territories, and New Horizons Refugee Departure Center in Choi Hung, Kowloon.

The detention of Vietnamese asylum seekers in Hong Kong is an issue of concern not only because the detention of asylum seekers is inherently undesirable¹¹ but also because of the extensive length of time people have been detained and the highly restrictive conditions in which these people have been held. Since the adoption of the closed camp policy in July 1982, the Hong Kong government has housed the Vietnamese boat people, 70 percent of whom are women and children, in what has generally been described by many human rights advocates as squalid and inhumane conditions.¹² It is important to note, however, that the Hong Kong government has made significant improvements in the provisions for the Vietnamese since the height of the influx in the late eighties. At this time, many asylum seekers were housed in ferry boats, factories and storage buildings which often lacked adequate plumbing, sufficient bed space and basic provisions such as blankets and clothing. In spite of improvements, camp accommodations still include overcrowding, primitive toilet and bathing facilities, low levels of sanitation, and general fire hazards.

In Hong Kong's camps today, for instance, it is typical to find a family of four sharing one bed on a triple-tiered bunk six feet wide and eight feet long. Reminiscent of Hong Kong's "cage houses"—bed spaces enclosed by sheet-metal walls or bars that represent the poorest form of housing in the territory—this small area is shared by the entire family and serves as an eating, sleeping and storage space. Separated from neighbors by nothing more than a curtain sheet or hanging blanket, the Vietnamese have little privacy and cannot secure any protection from the crime and violence that pervade the facilities. The general level of health among the camp populations also reflects unsatisfactory living conditions and particularly, inferior levels of hygiene. According to both the Hong Kong government Department of Health and Médecins sans Frontières (MSF), the most common illnesses in the detention facilities have been upper respiratory tract infections, gastro-intestinal ailments, and dermatological problems.¹³ Conditions like diarrhoea, scabies, tuberculosis, and asthma, which are often associated with contaminated or poorly cooked food, lack of space, and unclean, dusty bedding, are also commonly found among the camp population.

Prison-like Detention for Asylum Seekers

Human Rights Watch/Asia supports the right of all people to leave their native country due to a well-founded fear of persecution and to seek asylum on such grounds. While it does not in principle oppose the closed camp policy practiced in Hong Kong, Human Rights Watch/Asia does question the indefinite incarceration of asylum seekers in prison-like environments. Whitehead and High Island Detention Centers, two of the largest camps to accommodate boat people in Hong Kong, exemplified the prison-like regime employed by the Hong Kong government in its management of the Vietnamese. The problems found in these camps raise serious questions about this type of management and the Hong Kong government's administration of the closed camp policy.

¹¹ UNHCR detention guidelines, paragraph 1.

¹² See Asia Watch, "Indefinite Detention and Mandatory Repatriation"; Lawyers Committee for Human Rights, *Inhumane Deterrence: The Treatment of Vietnamese Boat People in Hong Kong* (New York: Lawyers Committee, 1989); Janelle M. Diller, *In Search of Asylum: Vietnamese Boat People in Hong Kong* (New York: Lawyers Committee, 1988); Pam Baker, "The Torture Convention and Vietnamese Refugees in Hong Kong," *Torture in Hong Kong: Implementation of the U.N. Convention Against Torture* (Hong Kong: Centre for Comparative and Public Law, 1995); Paul Harris, "The ICCPR and Vietnamese Migrants in Hong Kong," *Hong Kong and the Implementation of the International Covenant on Civil and Political Rights* (Hong Kong: Centre for Comparative and Public Law, October 1995).

¹³ Human Rights Watch/Asia correspondence with the Hong Kong government Department of Health, August 27, 1996. Médecins sans Frontières (MSF) operated clinics in section five and six of Whitehead Detention Center until both were closed in April 1996. Respiratory conditions counted for 23 percent of the total number of MSF consultations, gastro-intestinal conditions totalled 10 percent of all consultations, and dermatological problems accounted for 9 percent of total MSF consultations between July 1995 and March 1996.

Access to the detention centers is highly restrictive, and Vietnamese inmates are denied the right to communicate with the world beyond the camps. This runs directly counter to the UNHCR's Guideline No.6(ii), which emphasizes "the possibility to regularly contact and receive visits from friends, relatives, and legal counsel." In spite of the government's assurances that monitoring groups are welcomed in these facilities, it is, in fact, difficult to obtain permission to enter the camps.¹⁴ Even lawyers are restricted to legal-visit rooms, sandwiched between a succession of high wire fences and the area where inmates are housed. Arguing that the presence of the press might incite unrest among the camp populations, the government has banned journalists entirely from all detention facilities. The right to communication is accorded to people who are detained or imprisoned in the Standard Minimum Rules for the Treatment of Prisoners (SMRTP). While this right is extended to Hong Kong's convicted criminals, it is denied the Vietnamese asylum seekers.

High Island Detention Center is situated on the banks of a scenic waterfront within Sai Kung country park. Camp inmates, however, are prevented from enjoying the beauty of their surroundings by the high sheet-metal walls and the 5.6 meter barbed wire fences which enclose the compound. Due largely to the fact that most inmates are selected for forced repatriation from this camp, the Hong Kong Correctional Services Department decided in early 1996 to further tighten the facility's physical security system. In addition to affixing metal sheets to all parts of the camp's inner perimeter fence, the CSD also planned to install searchlights in the observation towers.¹⁵ A similar prison atmosphere could be found at Whitehead Detention Center, located in the resort area of Tolo Harbor. The camp itself was surrounded by two perimeters of steel mesh wire fences 5.6 meters in height and topped by four rolls of barbed wire. Movement within the camp was restricted, as each section was isolated by its own 5.6 meter fence composed of wire and metal plates. Sentry boxes, which were positioned at regular intervals around the camp, contributed to a heavy sense of surveillance throughout the center. This atmosphere was furthered by periodic surprise raids carried out by CSD and police forces, who stormed the camps dressed in riot gear and armed with tear gas in search of homemade weapons.

