

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

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JULY 27, 1995
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CONTENTS

WITNESSES

	Page
Arthur C. Helton, Esq., director of migration programs, Open Society Institute	3
Ms. Dinah PoKempner, counsel, Human Rights Watch/Asia	6
Ms. Elisa C. Massimino, legal director, Lawyers Committee for Human Rights	11
Mr. Gerassimos Furlanos, former CPA official	13
Mr. Simon Jeans, former CPA official	17
Mr. Allen Tran, victim of the CPA	30
Ms. Kim Ngo, victim of the CPA	31
The Venerable Thich Phuoc Sung, Buddhist monk	33
Mr. Wa Vue, victim of the CPA	34
Mr. Ter Moua, victim of the CPA	38
Mr. Shep Lowman, director of international refugee affairs, U.S. Catholic Conference	49
Mr. Daniel Wolf, attorney, Hughes, Hubbard & Reed	56
Ms. Pam Baker, Refugee Concern Hong Kong	59
Dr. Nguyen Dinh Thang, executive director, Boat People S.O.S	62

APPENDIX

Prepared statements:	
Arthur C. Helton, Esq	72
Ms. Dinah PoKempner	77
Ms. Elisa C. Massimino	90
Ms. Kim Ngo	136
The Venerable Thich Phuoc Sung	138
Mr. Wa Vue	141
Mr. Ter Moua	150
Statement submitted for the record by Tou Ger Vang	159
Letter to Hon. Christopher F. Patten, Governor of Hong Kong, dated July 27, 1995, from Mike Jendrzejczyk, acting executive director, Human Rights Watch/Asia	164
Statement submitted for the record by Lionel A. Rosenblatt, president, Refugees International	169
Report into the events of May 20, 1995, at the Whitehead Detention Centre, Refugee Concern Hong Kong	171
Proposal submitted for the record by Shep Lowman, Daniel Wolf, and Lionel Rosenblatt entitled "A Humane End to the Indochinese Refugee Program" ..	245

COMPREHENSIVE PLAN OF ACTION FOR INDOCHINESE ASYLUM SEEKERS

THURSDAY, JULY 27, 1995

HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERNATIONAL RELATIONS,
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND
HUMAN RIGHTS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:06 a.m., in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the subcommittee) presiding.

Mr. SMITH. The subcommittee will come to order.

I would like to welcome our distinguished witnesses and guests to this latest in a series of hearings on the comprehensive plan of action for Indochinese asylum seekers. We are finally beginning to understand how the CPA really worked. Perhaps today we can make some progress in deciding exactly what to do about it.

For some, the issue is how to get people to return to Vietnam and Laos without compromising the integrity of the CPA. For others, the question is how to bring the CPA to an honorable end; that is, how to close down the camps without forcing back refugees to Vietnam and Laos.

Here is what we have learned so far. Thousands of people who served on our side in the war and who were later persecuted by the Communists on account of such service are now being detained in camps throughout Southeast Asia. The camps also hold Catholics, Protestants, and Buddhists punished for their religious observance and others who serve time in reeducation camps or new economic zones for their anti-Communist views or activities.

Despite the strength of their claims to refugee status, almost all of these people are scheduled for repatriation to Vietnam and Laos within the next few months.

The CPA was intended as a sincere effort to deal humanely with the Vietnamese boat people. Unfortunately, it has turned out to be just the opposite. First, the responsibility for deciding who is and who is not a refugee, which used to be done by U.S. and U.N. refugee interviewers, was transferred to local immigration officials who had no real experience or training.

Some of the interviews were not only incompetent, but were also corrupt. There are well documented instances of local officials demanding money and sexual favors from refugees as a condition of favorable screening, and suddenly almost nobody was a refugee.

On Tuesday we heard what may be the glimmering of a change of heart by the Clinton administration. Although the testimony of

Assistant Secretary of State Phyllis Oakley consisted mostly of high praise for almost every aspect of the CPA, she finally conceded that there might be some problems and that the administration had begun talking to other CPA participants about possibly addressing these problems. The administration seems to assume, however, that no such remedial measures could be taken until after the asylum seekers had returned to Vietnam.

Today we will hear from three panels: The first panel, consisting of three experts in human rights and refugee law, as well as two former U.N. officials who worked in the CPA, will provide an in-depth look at how the CPA really worked.

The second panel consists of five people who believe that they or their close relatives have been personally victimized by the CPA. Our final panel will assess the strengths and weaknesses of proposals to rescreen asylum seekers or otherwise reform the CPA.

I look forward to their important testimony. Because we have 14 witnesses today, I would respectfully request that each witness keep his or her testimony to approximately 5 minutes. You may, of course, submit your entire testimony for the record.

I would like to ask our first panel if they would come to the witness table.

Our first person to address the subcommittee will be Arthur Helton, director of migration programs at the Open Society Institute and also a professor of immigration and refugee law at New York University Law School, from which he graduated in 1976.

He has served as chair of the Advisory Committee to the New York State Inter-Agency Task Force on Immigration Affairs and has published over 50 scholarly articles on the subject of immigration.

Dinah PoKempner is legal counsel for Human Rights Watch/Asia, a human rights monitoring organization formerly known as Asia Watch, which maintains an office in Hong Kong. Ms. PoKempner, who directs research on Hong Kong and Indochina, has lived in Hong Kong in 1981 to 1983 and again in 1991 and has written frequently on civil rights issues related to the territory. She is a graduate of Columbia University School Law School and Yale University.

Elisa Massimino, and I am sorry if I am mispronouncing that—

Ms. MASSIMINO. Massimino.

Mr. SMITH. Thank you. Elisa Massimino is the legal director in the Washington office of the Lawyers Committee for Human Rights, where she has worked since the office opened in 1991. Elisa directs the committee's national advisory program on refugee and asylum seekers, as well as the office's pro bono asylum representation project.

She has testified before Congress on issues of asylum reform and detention of asylum seekers and frequently comments on proposed legislation affecting the rights of asylum seekers and U.S. compliance with international standards on human rights.

Elisa also worked as an associate in the litigation department of the law firm of Hogan & Hartson in Washington for several years prior to joining the lawyers committee. She is a 1988 graduate of

the University of Michigan Law School and holds a master's degree in philosophy from Johns Hopkins.

Let me just invite to the witness table, and again I might be mispronouncing this one as well, Gerassimos Furlanos, who joined the UNHCR as protection officer in Ethiopia from 1985 to 1987.

In 1989, he was assigned to Indonesia as the senior legal consultant dealing with the screening of Vietnamese boat people. In 1990, he was transferred to Malaysia, where he again served as senior legal consultant. In 1992, he started his own law firm in Stockholm, Sweden.

Finally, Simon Jeans was employed as a legal consultant by the United Nations High Commissioner for Refugees [UNHCR] on Galang Island, Indonesia, between January 1992 and June 1992.

Simon holds a degree in economics, arts and law. He was admitted as a solicitor in New South Wales, Australia, in December 1989. Between August 1990, and September 1991, he worked in Hong Kong, initially with the Jesuit Refugee Service and then with a private law firm representing Vietnamese asylum seekers in the detention centers.

Since September 1993, he has been employed in the administrative law section of the Legal Aid Commission of NSW, representing asylum seekers at all stages of the refugee status determination process. He has appeared before the Australian Senate's Standing Committee on Legal and Constitutional Affairs in relation to the corruption of the screening process in Indonesia.

I would like at this point to ask Arthur Helton if he would begin with his testimony.

**STATEMENT OF ARTHUR C. HELTON, DIRECTOR OF
MIGRATION PROGRAMS, OPEN SOCIETY INSTITUTE**

Mr. HELTON. Thank you, Chairman Smith, for inviting me to testify today on the comprehensive plan of action for Indochinese refugees.

Promulgated in 1989, the CPA was created primarily in response to an increase in the departure of Vietnamese boat people. It introduced a basic new element in the efforts to management this movement of asylum seekers—the possibility of return, including forced return, of those determined not to be refugees with a well-founded fear of persecution within the meaning of the 1951 convention relating to the status of refugees and its 1967 protocol.

In terms of understanding the context in which these discussions will occur today, I would like to offer a brief legal policy context in order to assist the consideration and discussions relating to the legislation you are sponsoring.

The CPA constituted an abrupt reversal of a relatively generous program of resettlement of Indochinese refugees led by the United States, which has since 1975 resettled nearly 1 million Vietnamese and over 125,000 Laotians under its refugee admissions program.

Adjudication procedures under the CPA were to be implemented in the countries of reception in the region, the so-called countries of first asylum, some of which had reacted quite harshly to the new movements of boat people in the form of pushoffs or other brutal measures.

The Office of the United Nations High Commissioner for Refugees, was to monitor and advise upon these systems of adjudication in terms of implementing the CPA. The Colony of Hong Kong had played a leading role in this exercise inasmuch as it had introduced screening as a deterrent measure as early as 1988.

I would like to offer for your consideration an essential understanding of the motivation of the CPA, which is deterrence and migration control. It is not that there were not positive aspects of the CPA in terms of avoiding the movements of people in dangerous circumstances across open seas or quelling the discomfort by the countries of reception and first asylum in terms of providing first asylum, but the primary motivation was unquestionably deterrence and migration control.

It is not surprising, therefore, that we see a somewhat differential outcome in terms of refugee status determination where this motivation was most clearly manifested.

As of June 1994, there were a total of 20,354 positive decisions and 86,325 negative decisions in the places of reception or first asylum, namely the countries of Indonesia, Malaysia, Thailand, and the Philippines, as well as the Colony of Hong Kong.

If you looked at the country-specific experiences, you would see that adjudication rates in terms of approvals ranged from 11 percent in Hong Kong to 48 percent in the Philippines, with Indonesia at 27 percent, Malaysia at 28 percent and Thailand at 21 percent, for a general average of 20 percent in the region. The variations were dramatic, and, if anything, they reflect a differential treatment of like cases.

Again, I think these variances can only be understood in terms of the principal motivations of the comprehensive plan of action as deterrence and migration management.

In terms of documented inadequacies in refugee status determination, they are various and include misapplication of refugee law criteria, lack of uniform standards and the absence of any effective quality control, erroneous credibility determinations by adjudicators, inadequate counseling, legal assistance and language interpretation and even corrupt practices that compromised the reliability of the first asylum determination processes at times. UNHCR concedes the existence of such practices and has undertaken a review of the practices.

Essentially, the way in which the primary motivation of deterrence and migration control manifested itself in the refugee status determination procedures was the abject failure to accord to the affected individuals the benefit of the doubt. The adjudication was characterized by official skepticism and migration control priorities, which infused status determination activities. The essence of the CPA was ungenerosity.

These procedural defects and flaws, which were serious in character, will, I am sure, be elaborated upon in the discussion and testimony today.

In significant respects, the UNHCR itself recognized the unreliable character of status determination under the CPA inasmuch as it was required to exercise its mandate authority to designate individuals as refugees.

In Hong Kong, there were 558 cases mandated involving 1,542 individuals; in the Philippines, 13 cases involving 19 persons; in Thailand, 4 individuals remain pending in terms of mandate; in Malaysia, 14 individuals remain pending in terms of mandate.

The UNHCR, I note, has represented that it remains willing to review any wrongly rejected cases that are brought to its attention.

I would suggest as you examine the issues today that there will emerge two essential options to addressing the current situation of some 40,000 rejected applicants in the region under the CPA. In the first instance, UNHCR could be urged to exercise its mandate on an urgent basis to avoid the forced return of any wrongly rejected applicants.

The UNHCR would clearly entertain the presentation of such cases. However, given the inherent limitations of the CPA's adjudication procedures, it is doubtful, frankly, that a significant number of cases would be reversed under this approach. The first country of asylum authorities would undoubtedly resist any effort to re-determine large groups of cases, particularly under enhanced procedures.

I would suggest that a more promising approach would be for the United States to establish a special admissions program outside of the CPA to admit Vietnamese and Laotians of humanitarian concern. Such a program could be implemented on a categorical basis, for which there is somewhat of a tradition in Indochina, and could even be organized in the countries of origin as long as return would not jeopardize the individuals.

To consider this a humanitarian admissions program, as opposed to a refugee program, would remove any principled objections to in country processing. However, I would suggest that there must always be the authority to deal with rejected genuine refugees outside of requiring processing in the country of origin. What comes to mind particularly would be the Hmong in Thailand, who I think should not be required to return to Laos in order to have access to an admissions program.

The CPA itself does not prohibit such a measure of generosity. This compact between governments would run its course, and a bilateral approach outside of the CPA would be in the nature of a humanitarian admissions program. Such a program could be initiated under the U.S. refugee admissions program, or immigration parole authority, although I would suggest that a separate legislative authority be sought in order to insure coverage fully of the population of concern.

In sum, the time is right for an extraordinary measure of leadership by the United States to address this residual population of internationally homeless people. Such an approach could repair in significant measure the hostility to genuine refugees that characterized the implementation of the CPA and serve broad humanitarian interests, as well as the interests of the United States.

Thank you.

[The prepared statement of Mr. Helton appears in the appendix.]

Mr. SMITH. Thank you very much, Mr. Helton.

I would like to ask Dinah PoKempner if she would proceed.

**STATEMENT OF DINAH POKEMPNER, LEGAL COUNSEL,
HUMAN RIGHTS WATCH/ASIA**

Ms. POKEMPNER. Thank you, Mr. Chairman. I will keep my remarks very brief because I am required at another hearing and ask that my testimony be entered in the record.

[The prepared statement of Ms. Pokempner appears in the appendix.]

Mr. SMITH. For the record, all the written testimonies will be made a part of the record.

Ms. POKEMPNER. Thank you. If there are any particular questions, perhaps you can ask them to me directly after my testimony, and then I will be able to leave.

Human Rights Watch/Asia appreciates the opportunity to testify on the subject of human rights in Vietnam, a topic of relevance to the issue of repatriation of Vietnamese.

It has been suggested that the normalization of diplomatic relations between the United States and Vietnam could lead to progress in human rights conditions in Vietnam. Those who believe that human rights conditions will improve with normalized relations argue that the development of closer ties will bring greater prosperity, personal freedom, and contact with the West, which in turn will produce over time internal demand for political liberalization and respect for fundamental freedoms.