Responding to the large number of arrivals in the eighties, the Hong Kong government cited the concern for public order and safety as a key factor in its decision to initiate the closed camp policy. This rationale is clearly reflected in the large sums of money the government has invested to install sentry boxes, search lights, and barbed wire fences in the camps. It is important to note, however, that during the previous decade, a much larger population of Vietnamese asylum seekers lived in open camps throughout the territory, with little effect to Hong Kong's economy or public safety. If the closed camp policy had little impact on Hong Kong society, it had a major impact inside the camps in creating environments of crime and violence. Theft, murder and sexual assault have been common occurrences within the camps. Although victims of such crimes can file complaints with the CSD or with justices of the peace who frequent the camps, evidence suggests that such criminality has been, in part, exacerbated by the management techniques employed by the CSD.¹⁶

¹⁴ Human Rights Watch/Asia was granted access to Hong Kong's Vietnamese detention centers three months after its initial request. While Amnesty International has had access to the camps for several years, it was denied the right to visit Victoria Prison at the height of repatriation operations in September 1996. The Security Branch of the Hong Kong government (the department which oversees issues concerning the Vietnamese asylum seekers) later granted the organization access to the facility after it had successfully completed a number of transfer operations. This was approximately one month after the organization's researcher had already left Hong Kong.

¹⁵ Correctional Services Department, *Report to Legislative Council Panel on Security: Security in Vietnamese Migrant Detention Centres* (Hong Kong: Correctional Services Department, 1996), p.4.

¹⁶ Although Whitehead Detention Center was officially closed on January 3, 1997, Vietnamese who first fled to China and from there to Hong Kong are still held at this facility. They are referred to as Ex-China Vietnamese Illegal Immigrants (ECVII). Human Rights Watch/Asia

According to the Correctional Services Department, in the early days of the closed camp policy, government authorities implemented a camp management system that placed certain aspects of the welfare of inmates in the hands of elected representatives.¹⁷ Although supposedly supervised by the UNHCR, inside sources reveal that this form of management was, in fact, based on the influence of camp gangs and the power of certain individual inmates. A former Whitehead inmate told Human Rights Watch/Asia that a team consisting of about twenty-five Vietnamese "strong guys" was set up by the CSD to maintain common order in Section 5. Known by inmates as the "Peace and Order Team," this group received money from CSD staff for their services. This system of control, according to the inmate, extended down to the hut level with leaders who were selected by the "strong guys." These men formed what was called the "Hut Leaders Committee" which was headed by a General Hut Leader. Hut leaders were also paid by CSD personnel and oversaw the management, including the distribution of food and supplies such as toilet paper, toothpaste, soap, plastic buckets and blankets, in each hut.¹⁸

In a report published in the *Hong Kong Standard* and corroborated in an interview with Human Rights Watch/Asia, one Correctional Services Department officer revealed that authorities have, in the past, relied on Vietnamese gang members, otherwise known as big brothers or dai goh, to control the camps. According to this officer, dai goh were employed primarily between 1989 and 1992 when the CSD lacked both sufficient manpower and adequate knowledge of the situation and dynamics within the camps. Dai goh were used to intimidate fellow inmates, to force them to follow camp rules, and to provide the CSD with information on camp activities such as protests or demonstrations. As a reward for their services, camp authorities provided these informants with fringe benefits including extra food, toothpaste, and new clothes.¹⁹ Often taken from goods donated by the community, this reward system resulted in many of the other inmates not receiving their share of donations. After a controversial incident on April 4, 1994 at Whitehead Detention Center, authorities decided to exercise more direct control of the situation within the camps. By transferring many of the dai goh to different sections and to other facilities, camp authorities managed to dissolve the power bases of the big brothers, break up the system of gang influence, and exert more influence in the camps.

However, remnants of this system persist in the camps today. Most recently, complaints of hunger among the Vietnamese at Whitehead and High Island have raised concerns regarding the abiding power of individual inmates. Many camp inmates have complained that food rations have been dramatically reduced over the last twelve months. Former inmates of Whitehead Detention Center have told Human Rights Watch/Asia that rice rations previously allotted to one adult were being shared among three adults at the beginning of 1996.²⁰ High Island Camp inmates have also complained of a reduction in food rations. Inmates at this facility report that a typical day's menu includes one piece of bread and half a mug of milk for breakfast; one bowl of rice, a two-inch slice of meat or fish with vegetables for lunch; and approximately the same for dinner with the addition of a piece of fruit.²¹ In what appears to be less than the 2,750 calories per day allowance that the government purports to provide those above eleven years old, this diet can only provide a very minimum of nutritional value for camp inmates.

¹⁷ Leonel M. Rodrigues (principal information officer of the Correctional Services Department), "Letter to the Editor," *Hong Kong Standard*, September 9, 1996.

¹⁸ Human Rights Watch/Asia correspondence with Whitehead Section 5 inmate, Hong Kong, July 28, 1996.

¹⁹ Palpal-latoc, "Viet Gang Lords 'Control Camps,'" *Hong Kong Standard*, September 9, 1996; and Human Rights Watch/Asia interview with CSD officer, Hong Kong, October 4, 1996.

²⁰ Human Rights Watch/Asia interview with ex-Whitehead inmates, Pillar Point Camp, Hong Kong, July 2, 1996.

²¹ Legal Assistance for Vietnamese Asylum Seekers (LAVAS) correspondence with Hong Kong Security Branch, August 19, 1996.

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.²² 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.²³ As guardians of the camps and as architects of the food distribution system, the CSD is ultimately accountable for this situation.

Degradation of Detention Conditions: Victoria Prison

In 1996 the Hong Kong government stepped up its forced repatriation operations and began to empty its detention facilities at an unprecedented rate. This focus on repatriation has been accompanied by the degradation of detention conditions. Although it guaranteed that conditions for non-refugees would be "no more restrictive than those that applied in closed centers prior to June 16, 1988,"²⁴ the Hong Kong government imposed more repressive conditions on the non-refugee population in 1996. The most obvious example of this approach has been the increasing use of Victoria Prison as a detention facility.

Life at Victoria Prison is even more restrictive than that at the camps. Inmates are not allowed to reheat or respice their food. There are no information centers available for their use, and they are often not permitted reading materials brought to them by visitors or friends. In the 1988 Statement of Understanding, the Hong Kong government gave its assurance that "persons determined not to be refugees will not be confined to their dormitories from dusk to dawn."²⁵ At Victoria Prison, the Vietnamese are only allowed outside their cells at specified periods for a maximum of one hour per day for exercise or recreation. In addition to contradicting the Statement of Understanding, such treatment violates human rights standards set forth in a number of international instruments. Article 31(1) of the Convention on the Rights of the Child, for instance, recognizes the right of the child to engage in play and recreational activities. Rule 47 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty further requires that children have suitable amounts of time for daily free exercise and recreation. And more generally, Principle 8 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment stipulates that "persons in detention shall be subject to treatment appropriate to their unconvicted status." Finally, the UNHCR guidelines stipulate that asylum seekers (a category which includes individuals who have been rejected for refugee status on purely formal grounds with which UNHCR would not concur) should be segregated from convicted criminals, women from men, and adults from children, unless the individuals are relatives. They should also have the possibility regularly to contact and receive visits from friends, relatives and legal counsel; the possibility to receive appropriate medical treatment and to conduct some form of physical exercise; and the possibility to continue further education or vocational training, or in the cases of persons under the age of eighteen, the right to education which should optimally take place outside the detention premises.

²² Human Rights Watch/Asia fax correspondence with Refugee Coordinator, Brian Bresnihan, Hong Kong, November 8, 1996.

²³ Human Rights Watch/Asia interview with camp social worker, Hong Kong, July 2, 1996.

²⁴ *Statement of an Understanding reached between the Hong Kong government and the UNHCR concerning the Treatment of Asylum Seekers arriving from Vietnam in Hong Kong* (1988), p. 1.

²⁵ *Ibid.*, p. 6. In the 1988 Statement of Understanding, the Hong Kong government reserves the right "exceptionally to confine occupants to their dormitories when security requirements make this necessary." According to the Statement, "such measures will be adopted only on a temporary basis [and will] be discontinued when normal conditions return." Given the frequency and regularity of transfer and repatriation operations, such treatment, while "temporary" for individual inmates, amounts to a form of repeated and systematic abuse by the government. While legitimate security concerns accompany such operations, alternatives which accord with human rights standards must replace such treatment.

Designated as a detention center for Vietnamese asylum seekers since November 1989, Victoria Prison has seen an increasing number of boat people pass through its doors within the last year as they were moved from the camps in preparation for repatriation back to Vietnam. Accommodations at this facility have proven to be glaringly inadequate. Far exceeding the official capacity of 438, as many as 1,000 people have been held at Victoria Prison following a transfer exercise or preceding a repatriation operation. In May 1996, 980 people were quartered in the prison, with two cells holding 200 inmates each.²⁶ In August 1996, another 1,000 Vietnamese were sent to the facility. According to one inmate, one toilet was shared by sixty people.²⁷ Another inmate told Human Rights Watch/Asia that a room used for Vietnamese inmates had no proper toilet facilities and maintained only two shower taps for as many as 120 men, women and children.²⁸ Instead of preparing accommodations suited for the large number of people involved in repatriation and transfer operations, the government took the position that the limited period the Vietnamese were subjected to such conditions excused this treatment.²⁹ In many cases, however, inmates must live in such conditions for up to two weeks or longer. Given the acceleration of the repatriation process and the associated rise in the number of transfers to Victoria Prison, such intolerable conditions constitute a consistent pattern of abuse by the Hong Kong government. In 1988, the government reaffirmed its commitment both to treat non-refugees in a "humane and dignified manner pending their safe repatriation to Vietnam" and to "make every effort to ensure that satisfactory conditions of accommodation are provided for all Vietnamese."³⁰ Conditions in which Vietnamese asylum seekers were held at Victoria Prison raise serious questions regarding the government's commitment both to its agreement with the UNHCR and to international human rights standards.

Used to punish Vietnamese viewed by camp authorities as troublemakers—a use of detention which is in direct contravention of UNHCR's Guideline No.3, "under no circumstances should detention be used as a punitive or disciplinary measure...", Victoria Prison has also been used for the arbitrary detention of certain inmates. In some cases, the CSD has separated individuals from their families and placed them in Victoria Prison without formally arresting or charging them with any crime or offense. After a riot at Whitehead on May 10, 1996, about thirty people were transferred to Victoria Prison without any official charge. Among this group were eight men known in the camp community as leaders of the New Democracy Movement, an anti-communist political organization.³¹ One of these men, who was ill during the time of his "arrest," remained in Victoria Prison separated from his wife and family for over four months. Clearly a violation of the fundamental freedom of liberty, such detention is technically lawful in Hong Kong due to Victoria Prison's designation as a Vietnamese detention facility. By international standards, however, such treatment breaches Article 9 of the ICCPR, and Principles 10, 11, and 12 of the Body of Principles which prohibits arbitrary detention and ensures individuals the right to be informed of the reason for arrest.

Voluntary Repatriation and the Use of "Push" Factors

²⁶ Batha, Emma, "'Migrants' Conditions in Prison Attacked," *South China Morning Post*, August 29, 1996.

²⁷ Ibid.

²⁸ Human Rights Watch/Asia interview with Vietnamese inmate at Victoria Prison, Hong Kong, May 13, 1996.

²⁹ Batha, Emma, "'Migrants' Conditions....," *South China Morning Post*.

³⁰ *Statement of Understanding*, p.1.

³¹ Human Rights Watch/Asia correspondence with Whitehead Section 5 inmate, Hong Kong, July 28, 1996. See also, Lucia Palpal-latoc, "Detention of Riot Suspects 'Arbitrary,'" *Hong Kong Standard*, July 2, 1996.

The UNHCR has undertaken a variety of roles and shouldered a number of responsibilities in its work with the Vietnamese asylum seekers in Hong Kong, as it has elsewhere in the world. In addition to participating in the screening process and providing for the welfare of those people judged to be refugees, the U.N. agency has also continued to oversee, in conjunction with the Hong Kong government (and in accordance with a 1988 Statement of Understanding with that government), the care of a large population of people determined to be non-refugees. In addition to such protection and assistance, the UNHCR's mandate also includes the organization of voluntary repatriation operations.³²

Particularly within the last year, both the Hong Kong government and the UNHCR have devoted increasing energy to repatriation. The completion of the screening process and China's repeated insistence that Hong Kong be cleared of all boat people before its resumes sovereignty in July 1997 have together contributed to this shift in focus. For the UNHCR, repatriation has raised some important questions regarding the agency's various roles in refugee protection. This is an issue which the UNHCR has itself explored in a recently released publication, *Handbook on Voluntary Repatriation: International Protection*. Emphasizing the importance of voluntariness in repatriation, the UNHCR has recognized that "push" factors, or forces which compel refugees to return to their country of origin through the degradation of conditions in the country of refuge, seriously compromise the voluntariness of repatriation. In the case of the Vietnamese in Hong Kong, however, the UNHCR appears to have resorted to certain measures to "encourage" more returns to Vietnam which challenge the nature of this voluntariness.