This could in fact happen over time, but the scenario is exactly what certain elements in the leadership of Vietnam fear, as reflected in the frequent diatribes against peaceful evolution that are published in the official press.

Equally likely is the prospect that Hanoi will keep a tight reign on religious activities and political dissent while opening its economy, roughly following the Chinese model. This mixture of tight political control and economic liberalization has in fact characterized the Vietnam Communist Party's policy over the last several years.

Recent actions in the area of human rights reflect a profound ambivalence. On the one hand, Vietnam has invited the U.N. Working Group on Arbitrary Detention to visit its labor camps and has hosted delegations from Australia and the United States to discuss human rights concerns. On the other hand, Vietnam continues to imprison political and religious dissidents, as reflected in the June 1995 detention of two prominent Communists who had circulated essays that criticized the party's historic actions.

As these recent actions suggest, the picture of human rights conditions in Vietnam is neither black nor white, but a complex and changing view.

There is little doubt that the adoption of the renovation policy opened the door to significant human rights improvements, including the release in 1987 and 1988 of thousands of prisoners who had been consigned without trial to labor camps for re-education on the basis of their political and religious identities.

Under the renovation line, Vietnam has instituted codes of criminal law and procedure, laws on the press, religion, and prison conditions, and a new constitution. My testimony goes into detail on each of these laws, pointing out their positive aspects and their flaws.

There is anecdotal evidence that the level of official interference and harassment in the daily lives of ordinary people is receding. However, surveillance of foreigners or suspected troublemakers continues, supported by a large, nationwide bureaucracy. People are more able to privately express their opinions of the government and party, but public dissent is still subject to punishment. Vietnam has become much more engaged in U.N. processes.

Despite the trend of improving conditions, serious abuses persist, particularly the detention and punishment of people for the peaceful expression of political views or their faith. Although there have been annual releases and amnesties of such prisoners, every year there are new trials of fresh dissidents as well. The legal system remains both institutionally weak and highly politicized, unable to provide a check to these abuses.

Both national security charges and criminal charges have been used against political and religious detainees, and I note that this is of particular significance to the prospect of return because the promise is not to persecute people, but there have been criminal charges or criminal trials of some returnees.

The imprisoned also face a range of abuses, including excessive pre-trial detention, inadequate nutrition and medical treatment, and for those who persist in criticizing the Government while in detention, punitive isolation and transfers.

Hanoi's determination to keep firm control over religious institutions has led to confrontations with many of the country's churches, including the Unified Buddhist Church, the Catholic Church, and Protestant evangelicals. In some cases, these confrontations have led to the imprisonment of clergy and religious believers.

Although regular worship services held by recognized churches are permitted, the Government exerts legal authority over every institutional aspect of religion from the appointment of clergy, the approval of sermons, the repair of temples, to freedom to travel and preach.

Vietnam's current human rights practices are of concern if there is a possibility that genuine refugees may be forcibly returned to Vietnam. Human Rights Watch/Asia, at the time known as Asia Watch, criticized the screening of Vietnamese asylum seekers in Hong Kong as seriously flawed in two reports, which I would be happy to provide the committee.

Our research led us to conclude that individuals with strong and credible claims to refugee status were among those who had been rejected and who were liable to deportation.

Our organization has not taken a position either on H.R. 1564 or various other proposals for resettlement of the asylum seekers. We are, however, extremely concerned by the rising level of violence on the part of both government authorities and desperate asylum seekers brought on by the prospect of forced deportations.

I would also ask if the chairman would permit that a letter we have today issued to Governor Patten on just such violent confrontations be entered into the record.

Mr. SMITH. Without objection, so ordered.

[Material submitted for the record appears in the appendix.]

Ms. POKEMPNER. This dynamic of confrontation and violence makes new initiatives on the part of the international community

an urgent necessity. We urge that any proposal be sensitive to the cardinal principle of international refugee law, that no one with a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion be returned to Vietnam if his or her life or freedom would thereby be threatened.

Clearly, not every Vietnamese now detained in the region need fear persecution. The balance of this testimony describes human rights conditions in detail, both in terms of continuing abuses and improvements, to help those who seek solutions spot where the problems may lie ahead.

When considering the potential for persecution of any individual, it is critical to understand that conditions can vary greatly in different localities in Vietnam. One cannot understand the pressures that ethnic Hmong Catholics face from observing Sunday church attendance in Hanoi, nor can one conclude that former reeducation camp prisoners no longer face discrimination in remote villages based on a few entrepreneurial success stories from Ho Chi Minh City.

Central government policies are subject to local interpretation and individual discretion, and it has been harder for the central government to enforce its will as local governments become more financially autonomous.

It is also important to note that while the United States and Vietnam are moving toward reconciliation, there has not been as great an effort on the part of the Communist Party to reconcile with those compatriots stigmatized as disloyal.

These observations underscore the importance of long term, comprehensive, and careful monitoring at the local level of those who ultimately do return.

Mr. SMITH. I thank you very much for your testimony. Again, out of deference to your schedule and knowing you need to testify elsewhere, just a couple of questions.

Ms. POKEMPNER. Certainly.

Mr. SMITH. Does normalization convey a false sense of security, and may it actually provide a cover to proceed with this forced repatriation?

Ms. POKEMPNER. My sense is it does not convey any sense of security to the people who are in the camps now.

Mr. SMITH. I mean to policymakers here.

Ms. POKEMPNER. Policymakers I think have different views. I have directed my remarks about normalization. I do not think that normalization in the immediate term is going to have any effect on Vietnam's human rights conditions.

It may possibly over the long term work to encourage the opening of Vietnam in a broad sense, but in the very short term I think the Vietnamese Government has made it clear that while it welcomes diplomatic recognition, it does not intend to bend to human rights pressure from outside sources.

I think that what normalization may do is facilitate ordinary diplomatic contacts, but I do not expect any radical change from that.

Mr. SMITH. I had seen one article that was in the Los Angeles Times the day after normalization, and that very point was made by some high officials of the Vietnamese Government.

Ms. POKEMPNER. Yes.

Mr. SMITH. Do not expect us in any way to alter our policies on human rights.

Ms. POKEMPNER. Yes. I think the Vietnamese Government is very clear on that.

Mr. SMITH. Let me just say for the record how disappointed I am that the administration did not make human rights and resolution of the POW/MIA issue preconditions. I remember asking Secretary Brown right in this room at an open hearing whether or not when the embargo was lifted those two issues were linked. He said, "No."

Ms. POKEMPNER. That has been the administration's position.

Mr. SMITH. Let me just ask you a couple of other questions.

If someone, say a political-religious refugee who was sent back, begins anew what it was that got them into trouble in the first place—free exercise of religion or perhaps dissenting from some government policy—are they at risk again?

Second, you mentioned the criminal trials. Has the Government of Vietnam perhaps made a calculated decision, rather than retaliating on the dissent or the religious observance, to concoct some kind of criminal charge? We all know that that was a game and continues to be a game played by a number of dictatorships.

You might recall, and I am sure you do, when Nicolae Ceaucescu announced in the early 1980's there are no more political prisoners in Romania, and he would just levy charges against people for political crimes under the cover of using stealing or theft or some other crime. It was all bogus.

Ms. POKEMPNER. In response to your first question, I think it would depend on what kind of activity that person had performed.

We do have to recognize there has been some improvement generally in the kind of daily, ordinary human rights conditions people live under, so it is quite possible that someone who, for example, got in trouble for hanging Christmas decorations on a church—I have seen a case like that—that might not be a problem any more in his locality. However, it is quite possible that it would be as well.

There has been some loosening, but, as I said, you would have to know a great deal about the locality, conditions in the locality, how local officials interpret official policies, and certainly anyone who had, for example, spoken on behalf of the institutional autonomy of the Unified Buddhist Church or publicly advocated multipartyism would certainly have reason to fear because just such people are being arrested today.

My answer is of course there would be concern, and it would be very difficult, I think, for almost anyone sitting outside of Vietnam to accurately gauge how likely such fears are to be realized in any particular case.

With response to your second question whether there is a trend toward criminal charges, I do not know really if I can say that it is a trend, but certainly in recent years political and religious dissidents have been imprisoned on what we would recognize as criminal charges.

The Vietnamese Government does not distinguish between political crimes and criminal charges. Both are enumerated in its crimi-

nal code, and it just says all these people are convicted of breaking the law.

However, for example, the recent demonstration in Hue of the Unified Buddhist Church, in that demonstration, which ultimately turned violent, a number of senior monks were arrested and charged with disturbing public order.

In fact, one of the monks that was arrested had been in police custody for virtually the entire demonstration. He was the reason people demonstrated. When he was released from police custody, he was unconscious. He had fainted in the back of a vehicle.

He was given the same penalty as the person who was accused of burning a car during that demonstration and the same charge, disturbing public order. Even though he was not tried on one of the articles specifically directed at religion, it is clear that this was a case of human rights violation.

Mr. SMITH. I appreciate that.

I would ask that the other witnesses perhaps make a mental note of some of these questions. I will re-ask them later if you would like because perhaps you would like to answer some of these basic questions as well.

Just two final questions very briefly. Could you respond as to whether there are differences in the level of risk of people returned to Vietnam and to those who are returned to Laos?

Second, we heard from one of our witnesses on Tuesday who actually worked for the UNHCR, and after rather an intensive give and take during the testimony he testified that it was standard operating procedure to have government officials, and other people who were presumably reporting to the Minister of Interior or someone else within the Government of Vietnam, accompanying the UNHCR monitors, thereby putting at risk the integrity of the monitoring process.

What is your take on the fear of retaliation if one were to come forward and candidly say my life is hell—my kids are being discriminated against; we are not getting health care; we are not getting this; we are not getting that—with the government agent standing right there?

Ms. POKEMPNER. With regard to your first question, I am going to have to pass because we are not deeply monitoring human rights conditions in Laos, so I cannot make a comparative judgment.

With response to the second question, I think it is not considered acceptable practice among most human rights groups to conduct human rights interviews with government personnel present if you are talking to people who are in a vulnerable situation.

I do not think, that said, that people who are monitored by the UNHCR in the way that Mr. Horst described, and I must say that Mr. Horst is one of the best, most conscientious UNHCR monitors there could be, I do not think that people in that situation would necessarily be inhibited from complaining about, for example, not receiving their repatriation checks, having difficulty finding a job, if there are problems with their children's education or household registration. These are all the kinds of complaints that are routinely handled by the UNHCR.

I do think that it would be difficult to complain of political persecution or interrogations or other kinds of sensitive security matters in this kind of situation.

I think it is unreasonable to expect that U.N. monitors who briefly visit a village, causing a lot of excitement and stir, closely watched by all concerned, are likely to pick up the more subtle or dangerous types of discrimination.

I would qualify that, however, by saying that people are able to complain. For example, we do get information when people are imprisoned. It is not that Vietnam is a tight iron box. People can communicate.

I think the greater problem is that UNHCR, through its actions in the camps, has not built up much faith in the minds of asylum-seekers, so they are very dubious that if they do complain anything good would come of it. Perhaps if they were more confident in either UNHCR's powers of intervention or goodwill, you might find people more willing to take risks.

I do not mean my remarks to suggest there are massive abuses occurring that we have not seen. I just believe that UNHCR monitoring just by its parameters has to be considered as only a limited ability to pick up these kinds of very sensitive problems.

Mr. SMITH. I thank you, and I thank you very much for your testimony. It is very helpful.

Ms. POKEMPNER. Thank you very much.

Mr. SMITH. Good luck in your next testimony.

I would like to ask now that Ms. Massimino, who is the legal director of the Washington office of the Lawyers Committee for Human Rights, present her testimony at this point.

STATEMENT OF ELISA MASSIMINO, LEGAL DIRECTOR, LAWYERS COMMITTEE FOR HUMAN RIGHTS

Ms. MASSIMINO. Thank you. Thank you, Chairman Smith, and thank you for inviting the lawyers committee to testify today on this critical and very complex issue of refugee screening under the CPA.

Since 1978, the Lawyers Committee for Human Rights has worked to promote international human rights and refugee protection, including the provision of asylum to refugees on a fair and nondiscriminatory basis.

Our written statement goes into some detail on the international legal framework on which the CPA agreement was based. I would like to focus my remarks today on an examination that the lawyers committee has done of this screening process, particularly in Hong Kong, and problems that we have identified with it.

As you know, the CPA required the introduction into the region of a consistent refugee status determination process to be conducted in accordance with national legislation and internationally accepted practice. However, despite this noble goal at the outset, refugee screening under the CPA has been seriously flawed.

In 1992, the lawyers committee's refugee project, under the direction of Arthur Helton at the time, conducted an examination of the CPA screening procedure, focusing in particular on the refugee status review board in Hong Kong, and concluded that refugee status

determination procedures in Hong Kong were deficient in several very basic respects.

Our study culminated in the publication of a briefing paper, which is attached to my written statement for reference and inclusion in the record.¹

With regard to the CPA screening procedure in Hong Kong, our conclusions reflect a finding of underlying hostility toward asylum seekers and a striking lack of due process protections not only in the appeals procedure, but throughout the screening process.

We found that the interview on which the initial decision is based is conducted in such a way that it is unlikely to induce an applicant, most of whom are 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 credible claims are first raised on appeal, the review board has viewed them with extreme suspicion and skepticism.

Despite the international legal requirement that credibility of a refugee claimant is presumed until disproven, the CPA process virtually required an applicant to overcome a presumption of incredibility.

Again, while international refugee law requires governments to grant applicants the benefit of the doubt and err on the side of generosity, the Hong Kong screening process effectively requires an applicant to corroborate all aspects of his or her claim.

In discounting the abuse an applicant may suffer if repatriated, the review board often misapplied the international criteria for deciding refugee claims by finding that disproportionate punishment would not be excessive.

In addition to problems relating to the adequacy of screening procedures, the lawyers committee has monitored closely the conditions of detention of Southeast Asian asylum seekers held in camps, focusing particularly on camps in Hong Kong.