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. Within the last few years, however, the UNHCR has progressively scaled back its budget for the boat people. Expenditures have dropped consistently since 1992 when they peaked at HK \$373 million.³³ Between 1995 and 1996 alone, the UNHCR's outlay for agency-operated support (i.e. funding for nongovernmental organizations that implemented social welfare programs in the camps) dropped 45.49 percent from HK \$11,387,420 [US \$1,473,146] to HK \$5,180,060 [US \$ 670,124].³⁴ UNHCR representatives justify such cutbacks by pointing to the limited resources of the organization and its responsibilities in other troubled areas of the world. Human Rights Watch/Asia recognizes that balancing resources against competing priorities is a legitimate and difficult consideration for many organizations. Furthermore, it is also important to note that the UNHCR has already incurred a sizable debt of over HK \$1 billion to the Hong Kong government. While acknowledging such considerations, Human Rights Watch/Asia also questions certain changes within the Vietnamese camps that appear to have been largely inspired not by budgetary constraints but by the desire to promote more returns to Vietnam.

³² While the organization of voluntary repatriation operations is not expressly stated in the UNHCR's mandate, it has been provided for in the 1988 Statement of Understanding. According to the UNHCR, the agency's role in voluntary repatriation operations is usually based on bilateral agreements with the countries involved.

³³ UNHCR expenditures on Vietnamese asylum seekers in Hong Kong are as follows: HK \$373,489,613 in 1992; HK \$89,601,074 in 1993; HK \$201,661,662 in 1994; HK \$218,035,873 in 1995; and HK \$175,514,504 in 1996.

³⁴ Human Rights Watch/Asia was only able to obtain a sectoral breakdown for the UNHCR's budgetary outlay from 1995 onwards. In examining the agency's financial commitment to Hong Kong's camps, however, the most significant periods are believed to be between 1991 and 1994.

According to a UNHCR representative, welfare programs for the Vietnamese detention centers in Hong Kong were evaluated in terms of the objective of actively promoting repatriation to Vietnam from as early as 1993. Citing the changing circumstances in the camps during the early nineties, the UNHCR decided to cut “inessential” services and to exercise more control over continuing programs. It argued that community-based programs, which were previously allowed in the camps, created a “sense of permanence” to camp life, and thus discouraged people from returning to Vietnam.³⁵ As a result of this decision, humanitarian groups and nongovernmental organizations which sought to mitigate the strains of camp life were forced to leave the camps, in spite of the fact that many of these groups were either independently funded or operated at a minimum or negligible cost. In 1991, there were over two dozen organizations working with or on behalf of the boat people in Hong Kong’s detention camps. Today, only four agencies, Médecins sans Frontières, Caritas, Christian Action, and International Social Services, continue to run programs in the camps, and each of these has downgraded the services they provide.

Changes at Tai A Chau Detention Center over the last two years also reflect this approach which some nongovernmental organizations have described as a strategy of “tactical pauperization.” Due to its remote location, Tai A Chau camp faced some logistical difficulties in the supply of food and other resources. In the effort to both cope with this situation and help its population develop skills through useful employment, the camp developed a program to breed its own fish, ducks and chickens, grow its own vegetables, and bake its own bread. All of this (except the bakery) came to an end as efforts intensified to encourage people to return to Vietnam. Although this program actually saved the Hong Kong government money, it was regarded to be an obstacle to repatriation and was therefore eliminated. Denying people the chance to work, develop skills and eat fresh vegetables at no significant cost raises serious questions regarding the methods which have been used to promote repatriation.

Perhaps the clearest example of the UNHCR’s attempts to “push” the boat people back to Vietnam was the closure of secondary schooling within the camps. 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.³⁶ 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.”³⁷ As a result of this decision, approximately 1,150 children were deprived of the right to learn.³⁸

Ultimately, however, the responsibility for secondary education lies with the Hong Kong government, which is obligated under the Convention on the Rights of the Child to make primary education compulsory and available to all and to encourage the development of secondary education, and make that education available and accessible to every child. For over a year, the Hong Kong government responded to criticisms over the suspension of schooling by asserting that “the power to bring [the situation] to an end lies with the parents” who could make the decision to return

³⁵ Services considered “non-essential or inappropriate” included community education, camp representation, working with vulnerable groups and hut leaders, general group activities and group forum, and training of para-social workers. See Social Services Working Group, *Implementation Plan for the Continued Provision of Social Services to the Vietnamese in the Detention, Voluntary Repatriation and Refugee Centres in Hong Kong*, (UNHCR; Hong Kong, June 17, 1993).

³⁶ Human Rights Watch/Asia interview with UNHCR representative, Hong Kong, July 24, 1996.

³⁷ Ibid.

³⁸ Inmate teachers continued schooling for the Vietnamese children through donations provided by a local nongovernmental organization.

to Vietnam.³⁹ Revealing the disturbing intention of using detention conditions as levers in repatriation, the government was ultimately forced to reinstitute schooling in the camps under pressure by the United Nations Committee on the Convention on the Rights of the Child and local NGO advocates who lobbied the committee at its Geneva meetings in June and October 1996.

IV. REPATRIATION

³⁹ 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: Home Affairs Department, 1996).

In addition to the UNHCR's voluntary repatriation efforts, the Hong Kong government has systematically deported boat people back to Vietnam since 1991 through its orderly return program. Such repatriation must be evaluated within the context of the weaknesses inherent in the screening procedures used to determine refugee status for the Vietnamese. As the inadequacies of this process have been discussed at length elsewhere, this report will not fully reexplore the issue here.⁴⁰ A brief review of the key issues, however, is important in understanding both the concerns regarding the safety of those who have been or will be forcibly deported, and the violence and resistance which has frequently accompanied forced repatriation operations. Several aspects of the screening process have come under attack by nongovernmental organizations as well as legal experts.

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 asylum seeker, as international norms direct."⁴¹ Many have also suspected that the Hong Kong government maintained a set quota for the number of refugees it would recognize. As of June 1996, the Hong Kong government had completed screening for an estimated 60,062 people of whom 11.5 percent have been granted refugee status and 53,173 or 88.5 percent have been "screened out," or denied refugee status. This 11.5 percent figure is surprisingly close to the government's initial projection that no more than 10 percent of the Vietnamese boat people would be "genuine refugees."

The weaknesses of the screening procedures highlight the possibility that people with legitimate refugee claims may have been denied refugee status and are subsequently due to return to Vietnam. Human Rights Watch/Asia cannot support the repatriation of such people, as it would constitute refoulement and thus violate international guidelines which prohibit the return of genuine refugees. The Hong Kong government, however, has not been inclined to offer rescreening to many asylum seekers as it remains intent on clearing all of its camps before the handover to Chinese sovereignty. While the UNHCR has recently appeared more willing to review individual cases, it continues to exercise its mandate authority conservatively. Given the possibility that those with legitimate refugee claims may be forcibly returned to Vietnam, safe return and reintegration in Vietnam are of vital importance.

Monitoring in Vietnam

As part of its protection role, the UNHCR supervises the welfare of boat people who have returned to Vietnam. This monitoring role, which is legally rooted in the December 1988 Memorandum of Understanding between the UNHCR and Vietnam, began with the voluntary repatriation of seventy-five people from Hong Kong in March 1989. Under this agreement, the return to Vietnam of boat people from first asylum countries is guaranteed to "take place in condition of safety and dignity in conformity with national and international law."⁴² In addition to protecting returnees from persecution, harassment and punitive or discriminatory treatment, the Memorandum also ensured that the UNHCR would have full access to returnees.

⁴⁰ See Asia Watch, "Indefinite Detention and Mandatory Repatriation"; Lawyers Committee for Human Rights, *Inhumane Deterrence*; Janelle M. Diller, *In Search of Asylum*.

⁴¹ Asia Watch, "Refugees at Risk."

⁴² *Memorandum of Understanding between the Socialist Republic of Vietnam and the United Nations High Commissioner for Refugees* (Geneva: United Nations, 1988).

Unlike in any other refugee situation, the UNHCR conducts individual case monitoring of Vietnamese returnees.⁴³ A team of three UNHCR international staff monitors southern Vietnam while five international monitors cover the northern and central regions. Proficient in Vietnamese, the monitors' role is to assist in the smooth reintegration of returnees, help in the distribution of financial assistance, and investigate allegations of persecution, harassment, or mistreatment by Vietnamese authorities. The UNHCR staff have visited approximately 30 percent of the 91,525 people who have returned to Vietnam through both voluntary repatriation and the orderly return program.⁴⁴ As of January 1996, the U.N. agency had visited on one or more occasions 20 percent of the more than 22,000 returnees in Hai Phong, 31 percent of the 1,301 returnees in Hanoi, and 26 percent of the over 10,000 returnees in Ho Chi Minh City.⁴⁵

Criticisms of the UNHCR's monitoring program by asylum advocates are a cause of particular concern. Groups involved with the Vietnamese boat people have raised questions regarding the UNHCR's monitoring procedures, its attitude towards nongovernmental organizations, as well as its fundamental approach.⁴⁶ Such agencies have told Human Rights Watch/Asia that UNHCR monitors have displayed some reluctance in cooperating with them even as they sought to provide the agency with information regarding mistreatment of returnees by Vietnamese authorities. Cases which suggest the need for more vigilant monitoring include the following.

- In September 1995, a weekly publication of the Hai Phong Security Police published an article trumpeting its success in identifying seventy-nine political suspects among the 1,432 asylum seekers returned to Hai Phong between November 1, 1994 and June 15, 1995. Among these suspects, three people were arrested for belonging to New Democracy, an anti-communist political group active in Hong Kong's detention centers.⁴⁷
- After returning to Vietnam in April 1996, a former inmate of Whitehead, Section 8 was detained and interrogated at the Dong Ngac Reception Center for three days. During this period, authorities questioned him regarding the activities of and his involvement with the New Democracy movement. In a letter to friends in Hong Kong, this man writes, "Local police often come to 'see' us. Living becomes relatively complicated. I hope you could understand what I mean."⁴⁸

⁴³ United States General Accounting Office, *Vietnamese Asylum Seekers* (GAO/NSIAD-97-19).

⁴⁴ At the end of July 1996, 85,994 people had voluntarily returned to Vietnam and 5,531 had been returned through forced repatriation from Hong Kong as well as the other countries participating in the CPA.

⁴⁵ Human Rights Watch/Asia telephone interview with UNHCR representative, Hong Kong, August 21, 1996.

⁴⁶ Human Rights Watch/Asia interview with representatives of nongovernmental agencies, Hong Kong, July 18, 1996 and August 19, 1996.

⁴⁷ "Seventy-nine Political Suspects Identified Among 1,432 People Repatriated to Hai Phong," *Hai Phong Weekly Publication*, No. 163, September 19-26, 1995.

⁴⁸ Letter from returnee, Vietnam, June 30, 1996.