Two years ago, the committee, in conjunction with the Women's Commission for Refugee Women and Children, filed a petition to the U.N. Working Group on Arbitrary Detention in Geneva urging it to declare that Hong Kong's practice of detaining Vietnamese asylum seekers is a violation of international law.

Under an official policy referred to as humane deterrence, Hong Kong has detained tens of thousands of Vietnamese men, women, and children in brutal, prison like conditions. The stated purpose of this policy is to deter other Vietnamese from seeking asylum in Hong Kong. In fact, as we have heard from Mr. Helton, that is key to the development of the entire comprehensive plan of action, a goal of deterrence, as well as refugee protection.

Upon arrival in Hong Kong, asylum seekers are held in closed detention centers surrounded by razor wire and are subject to screening procedures as described to determine their refugee status. Determinations have taken sometimes up to 3 years, and the vast majority of asylum seekers have been screened out under these procedures, which we have found fall far short of those man-

¹Materials appear in Ms. Massimino's prepared statement which begins on page 90.

dated by international standards of due process in refugee protection and of the goals stated in the CPA.

We have been asked by the U.N. working group to present oral argument on this issue when the group meets again in September, and we expect a ruling on our petition shortly thereafter.

As you know, Chairman Smith, the lawyers committee has been deeply troubled for a number of years about the forced repatriation of asylum seekers screened out under these procedures and the use of harsh detention conditions to deter refugees from seeking protection.

The CPA is not the only context in which refugees fleeing by sea have been forcibly repatriated to places of persecution. Recent experiences with Haitian and Cuban boat people fleeing directly to the United States have challenged this country to remain true to its international commitments to refugees.

As nations around the world grow increasingly inhospitable to victims of persecution, it is more important than ever for the United States to reassert its leadership role in refugee protection.

Thank you.

[The statement of Ms. Massimino appears in the appendix.]

Mr. SMITH. Thank you very much for the fine work you are doing and Mr. Helton and your colleagues have done. It really has helped, I think, to expose in the most objective way possible the very serious flaws that have existed and continue to exist.

Hopefully a remedy can be found at least for some, so I do thank you for the tremendous humanitarian work that you do.

Gerassimos Fournalanos, a former CPA official, we would very much like to hear your testimony.

STATEMENT OF GERASSIMOS FOURLANOS, FORMER CPA OFFICIAL

Mr. FOURLANOS. Thank you very much, Mr. Chairman and honorable members of the committee.

My own experience from the screening comes from my more than 3 years of service in Southeast Asia. I was heading the eligibility unit first in Indonesia and thereafter in Malaysia.

A lot of criticism has been directed against UNHCR, which is either blamed for too liberal policies in the application of the criteria for recognition of refugee status or just the opposite, the bending on what is the source of criticism.

It is my own evaluation, based on my experience, that UNHCR is hardly a monolithic organization, but rather suffers from lack of well defined policies and can, as such, neither be charged for a liberal nor a tight application of the criteria. It all depends on the setup of individuals who are running the particular project, and they have experienced great contrasts in this respect.

If any criticism is justifiable in this context, it should concentrate on the recruitment of staff. In recent years, a plan—a fashion—has been established within UNHCR here, the so-called cynic school, the cynical school. The tougher you are and the more cynical you are, the more you are admired and appreciated and, of course, rewarded. The old style humanitarian guys are no longer in fashion, no longer appreciated.

You could read in letters and in assessments all sorts of cynical lines of reasoning. You could read in an assessment, for instance, in the case assessment that this applicant, this asylum seeker, who before 1975 before the fall of Saigon was, for instance, a pilot or an officer. He had a good position, a good career.

Thereafter, after reeducation and so on, he was reduced to selling cigarettes or matches in the streets illegally, in spite of the fact that you have several paragraphs in the UNHCR handbook which are applicable in this very situation. I could name paragraphs 54 and 55, as well as paragraph 63.

Paragraph 54 is serious discrimination amounting to persecution when it produces substantially prejudicial consequences in some of his rights to support himself. Paragraph 63 draws the line between economic immigrant and refugee. It says that if the poverty which you suffer is the result of economic measures directed against your particular social group or against your ethnic group and so on, then you are a refugee.

In spite of that, you could read that well, by selling matches he could still survive, so it was all right. You could also read that he was subjected to several years of reeducation. He was tortured. He was relocated to a new economic zone, but nothing else happened, so he is screened out. What else should happen? What is persecution?

I met so many people in UNHCR here, and I thought should they not when they recruit somebody to work in a human rights organization have a humanitarian approach at least? That was not there. That, in my opinion, could be a basis of criticism because otherwise I did not see any official policy to the effect of apply the criteria restrictively or apply the criteria liberally. There was nothing of that stuff.

In theory, we only had the official sources of policy to apply, which was the handbook, first and foremost, and then a set of guidelines which was elaborated at the branch office of Malaysia, which was the coordinating office, and which has been mainly drafted by myself.

It was never taken seriously by the other branch offices. We only applied it in Malaysia, yet it is supposed to be the handbook, the detailed set of guidelines on how we apply the handbook on the Vietnamese caseload.

In my opinion, corruption or not corruption, the screening was faulty. There were many flaws. Even if you would assume that there was no corruption at all, and yet, as we have seen, there is evidence of several instances of corruption, but even without those, the screening could not be good anyway.

I would suggest for anybody who would like to have an idea whether or not the screening was not perfect, as Chairman Smith stated the other day, it is not a question of perfection—nothing is infallible—but at least fair, reasonable, decent.

You could go and read case assessments, especially in Indonesia, even by UNHCR consultants. You will see the total lack of harmonization and great discrepancies in quality and a lot of other flaws and errors, and yet even if we would assume that assessments would be of good quality and harmonized, what would that matter?

In any case, the final decisions would be taken by the Indonesian authorities, and they had other criteria obviously to decide.

What were the criteria of the local authorities? In my opinion, the setup was wrong from the beginning. There should be one organization to be responsible for the screening, and I firmly believe that UNHCR should take that responsibility. They should have done it. I can see no reason why they did not do it. Of course, responsibility is always heavy, but it should be theirs.

How can you entrust that officers in countries who are often persecutors themselves will understand what is persecution? I organized and participated in several training courses in the region, and my difficulty all the time was how to explain to those people what is persecution.

In private, several of those officers would tell us this applicant claims that he was 3 years in reeducation. What is this? We treat our adversaries much worse. The only thing that they could understand was this logic of the good and the bad. The bad is Communist, so if you are anti-Communist you are good. They could understand oppression of religion, especially if religion happened to be Islam.

The result is as we have seen it. In addition, if you address, for instance, Indonesian authorities, they will tell you that we were not making the decisions alone, but in cooperation with UNHCR.

I think that the lack of sound legal reasoning both in the recommendations, many of them, and, above all, in the decisions taken and notified strongly indicates that the screening was not fair and that some kind of remedy should be undertaken at least for those who claim at this late stage—better late than never—that they were screened out unlawfully or unjustly.

I cannot see why the text, the letter and the spirit of the CPA would prohibit such remedies to take place. It is not stated in the CPA that there shall be only these two particular instances. We know as practicing lawyers that there are so many ways—judicial reviews, corrections. The court decisions are not always correct. You ask for a correction.

We did correct, I remember, cases where obviously a mistake had been committed. We had missed from the bio data that the lady had a husband in another camp, so we should harmonize the decision. We corrected the decision.

UNHCR could use its mandate, which is a procedure acceptable under any circumstances, and perhaps a review of cases. These cases have—one of the basic flaws of the screening process, in my opinion, which constitutes, I believe, a violation of a basic principle or law or a general principle of law is the lack of legal representation. We all know how important that is.

I have seen many cases where I myself was induced to recommend an acceptance just because the elements of the case—we are talking, of course, about borderline cases—were presented in such a way so that they had enough information to justify an acceptance.

How many cases, because of a poor presentation, have lost the chance? I can mention just one concrete example shortly.

Many Vietnamese cases would qualify under Paragraphs 54 and 55 of the handbook, which means discrimination and cumulative

discrimination because there are many types of persecution. The Vietnamese generally did not suffer from the type of persecution which would be applicable in Uganda. You would not be shot in the street. It was more the killing me softly attitude, which yet could render your life unbearable.

There was this one applicant who managed to give a picture of her day to day life of all the years after 1975, which was an unbearable life. There was no element of reeducation or new economic zone in that case, I remember—nothing flagrant—but such a long series of day-to-day complaints.

She would not get her photocopies certified by the authorities. Her electricity would be cutoff. Her rations would be cutoff. She would be harassed. There would be harassment and so on, but in such a concrete way so that we had no option but to say that her life was unbearable under paragraph 40 of the handbook.

Legal representation was important. The people did not know how to present the cases. In some cases, they did entrust privately lawyers from Australia and other countries. Those lawyers did not know the CPA. Their submissions did not help us at all.

Also, we did not know what to do with them. Some people said do not pay attention to such submissions. Others said read at least the content. There are no clear lines. There is no clear policy, and it is very different from country to country.

Those still in the camps, perhaps they should get the chance of some legal-like body of seeing through their cases so that no genuine refugee is lost.

Last but not least, referring to the corruption of the screening, I believe that the corruption was taking place in Indonesia and to a lesser extent in Malaysia. The setup was such that in Indonesia the decisions were taken by the officers, so if somebody was interested in achieving acceptance through bribing then the way was to get access to some Indonesia officer. It was out of the hands of UNHCR.

In Malaysia, the setup was much better. I think the first instance was tight in Malaysia because there was a gentlemen's agreement always followed, to my knowledge, that the Malaysian authorities would always follow the UNHCR recommendations, and the UNHCR recommendations in Malaysia were drafted in a very careful and systematic way. They were harmonized, so I cannot see at first instance any possibility of corruption.

However, in the second instance is the board of appeals. There it could happen, I believe, because the decisions were taken jointly and on a basis of consensus, not dialectic discussion where you convince with your arguments that it was out of the question, but just that we agree. There, if someone had approached the Malaysian officer, of course he would insist that he wanted to have this case end.

Thank you very much.

Mr. SMITH. Mr. Furlanos, thank you for your testimony and for the rather rare insights that we can get from somebody who was actually there on the ground from the perspective of UNHCR. I do thank you for that.

I do have some questions that I will pose momentarily, but I would like to ask Simon Jeans if he would make his presentation at this point.

STATEMENT OF SIMON JEANS, FORMER CPA OFFICIAL

Mr. JEANS. Thank you, Mr. Chairman.

Just as an introduction, I worked in Hong Kong between August 1990 and 1991, and then I went on to work with UNHCR between January 1992, and the end of June 1992.

Today I just wanted to talk about the situation in Galang, Indonesia. I think there has been enough information already presented about Hong Kong. Although I left Galang over 3 years ago, after I did leave the camp I came to Canada and America, and I went also to Vietnam and then eventually went back to Australia.

In that time, I spoke to a lot of people who had relatives in the camp or who had been in the camp and had an experience of the corrupt screening procedures. These were Vietnamese people who were in a position to know. These were what I considered to be independent sources, and every independent source that I met told me about the corruption, told me about how it was operating and confirmed my own investigations or ideas that I had at that time when I was in Indonesia.

There were a significant or so many cases that it became clear that the corruption was systematic. In fact, when I met Vietnamese people, after asking have you been in Galang, we would ask in Vietnamese were they in Galang I or Galang II camp, and then you would ask in Vietnamese, "Ban u dong?", which is how much money. They would tell you we paid maybe \$7,000 or \$5,000, \$1,000, \$3,000. It depended. This was only, of course, after they were resettled.

I know that one of the cases that I recommended for refugee status was in fact approved, and that person wrote to me later on and said that their sister in Japan had paid \$1,000 to get screened in. Of course, the Indonesians never told the person that they were going to get screened in by UNHCR. They simply said well, we can help you to get screened in and can you pass the money.

No one was the wiser because, according to UNHCR, the person was screened in, the person got the decision, the P3V got the money, and everyone was happy. P3V, I should explain, is the Indonesian task force. It is a combination of three Indonesian words beginning with the letter P and one with the letter V. They just call it P3V for shortness.

I initially raised the problem in September 1993 with the Australian Government. At that time, I wrote as a private citizen to the Minister for Development Corporation and also the Minister for Defense, Science, and Personnel, raising this issue of corruption with them privately.

Indonesian officials on Galang obtained Vietnamese language training at a military base in Australia and were able to basically put the hard word on Vietnamese men and women directly without an interpreter. There were no witnesses.

Australia had been funding that program and was also bankrolling Galang because the only thing between Vietnam and Australia was Indonesia, and Australia did not want 20,000 Viet-

namese people turning up on its doorstep. They paid the Indonesians to set up an island, electricity, water supply, roads, harbor—everything you could possibly want—in order for the Indonesians to stop the Vietnamese people and put them on Galang.

After I received no response, I then had an opportunity to speak to the local and international media in October 1993. In November 1993, the Indonesian Embassy in Canberra put out a statement. I do not think there is anyone from there here today, but I might just read this. This is from the Minister Counselor for Information dated November 8, 1993, in Canberra from the Indonesia Embassy. It says:

With regard to the allegation of corruption and bribery launched by Mr. Simon Jeans involving the Indonesian officials at Galang Refugee Camp of the Vietnamese boat people, we wish to strongly reject such an allegation. It was merely a malicious campaign to discredit the Indonesian government, which since 1979 has been temporarily providing an island as an asylum until they were eligible for resettlement in third recipient countries and the UNHCR.

It goes on to say it was completely not right that the refugee status of those people was solely determined by the Indonesian officials. The decision of their status was determined by UNHCR and the Indonesian officials after they had been screened by both parties in accordance with internationally accepted standards.

They go on to say that these screenings were finalized in August 1993, with the result that 9,500 were screened out, and 2,500 were screened in. The figures in Arthur Helton's paper are somewhat different. They show that about 4,500 people were screened in, and 10,961 were screened out. That is the first time I have seen those figures, but that is probably around 37 and 40 percent, which is significant and is much higher than the other averages around the region. I can come back to that later.

I do not propose to talk about the process of the screening because I would like to keep this brief, but I would like to say that corruption in Indonesia was systematic. It was organized at the top, and it worked down. They were very, very collective in their structures.