- One Vietnamese man voluntarily returned to Hai Phong in 1994 after spending approximately five years at Whitehead. Having converted to Christianity during his stay in the camp, this man began a small ministry in his hometown of Thuy Nguyen. According to informed sources, he has been repeatedly harassed by the police who have told him to abandon his religious activities or move to another town. After moving to his sister's district, however, he continued to encounter difficulties. In December 1995, for instance, he was arrested by police for conducting a Christmas service. Police demanded a fine of 200,000 *dong* (about US \$20) and later released the man.⁴⁹
- On May 22, 1996, Bui Thi Kinh and his family were forcibly returned to Vietnam. At the Dong Ngac Reception Center, Bui informed UNHCR representatives that his family had neither household registration nor any house to go to. Although the pre-1954 residence which the UNHCR had on record for the family was no longer valid, they were nonetheless sent back to Hai Phong where they were forced to stay in a "reception house." The Buis have moved from one place to another after repeatedly being harassed and forced out of various reception houses by local cadres.⁵⁰

Another case, involving a former sergeant of the Army of the Republic of Vietnam (ARVN), illustrates the fragility of protections that are presently afforded to returnees.⁵¹ This ex-soldier had served over fourteen years of re-education before fleeing the country. He was arrested by Vietnamese authorities in 1990 for "illegal departure" during an attempted escape by sea. Sentenced to four years, the man was released on medical grounds after serving two months of his sentence. He escaped by boat to Hong Kong with his wife and three children in 1991 after ignoring four notices to return to prison from his medical furlough. After being forcibly repatriated on February 7, 1996, he was arrested at the Dong Ngac Transit Center and later incarcerated at Hoa Son Prison, Quang Nam, Da Nang. This man was apparently arrested for escaping from his 1990 prison sentence imposed for his attempt to escape Vietnam. The Vietnamese government has promised that no returnees will face prosecution for having illegally left the country.⁵² Thus, while pardoned for having successfully escaped to Hong Kong in his second attempt, this man is now imprisoned for fleeing incarceration for a *failed* escape attempt in 1990. This case highlights the fine line which often divides cases of those who encounter problems with authorities upon their return to Vietnam, and those who are allowed to reintegrate with little or no difficulty. The UNHCR maintains that it has been in contact with members of this man's family and are continuing to monitor the case.

In addition to arrest, Vietnamese returnees face the risk of other forms of mistreatment by local authorities. Many have found it difficult to obtain household registrations, some have been ordered not to have contact with foreigners, and still others have been instructed to report regularly to the local police and submit accounts of their daily activities. Reports indicate that returnees have also been subjected to interrogations by Vietnamese authorities looking for information regarding anti-government activities among asylum seekers. In a July 1995 letter, one Hong Kong returnee speaks of this practice:

I just came back from the provincial security police station. The authorities requested that I report all activities of political organizations in the detention center in Hong Kong. Of course, they preface with

⁴⁹ Human Rights Watch/Asia interview with representative of the Vietnamese Evangelical Church, Hong Kong, September 25, 1996.

⁵⁰ Letter from Mr. Bui Thi Kinh, Hai Phong, May 23, 1996.

⁵¹ Human Rights Watch/Asia interview with representative of Legal Assistance for Vietnamese Asylum Seekers (LAVAS), Hong Kong, August 19, 1996.

⁵² *Memorandum of Understanding*, para. 3a.

a warning that my future would depend on how truthful my report was. At the end of the session, they told me that they would need my cooperation many more times.⁵³

Such accounts raise serious concerns regarding the safety and freedom of both those who have already returned to Vietnam and those who await repatriation.

⁵³ Letter from a returnee to a friend in Hong Kong, July 8, 1995 as cited in Boat People S.O.S, "UNHCR's Failures....," p.

According to a UNHCR representative in Hong Kong, the agency plans to continue its monitoring activities in Vietnam for at least the next two years.⁵⁴ The UNHCR should be commended both for its plans to bolster these activities and for recently increasing its international staff in the northern part of Vietnam. It is important to point out, however, that the Vietnamese government has a history of stigmatizing and blacklisting families over generations for political and religious expression as well as for class affiliations. If repatriation is to have the confidence of both the Vietnamese returnees and the international community, the concerns exemplified in the above cases must be investigated, resolved and monitored over the long term.

Excessive Violence in Forced Repatriation

The weaknesses of the screening procedures have also fueled a determination on the part of many asylum seekers to resist repatriation at all costs. Coupled with the government's goal of clearing all the Vietnamese from Hong Kong before July 1, this has led to the use of excessive force and violence during deportation operations on the part of both government security forces and Vietnamese who resist them.⁵⁵

As deportation of the Vietnamese accelerates in the months ahead, the Hong Kong government will be moving large populations of boat people between its various detention facilities. Such transfers have in the past been accompanied by excessive force and violence on the part of both government security forces and Vietnamese who resist them.

One of the most violent clashes occurred on April 7, 1994 as 1,500 Vietnamese from Section 7 at Whitehead were being transferred to High Island and Chi Ma Wan Upper Detention Centers. During this operation, a large contingent of CSD and police officers⁵⁶ clashed with Vietnamese inmates in what amounted to a five-and-a-half-hour raid of confusion and assault. Some asylum seekers sought to protest the transfer through passive resistance. Shouting slogans such as "protest against forced repatriation," the Vietnamese tried to assemble together in seated rows linked together at the arms. One inmate set fire to himself, and four others put their heads through nooses threatening to hang themselves.⁵⁷ Riot police responded with mace, tear gas and assault. Following the incident, the Hong Kong government commissioned an inquiry by two justices of the peace, and suspended its orderly repatriation program for approximately six months. The justices of the peace determined that 510 rounds of tear gas were fired with 333 confirmed Vietnamese casualties including twenty-four first-degree burns, 177 second-degree burns and thirty-two third-degree burns.⁵⁸ Beyond charging three CSD officers with assault, the government has undertaken no remedial measures to render the use of tear gas in the camps more safe and humane. Instead, it has used increasingly more rounds of tear gas in its operations.

⁵⁴ Human Rights Watch/Asia telephone interview with UNHCR representative, Hong Kong, January 24, 1997.

⁵⁵ The history of violent confrontations between Vietnamese inmates and Hong Kong CSD/Police forces dates back to July 19, 1988 with an incident at Heiling Chau Detention Center.

⁵⁶ The transfer was a CSD operation aided by police forces. The total contingent numbered 1,349 officers (587 CSD and 762 Police). According to the Justice of the Peace's Report, only about 367 (approximately 182 CSD and 185 police) were involved in the Section 7 operation.

⁵⁷ *Report of the Justices of the Peace on the Inquiry into the Events Surrounding the Removal of Vietnamese Migrants from the Whitehead Detention Center on April 7, 1994*, (Hong Kong, June 10, 1994), Para 3.38 and 3.40(b).

⁵⁸ *Ibid.*, para. 4.21.