People did not work as individuals. They worked as a team. They collected the money. It went into a pool from which everything was shared. Of course, if you are also familiar with the situation in Vietnam, money trickles out. The person at the top gets the most, and the people at the bottom also share.

There are other money making ventures that the police, the Indonesian Red Cross, the post office service, the transportation companies were involved with, which basically meant Galang was a money making venture. The line of Indonesia that it was a humanitarian gesture offering Vietnam asylum is a complete load of rubbish. They obtained money from asylum seekers at every available opportunity.

Even to cash a check you had to register it first with the police, with P3V, because P3V wanted to see what the cash-flow situation into the camp was. It cost about 50 U.S. cents to register a check. You could then go and cash it at the post office. It was not just in screening that the people were making money, but in all aspects of the camp.

I think there are lots of reasons why people have remained silent, and there have only been a few people who have spoken out. The victims are afraid. The victims of the corruption are afraid of having their residence status revoked if they are in a third country. They do not know that they were screened in because they are a refugee. They think they were screened in because they paid the money.

Let us say they come forward and say yes, I paid 5,000 U.S. dollars to get screened in. That means that they did not tell the truth, I suppose, in their application for immigration. In Australia, that can mean that you are investigated for a long period of time—maybe several years—your permanent residence can be revoked, and you can be deported.

Of course, in the situation of women, who were basically raped by the Indonesian screening officials in order to get refugee status, that is something that they do not want to go on the record. They would rather come to another country and get on with their lives. They are not going to come to a public hearing today in large numbers and tell you about that because that is just life.

The fact that there are not a significant number of people saying this does not mean it did not happen. I am presenting to you a system of corruption and maladministration and screening procedures where you can draw your own reasonable conclusion as to whether the outcomes were correct.

First, in terms of the screening by people like myself, we are under enormous pressure to do as many interviews as possible in order to basically reject the people and send them all home. The idea was that the screening would be finished by the end of 1992.

The representative in Indonesia wanted it completely finished. He wanted to be known as the man who finished the screening and closed the camp. We had a quota of three interviews per morning. It was four really a morning between 9:30 a.m. and 12:30 p.m.

If you were working with an interpreter so that half of it is in Vietnamese and half in English, an interview of 30 minutes is basically an introduction of how are you, how are you feeling today and just perhaps let me tell you about what we are doing here. That is it.

Well, you are supposed to do the whole interview. You are supposed to get the whole life story. You are supposed to get every possible event of persecution against them, against their brothers and sisters, against their parents, against their grandparents in a very, very short period of time—30 minutes to 45 minutes.

In Australia where I practice, an interview might last at least half a day. A good interview would last at least a whole day with breaks for lunch and morning tea and so on and possibly longer, depending on the complexity of the case. I do not think you can properly assess a case in a 35- to 45-minute period. That was one of the major flaws.

There was an expedited screening procedure where one person actually conducted nine screening interviews in a morning. He was in the office next to me. He used to just bang the table and shout at people to get them to answer yes or no to the questions. He just ripped through nine, and he did about 30 in 2 days just to prove that you could do some sort of fast track screening procedure.

At the time, Mr. Arthur Helton wrote to UNHCR complaining about this fast track procedure. The person who conducted it wrote back to Arthur Helton through UNHCR a pack of lies. I do not know whatever happened to that. I did not follow that up. It was not a good idea to get involved in political issues in UNHCR if you wanted to try to survive.

The corruption was well organized and systematic, as I have said, and it happened mostly on appeal. The Indonesians conducted the appeals in Jakarta. That is probably 2,000 or 3,000 kilometers away from Galang. Once the followers went to Jakarta, you would never see them again. We never knew what happened to a case.

The Indonesians had their own panel of people from the various interest groups, the Foreign Affairs Department, Intelligence, the Red Cross, and the P3V task force, who were on this panel loop and probably did not know what a refugee was if it poked them in the eye with a burning stick. That was not the test. The test was money and how much you paid.

If you did not pay and you were asked to pay, then you would be rejected because they could not afford to let people get away with not paying if they wanted them to pay. It was very easy to find out how much you could afford to pay because in the bio data, which they present in the file, it not only had your name, address and so on, but it had all the names and addresses and actual street addresses of your relatives living overseas. You could just look on the file.

It would be very easy to see well, you have four relatives living in America and two in Australia and three in Canada. You can do a quick calculation that they can probably each afford 1,000 U.S. dollars. There we are. You have come to a figure. It is not very easy to dissuade them that you cannot pay that sort of money if each relative can put in some sort of contribution. That was the system.

It was operating on appeal, or in Galang you would have a positive decision by UNHCR, which was never disclosed to the person. They did not know what the UNHCR consultant had said or the legal consultant had said when they went to the P3V screening interview. They could represent to them and say you have been screened out, but I can help you. Of course, they could then pay.

Another problem, of course, is that refugees were wrongly screened out under the system for the first reason that the system was flawed, that the interviews were conducted too hastily, that the assessments were very short. There was not enough thought put into them. That is not to say that I did not put any thought into the assessments, but given the pace that they were done, I do not know if they could all be relied upon.

If an appeal structure is working properly, then you are going to have overturned cases. You are going to have set aside cases based on merit, not on money, but the standard at appeal was money, not merit. In Australia, the set aside rate is about 16 percent at a refugee review tribunal, which looks at all the Immigration Department decisions. That is quite high, I think, but not so high.

That system, if it was operating properly in Indonesia, would have been able to identify a significant number of people who were

screened out on appeal but should have been recognized as refugees if it was done on merit, but there was no merit assessment.

In fact, there was a UNHCR representative on the appeal board, but he was an Indonesian, and I believe his brother was a general in the army. He was very well connected. If you understand Indonesian politics, if you are in Indonesia and you also have a connection with another organization, you are Indonesian first, and UNHCR was a very distant second. He was Indonesian, and that would have been made very clear to him. He shared in the corrupt procedures and in the corrupt process.

I do not believe there was a genuine review, and I believe that the people on Galang were denied natural justice in the initial screening procedure.

This is the system that I can explain. The UNHCR deputy representative in Australia, the previous one, harangued me for half an hour on the phone about a year and a half ago and basically said put up or shut up. He said you are a lawyer. Where are your cases? Where are your facts?

I said to him well, I can give you a few cases. I can tell you my anecdotal experience. I can tell you my experience in the camp. I can give you a system that was flawed, but I do not have the files. I do not have access to the people. You do. You conduct a rescreening of people who want to be rescreened.

Now, UNHCR has always stood by the view of give us cases, give us facts, give us names, give us places, give us times when the money was paid and so on. I do not think I am in a position to do that in the sort of numerous cases that they are demanding. I do not think I should. I can only give a system and describe what happened. I think a reasonable conclusion can be drawn from that.

That is an unpalatable decision or unpalatable outcome on UNHCR's part. It would rather be rid of this problem. The refugee has moved on to Bosnia and other places in Africa and has gone past the CPA. The UNHCR view, I believe, is now that the CPA has to be closed down, swept under the carpet and let us just forget about it.

Mr. SMITH. I thank you very much for your testimony.

You know, these hearings are extremely important not just in trying to do justice to those people who have been wrongly screened out and may be facing persecution in Vietnam or Laos and for those who are still in the camps, and hopefully some remedy can be found for them, but I can assure you that as chair of this subcommittee that as we look at the budgets and the refugee account, the money that will be going, the United States donation, if you will, to the UNHCR, that all of this will weigh very heavily as to how much is allocated, whether or not safeguards and reforms are instituted by the UNHCR and by others to insure that this kind of scandal does not happen again.

I say that again as someone who over the many, many years has been a very strong proponent of the UNHCR, but this is just the beginning and not the end of the inquiry into what has happened, what is happening as we talk today.

This testimony is extremely valuable to this subcommittee and will be widely disseminated within our leadership as we come up with budget allocations and any policies in the near future.

Mr. Fourlanos, you testified about the school of cynicism that the interviewers and people in the UNHCR presumably are increasingly gravitating to. They are rewarded for toughness, as you said. There is nothing wrong with being tough, as long as you are equally fair.

Is there a moving up in the ranks? Are there any rewards at the end of the day for those who are tough in screening out people and being a part of that process of exclusion?

Mr. FOURLANOS. I would say so. I would say so. The lawyer, the UNHCR consultant which my colleague, Mr. Simon, mentioned that he was acting as a gestapo in the camp, he is rewarded. He got a permanent post, a better post. So were all of those who were acting in a similar way.

We had a so-called senior social worker in Bangkok to take care of unaccompanied minors or children in the region. Now, the United States delegation at the regional coordinating meeting in Hong Kong in December 1991, would certainly remember that she was, let us say, more royalist than the King himself.

We had at that conference all the resettlement countries who, of course, wanted to have as low numbers accepted as possible. On the other hand, we had the UNHCR sandwiched between those and then the first asylum countries who wanted to get rid of the people. A good way was high numbers of acceptance.

There you had the so-called social worker, the senior social worker, who I would say she was a butcher in reality. She wanted all the children sent back to Vietnam, which not even the delegates of the resettlement countries argued for. The best interests of the child to her by definition was to send back anybody.

They have dealt with her in concrete cases, and they know the set of values that inspire her. She is, of course, rewarded. She is a high flyer in Geneva.

Mr. SMITH. Would others like to respond? Mr. Helton.

Mr. HELTON. I, too, am a strong supporter of UNHCR, and I think to understand the problems in this context I would suggest to you that to some extent they were structural in character and to some extent unique to the comprehensive plan of action.

I actually would single out UNHCR's many and sometimes contradictory roles in the implementation of the comprehensive plan of action as a source of some of the problems that you are hearing about and examining today.

To the extent that migration control priorities became the centerpiece of the comprehensive plan of action, calling upon UNHCR, for example, to monitor the situation of returned nonrefugees or those who had voluntarily returned, calling upon UNHCR to promote early repatriation from first asylum camps as part of a mixed counseling exercise, I would simply suggest to you that to some extent the difference was the comprehensive plan of action and not UNHCR, and to the extent that UNHCR began playing these roles that it became more identified with the state interests that were being served by the comprehensive plan of action.

Partly for that reason, I would suggest to you that an appropriate remedy now should be outside of the CPA and, indeed, much more a U.S. led initiative.

Mr. SMITH. Yes?

Ms. MASSIMINO. I would like to express support for that opinion as well. I think what is important for us to focus on right now and what I think we are focusing on and what you are focusing on in having this hearing is what can the U.S. Government do now to fix this.

There are those, many of them U.S. Government officials, who say we should not tinker with the CPA now because we made a promise to close this down by a certain date. I think we need to respond quite strongly to those people that we made another promise as well, and that is to refugees. When we ratified the refugee treaty, the U.S. Government assured that we would not participate in the repatriation of refugees to persecution.

One lesson to be learned is that when the U.S. Government becomes a party to such an international agreement as the CPA was, we have a responsibility to ensure that the screening procedure is one in which we can have confidence. That is not just in the planning stages, but in the implementation and all the messy details. Otherwise we risk putting the United States in the position of being an accomplice to the return of refugees to persecution.

I think we have to conclude now that the screening procedure that has gone on under the CPA cannot give us the kind of confidence we need to be sure that we are not going to be an accomplice to the repatriation of refugees to persecution, so we must now step in separately, the U.S. Government, and remedy the situation.

Mr. SMITH. Just let me ask a question before you respond, Mr. Jeans, and then I will yield right back.

Ms. Massimino, you heard Secretary Oakley say that while it was not perfect, she had lots of praise on the CPA. That would not concur with my judgment, which is largely gleaned from all of the input that I have gotten from organizations like your own, that it is a flawed process.

Perhaps you might want to comment on the people you think may have been improperly screened out. I do not know if that would be a guess or what.

We heard Mr. Jeans talk about systematic corruption from his personal observations in terms of payoffs, sexual favors, and some very, very, very scandalous practices. How widespread do you think that is?

Ms. MASSIMINO. Well, it really has to be speculation because as you heard described, it is almost impossible to document because there are so many barriers to hearing the genuine reporting on what has happened in individual cases.

What we have to look at is what the procedure was designed to do. If you have a procedure that is not even designed to accurately determine who is a refugee, then you are going to have large numbers—hundreds, maybe thousands of this group—who are inaccurately screened out as not being refugees.

Those who say that the CPA is a great success, it depends on what the goals are for the program. If the sole goal is control of refugee movement, even then I guess we would have to argue whether the CPA has been a success. That is the only ground I think on which one could argue that it has been a success.

There is an independent goal which the lawyers committee has promoted and encouraged governments to pursue: international co-

operation in dealing with large refugee crises or situations of mass movement. This was an instance of international cooperation, which may have prevented a bad situation initially from getting worse.

We cannot leave it at that. The ultimate goal has to be and the plan has to be judged ultimately on whether or not it protects genuine refugees, not whether it satisfied the various national interests of the participating governments.

Mr. SMITH. Are the orders coming down from the international community, or are they coming down from different layers of the UNHCR, implementing this whole idea that Mr. Fourlanos talked about: the cynicism, the school of thought that it is better to be real tough and screen people out than to give the benefit of the doubt and try to have an extensive interview, such as Mr. Jeans talked about in Australia, where he said it takes a full day to really do it right, rather than three or four in a single morning?

Ms. MASSIMINO. I think I agree with Mr. Helton in his assessment that here what we have was not so much simply a problem of UNHCR and failure to apply its own guidelines and take a leadership role, but the CPA came into existence in a context where there was already a strong distrust of asylum seekers in the region and strong national interest to place deterrence and repatriation at the top of the list of goals. UNHCR is made up of governments and is certainly susceptible to those kinds of pressures.

I think ultimately the UNHCR's goal in its refugee operations is to protect genuine refugees as best it can, but again it has to operate in the context of national governments with their own agendas, which are not many times refugee protection.

Mr. JEANS. Just two comments; one in terms of evidence. We see in Mr. Helton's paper he has identified some UNHCR statistics at Page 3 where it says that 36 percent of cases were positive reviewed decisions.

When I was in Galang, it was two percent of cases that had been overturned on appeal, and we were telling people that you do not really have much chance to appeal because it is not going to be successful. There is only a very small number that are successful. I think that is a very, very clear sign that something has gone wrong and that there was massive corruption at the appeal stage.

Positive decisions at the primary stage were 27 percent. When I was there it was 30 percent, and that was a policy of the Indonesians to always keep it at 30 percent. It fell around July or August 1992 to about 10 percent and remained around that level. Now to suddenly get up to 27 percent either indicates that these figures are rubbery or that there was a massive what we call in Australia a rort; that is, just huge corruption on a huge scale.

The second point I wanted to make is I would hope that America increases its voluntary contributions to UNHCR. In Galang we were a victim of not having enough budget. I wanted to get the amnesty reports, Human Rights Watch reports and newspaper clippings on Vietnam to get country information. That was refused because they did not have a budget for it. I even asked for the U.S. State Department report, and we could not even get that.

There was some country information in the data base, but there was nothing from an independent source that gave us up to date information about Vietnam.

Mr. SMITH. Are there suggestions that you or any of the panel might have on systemic reforms that the UNHCR might implement to insure that people are adequately protected and that the benefit of the doubt is given?

There may be a growing tendency, I fear, among the international community to say these are the definitions for refugees, but in a world awash in refugees we just want to push repatriation, repatriation, and repatriation, which is all the more reason why those reforms need to be put into place, and vigorous oversight must be exercised by governments, including the U.S. Government, so that this kind of thing does not happen again.

Mr. JEANS. What they need is an orientation of service. What they need is to work out who are they serving. Are they serving their own interests? Most people in UNHCR were looking to the next posting in Geneva and good positions.

Mr. SMITH. Again, more money without adequate strings affixed to it might mean more people with that kind of mindset.

What would be your recommendations on what we might do as a Congress, legislatively and administratively, to promote real reform? We all know that the Solomon reforms have helped the United Nations get its financial house in at least some better order.

Are there some things that we might do, Mr. Furlanos, and then anyone else who would like to comment?

Mr. FOURLANOS. I would suggest that UNHCR at this very late stage is urged by the Congress to take more responsibility and to accept any kind of remedy that is possible practically, financially, and legally so as to avoid disasters at this very late stage and disgrace.

If a case is identified now as a meritorious case which should have been screened in on the basis of the handbook and the case is identified now, be it from the mandate of the organization, be it a judicial review, a reconsideration or a correction of the case, they should be open to that so that the handbook at the end will be applied.

There are several Vietnamese cases which should be argued on the same provisions of the handbook as those who had been considered meritorious already. Many Vietnamese cases merit under paragraphs 54, 55, and 136 of the handbook.

UNHCR officials often forget the handbook. It was the first time in UNHCR's history that the handbook was utilized at all in a somehow systematic way. In other suboffices and places I have been, the handbook was not even available there.

If a question of determination of refugee status arises at all, then the protection officer or the representative responsible for that just writes what he thinks. He believes that is UNHCR and refugee law. Nobody thinks that most of the answers are contained in this book.

I think that the Congress should urge UNHCR to make sure at this very late stage in a flexible way whatever the platform is to see that there are no cases screened out in violation of this handbook.

Mr. SMITH. Mr. Helton.

Mr. HELTON. Apart from the specific remedies that you are considering, I think, if anything, UNHCR suffers from a phenomenon that we all experience to some extent in terms of not having sufficient time always to reflect upon experiences and activities. Migration and refugee emergencies do not lend themselves to lesson drawing exercises and unenforced reflection.

I would suggest one encouragement should be to promote within UNHCR the capacity more generally to draw lessons based upon such experiences. The comprehensive plan of action was a classical legal protection exercise in terms of status determination and trying ultimately to build capacities in the region to undertake those state responsibilities, I think probably not very successfully.

In terms of disentangling the many and potentially contradictory roles that the agency played in this particular exercise, or in terms of trying to identify what worked and what did not in terms of status determination for use in the future, the protection division in UNHCR should be encouraged to enhance its capacity to engage in research, reflect upon experiences and draw lessons from such experiences. I think that is something you might be in a position to encourage.

Mr. SMITH. I have one final question before yielding to Mr. Payne.

I apologize to all of our witnesses for the length of these hearings, but there is nothing cursory or superficial about what we are trying to do on the subcommittee. We are very serious about trying, not just through legislation, but by every means possible, to try to encourage reform.

I do apologize to some of our witnesses who are being delayed by the length of this.

The UNHCR official, and this is my final question, in charge of the Hong Kong program publicly charged that the disturbances in the camps after extraction raids, which he called riots, were caused by the legislation in the U.S. Congress.

Do you believe this is accurate? Is there anyone who would like to comment on that?

Mr. JEANS. Having seen the conditions in the Hong Kong camps, you could probably drop a pin and that might cause a riot. It is a very explosive situation. Blaming it on a single issue I think misses the point.

Perhaps they might blame it on the detention policy in the first place why they have detained people for up to 7 years now behind barbed wire fences in concrete enclosures with thousands of people crammed into the size of a football field, allowing in Hong Kong the gangs to basically run the camps and reign terror on the people in order to encourage people to go home. It could be any number of reasons why that is the case.

It is probably convenient for some people to blame Congress or to blame an act of some other external force, but perhaps they also need to look to their own policies of deprivation and detention and almost persecution or persecution.

If you detain someone without trial for 7 years and that person came to me, I would say you are a refugee. If you are Vietnamese,

it on account of your race. That is political opinion. You do not agree with the Hong Kong government.

There are many reasons for riots and disturbances in camps, but they have to look at the source of the problem and not blame external factors.

Perhaps Pam Baker, who is here today, may be able to explain something about that because she is from Hong Kong. She was probably there when that happened.

Mr. SMITH. That is true, and we have had Ms. Baker as one of our witnesses earlier, as I think you might know. She did a masterful job.

I would like to yield to Mr. Payne.

Mr. PAYNE. Thank you very much. Thank you, Mr. Chairman, for calling this very important hearing.

I am extremely involved and interested in this whole subject. Years ago when the situation began, I was chairing a world refugee committee with the World Alliance of YMCAs in Geneva and worked along with UNHCR and the others and did visit Vietnam on several occasions in the Da Nang Province and Quang Tri.

As a matter of fact, I visited Vietnam after the United States troops had withdrawn. I was not there as a military person. The Vietnam situation came after I was an older man, so I was not involved in it, but I was involved in the refugee situation there.

As a matter of fact, at that time I think I was probably the only American in Vietnam. It was between the time that the United States troops withdrew and the fall of Vietnam. I had visited Da Nang and up in Quang Tri Province up in the north of South Vietnam at the time.

I also went to Thailand, where there was a tremendous number of refugees there—the Cambodians, the Hmong hill people from Laos who were, as you know, very involved in assisting United States downed airmen, and, of course, Vietnamese boat people. At that time, in Thailand there was a tremendous amount of dislocation from ethnic Thais, who were sort of pushed off their land from the refugees.

I was involved a great deal in the United States legislation of assistance to Vietnamese and Laotian refugees to the United States to have our country's Government provide for refugees as they came into the United States around 1974 and on.

I did have the opportunity to visit the camps in Hong Kong about 2 years ago, and I was somewhat appalled by the conditions. Entire families were living on a bed or two at the most on the second level with four or five children, cooking utensils, clothing, everything right at that one bed or maybe the second tier.

You certainly could see that there was indeed a lot of tension, as has been indicated. If there was no tension, there would be something wrong with the people.

It is just probably some of the most inhumane conditions that I have seen anywhere, inhuman from the standpoint that so little was given in a place that really has so much to give if you look at the economic standard of Hong Kong.

I have not heard much about Indonesia. I have heard stories of real corruption in the Indonesian camps. We do not hear much

about them. They are not focused, and I do not know whether any of the previous persons talked about that.

I wonder, and that might be one of my questions, what is the status of Indonesia? Are there still many Vietnamese boat people there in Indonesia? Does anyone know? Let me ask that question.

Mr. JEANS. My understanding is that there are about 4,000 people there now, but you would have to check that with UNHCR. I think they probably are the only ones who would know the exact number.

Mr. PAYNE. Do you know anything about the conditions there?

It was rumored, and these are just rumors—I have never been to the Indonesian camps—that there was a very high level of corruption there. In order to write a letter or mail a letter you had to pay sums of money or just for whatever. Could you comment on that?

Mr. JEANS. My understanding is that there is no mail service out of Galang. The letters that I have received recently have been smuggled out through people being resettled and hiding them in their bags. If they were caught, they would be torn up and probably bashed up by the Indonesians. They smuggle them out with some people.

There were three camps—three sites—in Galang. Galang II is where the people who are screened out to be repatriated are. They are now in an enclosed area with a deprivation policy of limited food. They are surrounded by a barbed wire enclosure. There is a curfew. It is a fairly harsh regime, as harsh as they can probably get away with.

Galang I is where some people are awaiting resettlement, but because they either have some criminal record or they are disabled, no third country wants to take them. UNHCR, to our understanding, is trying its best to get those people resettled, but no one will take them.

There is a group of Cambodians—I do not know how many now; about 400 perhaps—and there were some Vietnamese people in that group who came on a Cambodian boat, had gotten into Cambodia and then come to Galang. UNHCR refused to screen them as Vietnam, even if they had an identification card showing they were Vietnamese.

UNHCR's view in Indonesia was that they were not there to determine nationality, but to determine refugee status for the Vietnamese.

There are other Vietnamese people who have a Cambodian spouse. They cannot go to Vietnam. Vietnam will not let them in. They will not let the Cambodian spouse in, and they cannot go back to Cambodia because the Vietnamese in Cambodia are under a real threat from the Khmer Rouge, so they are basically stuck there. Those people have never been screened. If anyone is at the shortest end of the stick, it has to be the Cambodians in that camp.

Mr. PAYNE. We have a vote coming up. I appreciate that.

Let me just say that I think in general the UNHCR really has been a humanitarian agency that has attempted to do the job as best as they could, but I do think that there are a lot of shortcomings in Goma camps where I have been recently where Rwandan refugees are.

You still have the Hutu militia, who created the genocide, actually running the refugee camps. They are still the strong men. They distribute food. They intimidate people from going back for repatriation.

As you know, the UNHCR has a policy that they do not force repatriation, which I think is good in a way, but by the same token it seems that there needs to be some integration of UNHCR with some other agencies to sort of keep the gangs and this kind of leadership that emerges in the camps of usually men intimidating the rest—the weaker, the women, the children—having the distribution of food, any kind of law dispensed by them.

I see a danger in the Rwandan refugee camps in Goma where this is allowed to happen, but the UNHCR does not have a mechanism. These people should actually be taken out of those camps and put on trial, as a matter of fact, for crimes. They were criminals. They were pushing genocide. Five hundred thousand people were killed in 3 months.

These murderers are harbored in refugee camps, and UNHCR does not have a mechanism to have them taken out. It may not be that you can blame them solely, but that is just the way the agency has not integrated some other mechanism in.

Thank you, Mr. Chairman. I know there is a vote, so I will yield back the balance of my time.

Mr. SMITH. Thank you very much, Mr. Payne.

The subcommittee will take a short recess to respond to the vote on the floor.

[Recess.]

Mr. SMITH. The subcommittee will come to order.

I would like to welcome our second panel to the subcommittee, beginning with Allen Tran, an American citizen. He is the senior drafting designer at an engine company in Indiana.

In 1992, he made a trip to Indonesia to visit his two brothers held in the Galang asylum camp. An employee of the Joint Voluntary Agency, the JVA, assigned by the U.S. consulate to facilitate his visit, proposed that Mr. Tran pay \$5,000 to secure refugee status for his brothers.

Tran reported the incident to the U.S. consulate and to the head of the JVA. The JVA employee was forced to resign, but the Indonesian took revenge on his two brothers. One has been forced back to Vietnam, while the other remains in the camp.

Second, Kim Ngo is a resident of, I believe it is, Falls Church, VA. She arrived in the United States in 1994, after spending 6 years in a camp in the Philippines. Ms. Ngo was a Catholic nun in Vietnam. In 1988, she was arrested for organizing a religious event banned by the Communist government. She was tortured and assaulted in prison.

In 1989, she was again arrested for interrogation. Fearing imprisonment, she escaped to the Philippines. Her refugee claims were rejected by the screening officials because she did not pay enough. Thanks to the special intervention of the Catholic Church, however, she was granted refugee status on appeal.

We will also be hearing from Wa Vue. Wa Vue is the son of Mr. and Mrs. Vue Mai. His father disappeared in September 1993 from

Vientiane, Laos, while leading a repatriation project in that country. His disappearance remains a mystery.

Wa Vue graduated from high school in Toledo, OH, and received his bachelor's degree from the University of Toledo in 1988. Mr. Vue received his master's degree in social work at the University of Michigan in 1990. He is a social worker in Fresno, CA, Department of Mental Health.

Finally, Ter Moua is a Hmong American who resides in Eau Claire, WI. He is here to testify about what happened to a close relative who returned to Laos.

I would like to briefly turn the chair to my good friend, Mr. Royce, and he will make an introduction as well.

Mr. ROYCE [presiding]. Mr. Tran, if you could begin with your testimony, and then we will proceed from there?

STATEMENT OF ALLEN TRAN, VICTIM OF THE CPA

Mr. TRAN. Thank you, Mr. Chairman. This is Randy Witwer, and he is my friend. Also, we work at the same company. He is the one that is helping me in my case. He knows from A to Z, so I invited him here today.

Mr. ROYCE. Excuse me a minute. I am going to ask you to speak into the microphone, if you would. That is going to make it easier for everyone to hear.

Mr. TRAN. Yes. I am Allen Walter Tran, an American citizen from Columbus, IN.

I went to Indonesia on March 25, 1992, to visit my brothers, Tran Cong Ngoc and Tran Le Bau, who were at the refugee camp at Galang Island. Mr. Sumarno, manager of JVA, was with us most nights and informed me that he could help insure that my brothers would be granted refugee status if I would pay \$5,000. I told him as politely as possible that I had the support of my church, community and government and that they were helping me.

Mr. Sumarno continued asking me about the \$5,000 for the remainder of my visit, telling me that without the money they could not screen in. Mr. Sumarno told me this money was to go to Indonesian lawyers in Jakarta and to the screening officer in the camp.