During a transfer from Whitehead to High Island on May 20, 1995, for instance, government security forces fired 3,250 rounds of tear gas, more than six times the amount used in the April 7, 1994 raid, over a period of approximately eight hours.⁵⁹ Two thousand two hundred and forty-eight CSD and police officers, outfitted in riot gear and armed with plastic and rattan shields, truncheons, tear gas launchers and gas masks, were deployed to move 1,300 inmates from Section 1 in preparation of forced repatriation.⁶⁰ At the beginning of the operation, some of the inmates carried banners protesting their removal. After initially trying to barricade themselves against the government's security forces, the asylum seekers were later supported by neighboring sections which hurled homemade spears and projectiles at the officers.⁶¹ The Hong Kong government later reported that approximately 200 people had received treatment for injuries after the operation, including 127 police, forty-one CSD officers, and twenty-seven asylum seekers.⁶² Among the seventy-nine Vietnamese who later sought treatment was a "sixty-five-year-old woman who was sprayed with mace, kicked in the ribs and struck by a truncheon, and a baby who had fainted from the tear gas and was accidentally scalded when an inexperienced officer tried to revive her under what turned out to be a hot water tap."⁶³ Despite the fact that authorities used more than six times the amount of tear gas of the April 1994 raid, no investigation was ever conducted of this incident.

Such incidents continued to occur. Approximately one year after the May 1995 clash, violence erupted again at Whitehead Detention Center on May 10, 1996. Twenty-four hours before an expected transfer of more than 1,100 asylum seekers from Whitehead to High Island in preparation for deportation to Vietnam, inmates from Sections 3, 4, 5, and 6 staged a peaceful protest against repatriation. A riot exploded hours later when hundreds of inmates from Section 3 broke through the camp fence and set fire to twenty-six buildings and dozens of parked cars. Fifteen CSD officers were taken hostage for three and a half hours and later released unharmed. In containing the incident, which resulted in forty-six casualties including twenty-two CSD officers, sixteen police, five firemen and three Vietnamese, security forces again employed large amounts of tear gas, using over 2,000 canisters.⁶⁴ While there is no question that tear gas was an appropriate form of crowd control under the circumstances, eyewitnesses reported that the tear gas used to contain the incident was fired almost indiscriminately and there were no "safe" areas to which children and others who played no part in the riot could escape.

Established as a result of the independent inquiry into the events of the April 4, 1994 incident, a group of independent monitors composed of nongovernmental organizations and justices of the peace supervise every transfer and repatriation operation. However, some members of the independent monitoring body have complained that their work has at times been restricted by government authorities who have displayed an uncooperative attitude with the group. In the May 10 riot, for instance, the monitors were called to the scene nearly seven hours after the violence had erupted. In response to criticisms regarding this delay, the government responded that the monitoring group is only responsible for the supervision of actual transfer operations, and although inspired by an anticipated repatriation, the riot was a "law and order situation" that did not call for the presence of the monitors. Following meetings with the nongovernmental organizations involved in the monitoring work, the government has since changed this position and has agreed to notify the monitors at the outbreak of such incidents in the future.

⁵⁹ Refugee Concern Hong Kong, *Report into the Events of 20th May 1995 at the Whitehead Detention Centre* (Hong Kong: Refugee Concern, 1995).

⁶⁰ Ibid.

⁶¹ Human Rights Watch, *World Report 1996*, p. 150.

⁶² Refugee Concern Hong Kong, *Report into the Events of 20th May 1995*.

⁶³ Human Rights Watch, *World Report 1996*.

⁶⁴ According to Independent Monitors, empty tear gas canisters revealed that some of the tear gas used were past their expiry date.

V. VULNERABLE GROUPS

Refugees *Sur Place*

It is well known that Vietnam has devoted considerable attention to the activities of asylum seekers within Hong Kong's detention centers. Whether through voluntary or forced repatriation, every returnee must face one or multiple sessions of debriefing by Vietnamese authorities upon arrival in the country. During such interrogations, officials have shown particular interest in asylum seekers who have worked with foreigners or foreign voluntary agencies, acted in some leadership capacity within the camp communities, or engaged in anti-communist or other political activities. Such interest indicates a certain degree of danger for those asylum seekers who have been involved in these types of activities.

Hong Kong has evaluated Vietnamese asylum claims pursuant to the 1951 Refugee Convention and the 1967 Protocol. Under both treaties, a refugee is a person who, owing to a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, is unwilling or unable to return to his or her own country.⁶⁵ Although "screened out" by Hong Kong's refugee determination procedure, many individuals have a well-founded fear of persecution in Vietnam for reasons arising since their departure from their country. According to the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*, such people may be considered refugees *sur place*. A refugee *sur place* is an individual who, due to the person's own actions, or as a result of circumstances which have developed in the country of origin during the person's absence, cannot safely return to that country.⁶⁶

Under such criteria, many people in Hong Kong's detention centers should not be returned to Vietnam. At particular risk is a group of people who are known to have been interviewed by the Hong Kong Security Branch or the Defense Liaison Office of the United States Consulate. Interested in obtaining intelligence regarding Vietnamese command structure, communications, internal security, coastal defenses and military transportation, members of the Hong Kong Security Branch systematically interviewed boat people detained in its camps. Interviews were also undertaken by representatives of the United States Defense Liaison Office who sought information on missing American servicemen and prison conditions in Vietnam. Given their military or security backgrounds, these men were considered to be sources of potentially useful information. Meetings with U.S. and/or Hong Kong officials were long, and interviews were often conducted over two or three days. In some cases, individuals were interviewed up to nine times. Security representatives of both governments sought out these individuals both by public address announcements and by individual distinction, calling out their names and camp numbers. As a result, these meetings and the individuals involved are well-known throughout the camps and, by extension, in Vietnam.

- Before coming to Hong Kong, Pham Huu Trong was a major in the Vietnamese Army's Special Forces. Among other duties, Pham infiltrated enemy posts and escorted downed U.S. airmen to Hanoi. Due to these activities and to his knowledge of Chinese military movements, Mr. Pham was interviewed by Hong Kong and U.S. security officials. U.S. representatives have sought meetings with him on over four occasions and have as recently as August 1996 returned for more information. Mr. Pham is currently being held in Victoria Prison.
- Arriving in Hong Kong in 1989, Phung Xuan Thanh was a four-star captain in charge of security information in Hai Phong Headquarters. Interviewed by both Hong Kong and U.S. security officials, Phung was sought out by U.S. officials again in 1944 for more information about missing U.S. servicemen.
- Also a four-star captain, Vu Song Thao was formally deputy chief of Hong Bang's Public Security Bureau in Hai Phong. Mr. Vu's troubles with Vietnamese authorities began in 1985, when he opposed the demolition of an ethnic Chinese temple in his community and began to speak out against the corrupt practices of cadres. Fearing arrest over a petition submitted to Do Muoi, former chairman of the Council of Ministers and current

⁶⁵ United Nations, *1951 Refugee Convention*, art. 1, para. 2 and *1967 Protocol*, art. 1.