When my visit was ended, I was depressed, fearing that if I did not pay the \$5,000 it would jeopardize my brothers' chances of being granted refugee status. I spent the last night in Singapore, and the next day a business associate, Mr. Eric Thompson, listened to my story and suggested that I should report it to the U.S. Embassy.

I spoke to Mr. Frank Minnick at the U.S. Embassy in Malaysia the next day, and he flew to Singapore to talk with me at the airport before I left for the United States. Mr. Minnick seemed to be very concerned about corruption in the screening process.

Mr. Sumarno called me at home on April 9, 1992, at about 3 a.m. eastern time and complained that I had not kept the secret. He also threatened me, telling me that my brothers and I were in trouble. He also said he had lost his job and that it was all my fault.

A couple days later, I was called by Mr. Minnick and told that I would be called by Mr. David Jamieson. When Mr. Jamieson called me and asked me what had happened, I told him all I knew.

Mr. Minnick called me again in September and told me that my brothers might be able to come to America as soon as New Years. He told me he wrote something in my brothers' files which would allow them to have their first screening interview much earlier than usual.

In October 1992, I learned that my brothers were screened out and that they would not be allowed to come to America. In December 1992, I appealed the screening decision to Mr. David Jamieson of the UNHCR. I sent a copy of the appeal to my Senators, Congressman, to Mr. Louis Mazel and Mr. Frank Minnick of the U.S. Embassy in Malaysia, and to His Excellency Abdul Rachman Ramly, Indonesian Ambassador to the United States.

During the next several months, I had many phone conversations with Mr. Minnick. I soon learned that the appeal was not granted, and I began writing letters in more detail about the corruption.

In late May 1993, I learned from a refugee who came to the United States that my brothers were being mistreated and abused because of my actions. I was told they were used as examples to show others that even the U.S. Government cannot help them if they refuse to pay the illegal fees.

Earlier this year one of my brothers, Bau, was forced to return to Vietnam. My sister wrote me last month telling me he is in prison. My other brother, Ngoc, is still in the camp at Galang.

He is in danger, and I am afraid my testimony today might cause him more harm. Please help us.

Mr. ROYCE. We appreciate the courage of the testimony that you have given us here today in the Congress.

Mr. TRAN. Thank you.

Mr. ROYCE. Now if I could ask Kim Ngo if you would like to proceed with your testimony?

STATEMENT OF KIM NGO, VICTIM OF THE CPA

Ms. NGO. My name is Kim Ngo. I came to the United States 10 months ago after 6 long years in Palawan Camp in the Philippines.

I would like to thank the subcommittee for giving me the opportunity to tell you about the corrupt screening system in the Philippines, of which I was a victim.

I began studying Catholicism in a monastery when I was 8 years old. In 1975, when the Communists took over South Vietnam, they closed down our monastery. I had to practice religion in secrecy. On August 15, 1985, I became a nun and started to preach in suburban areas.

In 1988, Catholic followers were to organize for the canonization of Vietnamese martyrs according to a directive of the Vatican. The government opposed this and accused the martyrs as traitors. As a nun, it was my duty to explain to the Catholic followers that the government's accusation was wrong.

For that reason, on July 12, 1988, I was imprisoned. The authorities accused me of spreading antigovernment propagandas. The guards mentally and physically abused me. I was released after 3 months, put under surveillance and forced to abandon all religious activities.

After this traumatic experience, I felt I could no longer competently carry out my religious duties as a nun and sought my Mother Superior's permission to leave nunhood.

In February 1989, I was again arrested because of suspected involvement in an anti-Communist organization. After 3 days of interrogations, I was released temporarily, but was required to report back the following day. I took advantage of this temporary release to go into hiding and subsequently to escape from Vietnam in September 1989.

In the Philippines, I was screened by Ms. Rosario Teano. In the interview, Ms. Teano asked me only three questions: First, do you have any relatives overseas; second, are your relatives willing to sponsor you; third, do your relatives send you monthly remittances. I was then dismissed.

A few days later, Nhung and Thong, two middle persons working for Ms. Teano, came to advise me to pay for my refugee status. Like many others in the camp, I had no choice but to pay. I handed to Ms. Teano \$300, which was all I had. Six months later, I was denied refugee status. Nhung told me that Ms. Teano deemed the amount inadequate, considering that I had relatives in the United States. She wanted \$1,000 more.

With the help of a local friend, I sought the help of the Catholic Church. Cardinal Sin quickly interceded with the government on my behalf. In October 1993, I was granted refugee status on appeal.

I consider myself lucky. I know many compelling cases whose refugee status has been denied. In these cases, the asylum seekers had neither the money to pay for their refugee status nor the intervention of kind and influential persons like Cardinal Sin. Without Cardinal Sin's help, I would more than likely be facing forced repatriation today.

I earnestly urge Members of Congress and the administration to take prompt actions to help save the victims of unfair and corrupt screening system.

Thank you.

[The prepared statement of Ms. Ngo appears in the appendix.]

Mr. ROYCE. Thank you for coming and testifying today.

Now I am going to introduce our next witness. He is the Venerable Thich Sung. He is the Abbot of the Buddhist Temple in Rosemead, CA.

After 1975, Vietnam's Communist Government confiscated his temple in Vietnam. In 1980, the Venerable Sung petitioned for the return of his temple. The government considered his petition as reactionary and sent him to 2 years in reeducation camp where he had to do hard labor. Afterward, he had to live an errant life banned from preaching, until he escaped from Vietnam to Indonesia.

Believing in his strong claims, he refused to pay bribes to the screening authorities. He was screened out. Fellow Buddhist monks and followers in the United States and Australia pooled their resources to pay \$7,000 to the screening authorities. He was then granted refugee status and resettled in the United States.

Venerable Thich Sung, we would appreciate hearing from you now.

The INTERPRETER. Mr. Chairman, could I provide the interpretation for the Venerable?

Mr. ROYCE. We appreciate your willingness to do that.

The INTERPRETER. Thank you.

Mr. ROYCE. Let us let you take a microphone at this point, all right?

**STATEMENT OF THE VENERABLE THICH PHUOC SUNG,
BUDDHIST MONK [INTERPRETED]**

The INTERPRETER. In the name of Buddha, Mr. Chairman, I am a Buddhist monk. My religious name is Thich Phuoc Sung. Currently I am in residence at the Khanh Anh Temple in southern California.

After 1975, I continued my religious study and professed my faith with great caution because the Communists persecuted all religions. In order to be cut some slack, usually the Buddhist monks have to join a government sanctioned church or the Vietnam Buddhist Church. I myself refused to join this organization because it is only a propaganda organ of the state and not a religious organization.

In 1980, together with my teacher, the Venerable Thich Hoang Phu, I signed an appeal requesting the government to return our temple, which had been confiscated previously. My teacher was arrested, and I had to go into hiding.

A few months afterward, I was arrested while trying to flee from Vietnam. The Communist regime accused me of leading a counterrevolutionary organization aiming at overthrowing the government. As a result, I was imprisoned for 3 months and was sent to a forced labor camp for 2 years.

When I was released in 1982, I continued to practice my religion surreptitiously to avoid persecution by the government. I became an unwanted person, and I had to move from one temple to another.

I was arrested once more in March 1987, again trying to flee the country. This time I got a prison term of 9 months.

Finally, I successfully fled from Vietnam and arrived in Indonesia in May 1990. In Galang, I became the chief representative of the Buddhist Church, and after 6 months there I was granted a preliminary interview with the UNHCR and then later passed to the screening officials of the Indonesian Government.

Even though I had been persecuted in Vietnam because of my religion, I was still denied refugee status. My subsequent two appeals were in vain.

In April 1993, a Buddhist follower of mine told me that he could get me refugee status if I can pay 7,000 U.S. dollars. Weighing the pros and cons, I decided to borrow the money, as well as ask for donations from other religious leaders, followers, as well as from Vietnamese communities abroad.

Once I obtained the amount I gave it to this Buddhist follower, and he passed it on to the Indonesian official. In August 1993, I was suddenly informed that I just became a refugee and was allowed to go to the United States in March 1994.

Through my 4 years in the Galang camp and as the chief representative of the Buddhist Church in the camp, I hereby solemnly confirm the following facts:

The screening process implemented by the UNHCR and the Indonesian officials is arbitrary and unfair. As a result of this unfair screening process, as well as the favoritism toward those who could satisfy the monetary or sexual extortions, both the screening process and the appeal process are worthless.

Everybody in the camp was aware of the corruption practices, such as monetary and sexual extortions from the camp dwellers.

There are many of the asylum seekers, such as myself and many others, who should have been granted refugee status who did not receive the status just because we could not pay or could not satisfy their demands.

Even though the UNHCR is supposed to protect the rights of the asylum seekers, in reality the UNHCR sides with Indonesian officials to cover up for their practices, as well as thwart any attempts to find out those practices.

Many of the camp dwellers protest these unfair practices, going as far as self-destruction, self-immolation, hanging by themselves. They refuse to be repatriated back to Vietnam until there is some improvement in the screening process.

Mr. Chairman and members of the subcommittee, my sharing with you my personal experiences today is my obligation. It is a solemn obligation to my compatriots in the camps who are less fortunate than I am right now.

I sincerely wish that what I have been presented will provide you with some details about an issue that has a solemn impact on the future of more than 40,000 people in the camps in Hong Kong and the Southeast Asian countries. Their faith in their future would certainly be better with your intervention.

Thank you very much, Mr. Chairman and members of the committee.

[The prepared statement of the Venerable Thich Phuoc Sung appears in the appendix.]

Mr. SMITH. Thank you very, very much for your testimony and for the ones that preceded it. I will read and look at the record. Unfortunately, I had to step out for a moment for another meeting.

I would like to invite Wa Vue to give his testimony.

STATEMENT OF WA VUE, VICTIM OF THE CPA

Mr. VUE. Thank you, Mr. Chairman and members of the committee. Good afternoon already.

My name is Wa Vue, and I live in Fresno, CA. I am a naturalized American citizen, and my presence here is to represent my father, Vue Mai, the elected Hmong refugee leader of the camp of Ban Vinai in Thailand.

He returned to Laos on November 10, 1992, under the auspices of the UNHCR, the United States Department of State, the United States Embassy in Bangkok, and the Thai National Security Council. He was asked to help with on-site planning for the return of refugees from Thailand and for economic development of sites selected for settlement by the returnees.

I consider it a great honor and privilege to testify before you on the repatriation program. Additionally, I am grateful for the opportunity to tell you about my father's invaluable contribution to this program and how the impact of his disappearance affects my family and my relatives at large.

My father, Vue Mai, was born on May 3, 1937, in the Xiengkhoung province of Laos. After completing the sixth grade, he entered a military communication training in 1953. He served in the Royal Lao Armed Forces from 1960 to May 1975. He served both the Laotian Army and the CIA in the fight against North Vietnamese and Pathet Lao Communist Forces.

When Indochina fell to the Communists in 1975, as a military major he had no choice but to take the road of exile with thousands of fellow Hmong to Thailand.

In addition to his position as elected refugee leader of the Ban Vinai camp in Thailand, he also became a high ranking member of the United Front for the Liberation of Laos, a resistance movement that tried to overthrow the Communist Laotian Government.

In 1990, personnel from the United States Embassy in Bangkok and the United Nations High Commission for Refugees met regularly with him and persuaded him to support the repatriation program for Hmongs in Laos. Once he was persuaded, the U.S. State Department granted a visa to my father to make an official visit to Washington, DC.

In Washington, DC, my father met with officials of the State Department such as Sarah Moten, Deputy Assistant Secretary for Refugee Assistance; Doug Hunter, Office of Policy and Budget Coordinator; and Robert Funseth, Senior Deputy Assistant.

These officials encouraged my father to lead the refugees back to Laos. They also promised financial assistance to the returning refugees for economic self-sufficiency in Laos. In doing so, he was to drop all participation in the resistance movement.

Following the collapse of the Soviet Union and based on his contacts with Thai military units and the Thai National Security Council chief general and the United States Embassy officials in Bangkok, my father felt that to continue in the resistance movement was unnecessary.

After his return to Thailand, my father continued again to work closely with high level ranking Thai officials, UNHCR, and the United States Embassy officials in Bangkok. While living in Bangkok, my father continued planning the return of his people, staying in close collaboration with the Thai authorities, the UNHCR, and American officials, who had convinced him that it was safe to return to Laos.

On November 10, 1992, my father was escorted by a State Department representative, Thai, and UNHCR officials on the ferry ride back across the Mekong River to Vientiane, Laos, along with trucks loaded with basic supplies destined to returnees.

That was a day of plenty of excitement and promise. My father always wanted to become a role model for his people. Believing that Laos had changed with the new situation of the world, Vue Mai had never doubted that he would disappear in the exercise of his pioneer duty.

In Vientiane, Laos, my father met with UNHCR, United States personnel, and Lao Government officials regularly to discuss possible resettlement sites for the Hmong returnees. Sometimes he expressed frustration about the slow progress of the repatriation implementation and how difficult it was to find and obtain appropriate lands for the refugees.

According to my mother, a resident of Fresno, CA, who paid two visits to Vientiane to visit my father, my father's activities consisted of only contacting the United States Embassy, the UNHCR, the Lao Ministry of Foreign Affairs, the Interior Ministry, and the Welfare and Labor Department for business related to the implementation of the tripartite agreement of Luang Prabang signed by Thailand and the UNHCR with Laos. My father was very careful not to associate himself with any other organizations that could damage his reputation.

For protection and safety, the Ministry of Interior assigned a Hmong police officer to my father to facilitate communications between him and the Lao authorities. His activities were somewhat controlled, and had he maintained any relationship with the resistance in or outside Laos, the Lao intelligence service should have known and should have been able to provide evidence since his disappearance almost 2 years ago.

Mr. Chairman and members of the committee, please allow me some time to read a reliable assessment of Vue Mai's activities by Mr. Soyasith L. Ya of Sacramento, CA, who had the last opportunity to meet with Vue Mai in Vientiane about the repatriation program just 2 weeks before his mysterious disappearance.

Following Vue Mai's return to Laos and recognizing that sooner or later thousands of Hmong refugees will have to repatriate, I felt that a meeting with Vue Mai would give me firsthand information on the implementation of the repatriation for the Hmong.

The first meeting took place at the Hotel Saysana where I stayed. Vue Mai gave me a general overview of the repatriation program, and he told me about his activities in Vientiane since his return.

The obstacles that Vue Mai encountered in the land appropriation for the returnees were first due to the Lao officials at the provincial levels and second to the local population, who did not have a good understanding of the repatriation program and who tried to claim that all the lands considered for the returnees belonged to them from generation to generation.

My last meeting with Vue Mai was our visit to the U.S. Embassy in Vientiane. Because of a change of Embassy staff, I had to reintroduce Vue Mai to the Embassy's new first secretary, Mr. Frank Light, who just arrived and did not have enough time to become familiar with Vue Mai's special leadership role in repatriation.

Vue Mai mentioned his disappointment due to the lack of material and financial support and said that he might join his family in the U.S., which was his only source of financial assistance.

We both wished the U.S. Government would consider allowing the maximum of Hmong refugees in Thailand to be reunited with their relatives already in the U.S., even though I acknowledged that the majority of Hmong were having difficulty resettling in the United States and adjusting or assimilating into the mainstream of American society.

His decision to return to Laos was a risky one, but he took it without hesitation. He believed that lending support to the repatriation program would provide more alternatives to alleviating the refugee situation in Thailand and in the United States. He said that the winners have to be the ones who can bring peace, social justice, and economic prosperity for the people.

Since my father, Vue Mai, has disappeared, all my sisters, brothers and my mother and I are affected mentally and physically. I would like to ask the United States Government, concerned individuals, and humanitarian agencies to take strong action on the Lao Government for an official answer of his disappearance in Vientiane. After hearing many conflicting rumors but no evidence on his whereabouts, dead or alive, we are requesting a private investigation by the American Government.

My mother made a trip back to Laos exactly 1 year ago and received very little cooperation from the authorities in her extensive search for my father. She has felt devastated ever since his disappearance. The worry, frustration, and anxiety she has experienced has made her grow thin.

I have a two page summary about my mother's trip to Laos last summer in the back, but due to the time I will not read it.

Mr. SMITH. Without objection, that will be made a part of the record.

Mr. VUE. Thank you.

My family believes that the United States, the Thai Government and the UNHCR must assume some responsibility for the disappearance of my father, who sacrificed all his personal life for the repatriation program. Please consider my father as a man missing in action and take the necessary measures to locate him.

When I testified before Congress on April 26, 1994, I made a plea on behalf of the 450 members of the Vue clan in the camp of Napho who did not want to be forced to repatriate back to Laos. My plea was ignored, and most of the clan members are now living a frightening existence back in Laos.

On behalf of my relatives, my family, and myself, we feel very disappointed because the Vue clan had expressed concern and said that their lives were a nightmare ever since the news of my father's disappearance. All of them changed their decision regarding repatriation and wanted to resettle in America once they realized how dangerous Laos had become under the Communist dictatorship.

Most of them were well qualified to come to the United States, and we submitted a list of their names to the UNHCR and United States Embassy in Bangkok in November 1993, shortly after my father's disappearance.

I have also an addendum with more information referring to my relative's call to Mr. Dennis Grace of JVA in Bangkok. I have that on the back of my testimony. I will not read it.

The reports we receive from them now are very distressing. They complain that Laos is a closed society and communication is difficult. Recently they wrote to me that they are frightened for their safety due to the fact that they are related to my father, Vue Mai. Apparently, all communication with the outside world is censored, and I fear that they are only able to barely hint at the miserable existence they are living in Laos.

I would like to make a plea on behalf of my Vue clan members for the State Department and the UNHCR to attempt providing close supervision of my people in terms of safety.

I want to thank the Committee on Foreign Affairs for their letter to the Department of State last November in regard to information

received about Vietnamese and Laotian authorities capturing my father for interrogation.

I hope that my father is not enduring the same kind of torture that Senator John McCain has described. My family worries constantly, especially now that there is so much discussion about MIA's and POW's.

I thank this Subcommittee on International Operations and Human Rights for giving me an opportunity to speak on behalf of my father and my people. I am well aware of all your dedicated efforts, and my family extends their deepest gratitude.

Thank you.

[The prepared statement of Mr. Vue appears in the appendix.]

Mr. SMITH. Mr. Vue, thank you for your testimony. You certainly are continuing the vigilance and efforts to assist your dad. That is very moving in and of itself, but I thank you for your very fine testimony.

I would like to ask Mr. Ter Moua, a member of the Hmong-American community, if he would present his testimony at this point.

STATEMENT OF TER MOUA, VICTIM OF THE CPA

Mr. MOUA. Thank you, Mr. Chairman and members of the committee.

My name is Ter Moua. I am a Hmong refugee who fled the Communist regime of Laos in 1983. I am still developing my English, but I would ask that you bear with me this morning as I try my best to share with the committee what I know about Laos and the Hmong refugees.

Since arriving in the United States in 1988, I have developed a great respect for this Nation, for its freedoms, for its strengths in the world, and for its support for global freedom.

In truth, however, my respect for this country goes back much further. Twenty some years ago, as a young boy in Laos, I remember watching my father and my uncle, who went to war to help the United States in its effort to defend the freedom of Southeast Asia.

At about 9 years of age, I can remember that the Communist North Vietnamese Army shelled our town. They destroyed our house, they killed our animals, and they destroyed our lives. We were in hiding in a bunker that night, and it was on this night that I fully realized that the North Vietnamese and Lao communities intended to take my country and kill my people.

Unfortunately, my fears proved correct. My country fell to communism in 1975, and since then the story of Laos has been one of death, destruction, and suffering for my people.

Growing up in Laos around this war, my father always told me that the United States was a great, free country and that they would help us. I also know that the United States, like my own people, paid a great price in trying to keep Laos free.

It is a great honor to be able to speak with this committee this morning and especially to share with you the ongoing suffering of my people, many of whom remain under the brutal Communist regime in Laos and others who have fled to Thailand where they are in refugee camps, in prisons, and in hiding.

Mr. Chairman, I have traveled here today from Eau Claire, WI, to ask for the help of this great Nation in saving the lives of some

40,000 of my countrymen who face certain persecution or death if they are forced back to Laos from refugee camps in Thailand. Many of these Hmong in Thailand are combat veterans who fought side by side with Americans against the Communist forces.

I must say, Mr. Chairman, that I am here this morning with fear. Some of my family remain in Laos, and the Communist government in Laos has proved over and over again that it will persecute and kill those who talk too much and even the families of those who talk too much.

I have seen many of these people disappear, and we never learn what happens to them. No one ever investigates their disappearance because people know that if they try to find these people that they, too, will disappear.

I have thought about all of this, and while I am here this morning filled with fear, I also am convinced that I have no choice but to bring the truth to this committee and to this Congress. I do this because I care greatly about my people, my friends, my family, my brothers, and especially mom, who have faced forced repatriation and death at the hands of the Communist regime in Laos.

I speak the truth this morning because I know that without the truth being heard in this Congress, we have no hope that the killing and suffering will stop in Laos. Mr. Chairman, let me tell you the truth about what is happening to my people and my country.

First, I know that the United Nations and even some officials in the American Government have told Congress that no Hmong people in Thailand have been forced back to Laos. Mr. Chairman, this is not true. Like many other Hmong people, my family of nine people, including my mother and my four younger brothers, were forced back to Laos in April 1954 by the United Nations and officials from Thailand.

My mother was a widow of a Hmong combat veteran, who fought with the Americans under the command of Gen. Vang Pao of the Royal Lao Army during the Vietnam war. In 1975, the Communist soldiers tried to capture my family and me, but we escaped and fled to the jungle where we hid and did our best to avoid being killed by the Communists.

My father died in 1989, several years after chemical attacks from the Communist forces, leaving my mother a widow with six children. In 1991, my mother and brothers were approved for resettlement in the United States.

Three years later, United Nations and Thai officials forced my family and several hundred other Hmong onto buses for Laos. They were told, "You go back to Laos, or we will beat you, torture you and put you in jail." My family believed they had no other choice but to board this bus. The fact is that my family did not want to return to Laos. They fear living under communism, but they were forced to return.

No matter what this committee is told by the United Nations or others, it needs to know that the United Nations has been forcing hundreds and hundreds—probably thousands—of Hmong back to Laos. Once in Laos, Hmong have disappeared, and some, like my brother, have been killed by the Communist regime.

I have always believed that the United Nations should protect the lives of the Hmong, but the truth is that it is not protecting

the Hmong and is forcing the Hmong back to one of the world's worst Communist governments.

A second fact that this committee needs to know is that the United Nations tells the Hmong that once they are forced back to Laos, they will be safe, given food, and given a place to live. Mr. Chairman, this also is a lie.

The truth is that once in Laos, the Hmong are singled out for persecution by the Communist regime. In the case of my 25-year-old brother, Chao, he was denied food and went out to get food for his 1-year-old baby. My brother never came back.

Several days later, my mother went to the place where my brother was killed. There she found my brother beaten to death. Some of his teeth were missing, and his face was badly beaten. She asked the authorities what happened to him, and she was told that he had died in a fishing accident.

Mr. Chairman, the water in that river was knee deep. No one dies in fishing accidents in this kind of river, and no one in that village has any doubt what happened to my brother. He was killed by the Communists only 18 days after he was forced back to Laos.

Once again, Mr. Chairman, the United Nations has lied to the Hmong and has lied to the Congress. Laos is not a safe place for the Hmong. The United Nations tells Congress that it monitors and protects the Hmong in Laos. Mr. Chairman, my family in Laos never even saw any U.N. officials.

If the United Nations says that it is responsible for monitoring the safety of the Hmong, let me ask you this. Why is it, Mr. Chairman, that no U.N. official—not even one, as far as I know—ever came to my family's village to investigate the murder of my brother?

We need such security, Mr. Chairman, because there is no freedom in Laos. There is no democracy in Laos. The Communist regime in Laos has the power to do anything—to persecute, to kill, to do whatever it wishes, particularly against ethnic minorities like the Hmong.

The Communists hate the Hmong, who fought with the Americans, and because of this you will find that of the 40,000 Hmong refugees in Thailand, almost all of them are very scared to return to Laos. Laos is not safe for the Hmong, and the Hmong know it.

The rest of my family is so terrified of the Communist regime in Laos that they have fled to a Buddhist temple outside of Bangkok, Thailand, where one Buddhist monk is protecting about 18,000 Hmong who face persecution if returned to Laos. Many Hmong continue to flee Laos for Thailand, and until there is democracy in Laos I think that the Hmong will continue to flee.

There is something else that the United Nations has wrongly told Congress. They have told you that there is no corruption in processing refugees by the United Nations and Thai officials. Again, Mr. Chairman, you have been lied to. I spent time in these camps, and my family has spent time in these camps. There is a lot of corruption with the refugee process.

In the case of my family, I was told by my family that if they were going to be granted refugee status, they would need to pay about \$2,000 to the Thai officials who worked in the refugee camps. I wanted my family to get back their refugee status, so my brother

and I sent this money to save their lives. The Thais took this money and sent my family back to Laos anyway.

Mr. Chairman, I want to ask you, and I want to ask this committee. What will the United States do to stop this corruption? The American people support the United Nations. They support the refugee camps in Thailand. While the United Nations may tell you differently, any Hmong knows that this system is very corrupt and very dangerous.

Mr. Chairman, I trust this committee to do the right thing for the Hmong people. I know that this Congress has done many great things for freedom around the world. I was fortunate to be in this country and to see the Berlin Wall come down. I was very happy when communism collapsed in the Soviet Union, and I know that these things did not happen by accident. They happened because America supports freedom around the world. Now, Mr. Chairman, I ask that you turn your attention to Laos.

I would like to conclude by offering just a few recommendations on how this Congress can support freedom in Laos and how it can make sure that the Hmong refugees in Thailand are united with their families in the West and that they are not returned to Communism.

First, this Congress should reject any proposal to continue American foreign aid to the Government of Laos. This aid is helping to keep this horrible regime in power. On behalf of the Hmong, I ask that you stop aiding this regime. Stop sending the support to the Communists that allows them to continue their abuse of the Hmong and the Lao people.

I was interested to read that this Congress is thinking about cutting foreign aid to countries around the world. Mr. Chairman, Laos is a good place to start. I know America, and I know Laos. This great Congress and this great country should have nothing to do with a government that kills its people, that persecutes its people and that rejects everything that this country believes.

Second, this Congress must realize that the United Nations has not and I suppose will never admit that the refugee process in Thailand is totally flawed. It is corrupt, and it is unfair. This system is supposed to protect and assist the weak in their moment of need, but it is instead hurting those people that it is responsible for helping.

Mr. Chairman, the time has come to save the Hmong. The Hmong are friends to the United States. Many of them lost their families and friends fighting with America. They look to this country as their only hope now, so I would ask this Congress to provide them with what they need. We fought for America. We fought for freedom. Now we need this country to fight for us.

Do not allow the Hmong to be returned forcibly to communism. Like most Americans, the Hmong hate communism, but, Mr. Chairman, the Hmong are being sent back to it. They are being repatriated, and this must be stopped immediately if the Hmong are to be saved.

The Hmong in the camps in Thailand, in the Buddhist temple outside Bangkok and those who are in hiding or who have been detained should be allowed to be resettled in the west. The Hmong deserve this, and Congress should insure that this is done.

Finally, I would ask that this committee and this Congress remember Laos. Our country is not free, but together we should do everything we can to bring democracy back to Laos. I would ask, Mr. Chairman, that this Congress assist in making this happen. We Hmong have paid a big price for freedom.

I would like to thank this subcommittee for allowing me to testify on behalf of my brother, who was murdered by the Communists in Laos, and my mom, who I love so much, but who I have lost because she was forced back to Laos when she should be living with me here in this country.

I know that this committee will hear from many official voices—from the United Nations, from groups working with refugees and from this Government. The Hmong are great friends of America, but we regret that many of these individuals are misguided about the Hmong and the situation in Laos.