⁶⁶ Office of the UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status*, para. 94 and 95 (Geneva: United Nations, 1988).

security general of the Communist Party, Vu fled to Hong Kong in 1989. After arriving in the territory, officials from Hong Kong's Security Branch questioned Vu regarding various aspects of his work as a police chief.

- Chu Minh Tien was a national defense worker and deputy manager of army vehicles carrying sensitive communications equipment who fled to Hong Kong in 1989. After providing secret information of the command of military telecommunications to Hong Kong Security Branch officials, Chu's sister in Hanoi was visited by Vietnamese army security and police. Convinced that Vietnamese authorities are aware these interviews, Chu's sister has urged him not to return. Chu Minh Tien is currently being rescreened.

Reports indicate that Vietnamese authorities are aware that such interviews took place and are familiar with the individuals who were involved in these meetings. In January 1994, one interviewee received the following warning from his father in Vietnam.

The authorities are now showing their continuing interest in your case and your friends' constantly, especially they knew what documents you provided to the Hong Kong Security Branch. They have investigated this matter from Mr. Chu who returned to Vietnam under volrep [voluntary repatriation] and Mr. Chu stated to them everything...If you have done that matter, it would be very dangerous and if so, you shouldn't return. Recently, the Public Security Officers and Authorities came to search our house and letters and watched us strictly. We could not do anything and all our family members are placed under surveillance and restriction and are not allowed to go anywhere.⁶⁷

Providing foreign security representatives with sensitive information almost certainly brands these individuals as traitors in Vietnam and leaves them vulnerable to prosecution under the country's criminal code, particularly its national security articles.⁶⁸ Although international law prohibits the refoulement of those who would be in danger if returned, these men and their families remain on the list to be forcibly repatriated to Vietnam.

Refugees

There are approximately 1,282 Vietnamese who have been determined to be refugees and are entitled to resettlement in third countries. Up to 800 of these refugees reside at Pillar Point Refugee Camp and roughly 500 others live in local communities around Sham Shui Po and Yuen Long in Hong Kong's New Territories. Most of these refugees have found jobs in small factories, local restaurants or at construction sites such as Chek Lap Kok, Hong Kong's new airport project. The UNHCR has found it increasingly difficult to resettle these people in third countries. Many of them have criminal records or drug problems that make them unattractive candidates to third countries with stringent immigration policies. Sources close to this population estimate that in spite of efforts by the UNHCR and the Hong Kong government, it is likely that over 1,000 of these refugees will still be in Hong Kong as

⁶⁷ Letter from interviewee's father in Vietnam, Lam Hai, January 24, 1994, as cited in *Submission to the UNHCR*.

⁶⁸ Asia Watch, "Refugees at Risk."

of the handover date.⁶⁹ As the Basic Law denies permanent residency rights to Vietnamese refugees in the future Special Administrative Region, this group will be left with only the protection afforded under the UNHCR's mandate.

V. CONCLUSION

During the past few years, the desire to resolve the boat people situation in Hong Kong has resulted in the exacerbation of existing human rights violations and the development of new concerns. Among the most disturbing of these developments is the use of harsh detention conditions as an incentive in promoting repatriation. In the effort to "encourage" more people to return to Vietnam, both the Hong Kong government and the UNHCR have allowed their basic protection roles to be seriously compromised.

While Human Rights Watch/Asia acknowledges the UNHCR's efforts to address systematically the protection and assistance needs of Vietnamese asylum seekers in Hong Kong, the agency has been unable, partly due to the intransigence of the Hong Kong authorities, to significantly improve these conditions of detention which do not meet the agency's own standards. Finally, UNHCR has not adequately ensured that all genuine refugees who choose to return to Vietnam do so voluntarily, and all individuals who may have been screened out have not been adequately protected against refoulement. The safety of the Vietnamese must be protected in countries of first asylum as well as back in their countries of origin. Having taken on a multifaceted role, the UNHCR seems to have often found its protection abilities compromised due to conflicting interests and priorities.⁷⁰

The experience of the Vietnamese in Hong Kong raises important questions about the protection of asylum seekers in an age of changing political priorities. As the protection of refugees ultimately falls to individual countries, it is important to reevaluate how states should translate this responsibility into action. A significant proportion of Hong Kong's native population are refugees or descendants of refugees who fled political oppression, social turmoil or natural disasters in China and elsewhere to seek haven in the island territory. In Hong Kong, refugees and the challenge of dealing with them are certainly not unique to the Vietnamese. As a result, there is a clear need for the Hong Kong government to establish a comprehensive policy to deal with asylum seekers in a fair and systematic way. In doing this, Hong Kong must respect the individual's right to seek asylum and to have the opportunity to make an asylum claim within a reliable and unbiased system.

As the reversion of Hong Kong to Chinese rule takes place, the future government of the Hong Kong Special Administrative Region must above all ensure that Hong Kong is a place where basic rights and freedoms are protected and enjoyed. These rights must be extended to even the most unpopular groups in Hong Kong society. The twenty-year history of the boat people reveals that this has not always been case under the Hong Kong and British governments. How Hong Kong will operate under Chinese sovereignty remains to be seen. In charting their course for the future, the incoming authorities would do well to learn from the Vietnamese experience and remember the adage that a society is judged not by how it deals with its strongest members but rather with its weakest.

⁶⁹ Human Rights Watch/Asia interview with Pillar Point representative, Hong Kong, June 21, 1996.

⁷⁰ For analysis of a similarly contradictory UNHCR program, see Human Rights Watch/Asia, "Burma: The Rohingya Muslims Ending a Cycle of Exodus?" *A Human Rights Watch Short Report*, vol. 8, no. 9, September 1996.

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