Some of these people have many more credentials than I, Mr. Chairman, but for them their work is only a job. For me, this has been my life. Being here today is not a day at the office. It is a very sad event.

I am here today as a victim of communism, and my family in Laos has been a victim of a flawed refugee process that many of these officials will tell you is working. Mr. Chairman, it is not working. People are dying. My brother already has died, and I know that it will continue unless this committee takes action.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Moua appears in the appendix.]

Mr. SMITH. Thank you very much, Mr. Moua. Let me just say that not only is your family very ably represented by your testimony today, but the cause—with which I totally agree—of the Hmong people likewise was very ably represented. I commend you for your very fine testimony.

I would like to yield to Mr. Royce, who is the vice-chairman of the Asian and Pacific Affairs Committee, for questions.

Mr. ROYCE. Thank you.

I would also like to thank each of you for your testimony about your personal experiences with respect to the corruption that you found in the process of the comprehensive plan of action. I want to also commend you for your courage in coming here today to speak out on behalf of fighting the corruption which you discovered in that process.

I wanted to ask in what countries is there solid evidence of corruption in the screening process? I wanted to ask you if you could answer was it just a few corrupt screeners, or was it widespread? How do we know this? If any of you would like to answer?

Mr. MOUA. Since I know only my family, but I paid \$2,000.

Mr. ROYCE. OK.

Mr. MOUA. Excuse me. Can I saying something more?

Mr. ROYCE. Yes.

Mr. MOUA. That is not including the other families. My family would include the 305 people that each family paid \$2,000.

Mr. ROYCE. Thank you.

Did corruption result only in nonrefugees being screened in, or did it sometimes result in genuine refugees being screened out?

The INTERPRETER. Mr. Chairman, could I translate your question to the Venerable, and he will answer it?

Mr. ROYCE. Certainly.

The INTERPRETER. During my 4 years there and my witnessing the corruption process, basically it has different stages, depending on your status.

The first stage involves the screening decisions by the UNHCR or the Indonesian officials, and the prices usually range from \$1,500 to \$2,000. If you fail this first stage, then there is the re-view stage. The price increases to \$4,500 to \$5,000.

The third stage is called the appeal. After you fail the previous two, then the price now is \$7,000 to \$10,000, depending on the case.

In the previous stages I could not do anything because I was the chief representative of the Buddhist Church there. I had to take care of the other monks and other followers, so I did not have any money at that time. The other Buddhist monks who were allowed to resettle mostly had to pay the bribes and this corruption. Right now we have four Buddhist clergy, three monks and one nun, in the camp. Right now they are still over there.

There was a special case of a Buddhist monk and one nun who escaped to Australia. They were sent back to the Indonesian camp, and they were tortured and very mistreated. We have been trying to gather the documents and get the stories from them.

Mr. ROYCE. Thank you for bearing with me. I want to ask these questions for the record, so I will continue.

Did the interviewers read from a list of questions, or were the interviews more free form? Is there some way that we could get a copy of the questions that were asked?

Now, in your testimony you had an example of three questions being asked. Did any of you bring examples of the questions that were asked during the process?

Yes, Kim? Kim Ngo.

Ms. NGO. Yes, sir. According to my case, I will never forget. Only three questions. The interviewer asked me only three questions. That is it. She did not ask me why I escaped from Vietnam, why I had to leave my country, what was my situation in Vietnam.

During the interview she asked me what is your name. After that she asked me do you have any relatives out of the country, where they are and are your relatives willing to sponsor you. That is it. No other questions any more. That is it.

Mr. ROYCE. Thank you.

If I could ask, what about the appeals process and the UNHCR mandate process? Should these not have taken care of all genuine refugees who were missed in the original interviews, and why did it not? Could I just ask for a response to that?

Ms. NGO. For my case, I do not believe UNHCR supported me on the mandate because in the Philippines I knew many, many soldiers. They had been in reeducation camps, but they were denied appeal.

I know about my case. I had to ask my local friend. He knows in the Catholic Church Cardinal Sin. I asked him to help me bring my attention to Cardinal Sin. I do not believe the UNHCR sup-

ported me, even the mandate, so that is why I bring my attention to Cardinal Sin.

Mr. ROYCE. Any other observations?

The INTERPRETER. Could I provide translation for the Venerable?

Mr. ROYCE. Absolutely.

The INTERPRETER. The UNHCR is very reluctant to intervene unless there is some external pressure or attention brought by other authorities because, first of all, they did not want to create a precedent. Second, they did not want to embarrass their employees or cause them to lose face in front of the camp dwellers.

Regardless of the decision that had been so arbitrary, the UNHCR simply refused to intervene. Even though they had the mandate, it was very seldom exercised. The Venerable knew of one or two cases because there was pressure specifically from Members of Congress.

Mr. ROYCE. Thank you again for your testimony.

Mr. Chairman.

Mr. SMITH [presiding]. Mr. Royce, thank you very much.

Mr. Payne.

Mr. PAYNE. Thank you very much. I really do not have any specific questions. I missed a lot of the testimony, but I certainly will read the testimony.

As I indicated earlier, I do think that the Hmong people in particular, as you were mentioning, were very helpful to United States troops when airmen in particular were downed in Laos. They spared their lives and risked their lives to bring United States airmen out to Thailand and other places. It seems only fair that those people who have suffered so much are given justice.

I hope that we can find out what is wrong in the U.N. system and if we can have a review so that those employees who are corrupt and are not doing the job right will be expelled and that those many workers who are doing the job well should be continued.

The whole question of refugees is a very serious question around the world. The agency is in many instances overburdened in many countries. Of course, during the flight of the Indochinese people during the 1970's, many countries were simply overtaxed and overrun. There has, of course, been hostility. In many instances, we are very critical of the U.N. agencies.

When I look at some of the policies that we have had in our own country it was not corrupt, but when Haitian refugees came to this country fleeing tyranny from Haiti and the military dictators, our country did not let them in. We just simply took them back on ships without any questioning, without any repatriation, and took them right back to those tyrants that they were fleeing from right here in the United States. We had a policy of not allowing Haitians to come into the United States of America. They were forcibly repatriated.

I think when we look at injustices we should be critical, and we should ward out where things are wrong. In this great nation of ours we also need to be sensitive to the injustices that have been done here under previous administrations when people were simply sent back to their countries or interned in camps when they were not sent back initially.

I think where things are wrong they should be corrected, and I certainly will work strongly with the chairman to help in the reformation that must go on in the highlighting of abuses and highlighting of wrongdoings because I think that the United Nations in general is an agency that is important. UNHCR, UNDP, WHO, and UNICEF in particular do good jobs. We need to find out what is wrong, correct that and I think move on with the support of the agencies.

I certainly appreciate hearing the testimony that I did hear. I apologize for being unable to hear all of you, but I will read the testimony.

Thank you very much.

Mr. SMITH. Thank you, Mr. Payne.

I want to thank our witnesses for telling us firsthand what your experiences have been because I think that helps give an additional and very important dimension to the work of this subcommittee.

I do have a few very brief questions. Mr. Moua, you talked not only about your brother, but about the fact that there was not the check or the visitation by a repatriation monitor or anyone else from the United Nations to insure their safety upon their return.

We hear the argument made over and over again that there are repatriation monitors. During the debate on the floor it was argued that there are no instances of retaliation or anything negative coming to those who have been returned.

If you could comment, and anyone else on the Vietnam side, on repatriation monitors? We have heard in testimony and from other sources, so I do believe it is true, that even those few repatriation monitors that exist, those people are accompanied by government employees or at least people who have been approved by the Government of Vietnam and Laos.

My question is, How much confidence would a returnee have when the repatriation monitor shows up at their doorstep, if they do show up, and in tow is somebody who presumably is reporting to the Interior Ministry or someone else within the government about what transpires between them?

Mr. Moua.

Mr. MOUA. Mr. Chairman, I think after several months a U.N. official or a Thai official, they leave the refugee alone. It is much more dangerous for them.

I got all the message from my mom in this cassette, too, so all the message from my mom is here.

Mr. VUE. I would like to add to what he just described.

An example of my Vue clan is they wrote me that you do not know who you talk to. The countries are so close. You always have to say that everything is satisfied. You cannot say that it is not satisfied. My relatives, they keep quiet because they also belong to my father's group.

The UNHCR officer has already been around. It is very difficult to estimate what the government is going to do.

Mr. SMITH. Thank you.

Mr. Tran.

Mr. TRAN. Yes, Mr. Chairman. In my brother's case, I understand the news that any refugee returned to Vietnam is looked

after by UNHCR, but my brother did not have any help. The result is he is in prison.

Mr. SMITH. Thank you.

The INTERPRETER. Mr. Chairman, could I provide a short description of what the situation is with respect to the monitoring of the people who were repatriated back to Vietnam?

Communication is difficult. Transportation was very restricted. Most of these people who were repatriated were sent to new economic zones for refugees, but the mentality of the authorities in Vietnam was that they considered these people traitors in the first place who escaped from their system.

When they came back, even though these people came back with certain financial help from the UNHCR, they were looking upon them as a source of corruption, intimidation and harassment.

During the debate of your bill, you pointed out clearly that only two or three UNHCR personnel were assigned to this monitoring process. The rest were recruited from the local people with the approval of the local authorities.

In the presence of the local authorities, the people who were discriminated against and mistreated would not dare to raise their voice because they are afraid of subsequent retribution.

The comment saying well, there was no mistreatment or no persecution of the people repatriated was simply not reflecting the reality in Vietnam, Mr. Chairman.

Mr. SMITH. I thank you for that explanation and that answer.

Mr. VUE and Mr. Moua, the official explanation of the fact that the Hmong have been screened in as refugees and are not being resettled in the United States and other free countries is that the Thai Government, with the assistance of the UNHCR, is encouraging voluntary repatriation to Laos.

In your opinion, are there many refugees left in the camps who really want to return to Laos? Second, if they are all given a free choice today, how many would go back, and how many would choose to be resettled elsewhere?

Mr. VUE. I have an addendum to my testimony, an example of the letter that Mr. Dennis Grace of JVA sent to Mr. Edward Wilkinson at the Embassy in Thailand, a refugee counselor.

My relatives in the early period before my father disappeared, they volunteered to go. They are well qualified to come to the United States. After my father disappeared and without the cooperation from the Laos Government, they want to change their minds. They want to come to the United States.

I submitted the list to the U.S. Embassy in Bangkok. I also came here during last year to talk to Mrs. Phyllis Oakley to request a second chance for them to settle in the United States.

The UNHCR and the State Department keep saying that they volunteered to go. According to this paper here, they called Mr. Dennis Grace for help. They do not know who to look to. They know him, so they called him. They do not want to go back. The Thai Government—the guards, the policemen—forced them one on one to sign their names.

Mr. SMITH. Is that a description of this case?

Mr. VUE. Yes.

Mr. SMITH. I would like to make that a part of the record, if you would not mind.¹

Mr. Moua.

Mr. MOUA. Mr. Chairman, just like I showed you before, my mother did not want to go back. They forced her to go back.

Also, the press went to Laos and interviewed all the people. They did not want to go back to Laos.

Mr. SMITH. You spoke of disappearances. Does UNHCR and their repatriation monitors have any data or are they showing a concern about these disappearances of people who have been sent back, the Hmong?

Mr. MOUA. My mom did not say anything. They did not see any of the documents from the United Nations and Thai officials.

Mr. SMITH. Let me just ask a question. One of the recommendations that is being made is that as part of the rescreening that it would happen not in the first asylum country, but perhaps in Vietnam itself.

How would that be received by people? Would there be a fear that they would screen down after going through that process and might be retaliated against if they actually did this in country, or would it be seen as a last chance and a good chance to make their case?

The INTERPRETER. Could you repeat your question, Mr. Chairman?

Mr. SMITH. One of the recommendations that has come forward is regarding the rescreening, because we do believe and I believe very strongly that many true refugees have been improperly and unethically screened out because of the flawed process.

There has been a recommendation made that, since the countries of first asylum are balking at this process of rescreening, that it be done in Vietnam itself or perhaps at the airport. When a plane would come in with people who were being returned, they would have one last opportunity.

How would that be received by the people inside the camps?

Ms. NGO. Yes, sir. I think this is not a good idea because why do they have to open and reinterview in Vietnam? Why? This is the UNHCR's fault. This is not our fault. The interview for screening, this is not our fault.

In my case, I have my people in the camp now. They are waiting. It is UNHCR's fault. It is not our fault. Why would UNHCR open and reinterview in Vietnam?

The other reason, in my opinion, is that when the people escape from Vietnam, until now in the policy of the Government of Vietnam, they are a criminal. Who knows? Who believes you? Whom do you believe?

If they want to reinterview in Vietnam in the airport, I do not believe that it is a good policy or a good idea. I do not believe that. For me, I think not.

Please help us. Help save the victims of an unfair and corrupt screen system. I want to say again that this is not our fault. This is UNHCR's fault. Yes, sir.

¹ Materials appear in Mr. Vue's prepared statement which begins on page 142.

The INTERPRETER. The Venerable has the opinion that because of the mistrust and the lack of procedures to safeguard the fairness of the screening process, it is unthinkable to hear a suggestion that because the UNHCR could not do anything in the camps right now that they could do a better job on the soil in Vietnam.

These people escaped from Vietnam in the first place, and the last thing that they want to do is go back there under the Communist regime. That is the reason why they even killed themselves rather than being forced to return to a place of uncertainty where the cruelty was well known to them personally.

Mr. SMITH. Yes, please?

Mr. MOUA. The issue of the Hmong and Laos refugees were promised to return to Laos. They have another chance to reinterview to settle in third countries. So far in the past years—10 years now—nobody so far returned to Laos and has been resettled in a third country. The promise is just an empty promise. When they cross the Mekong River to the other side, that is it. Nothing else. There is no system that can do that.

In addition to that, the Laotian Government does not allow these people to get permission to go to the city to get a passport to go to the third countries.

Second, there are 5,000 Hmong people right now in Napho camp in Thailand. This petition here has the signatures of the people in Thailand. The refugees in Thailand do not want to return to Laos.

Mr. SMITH. Thank you very much. At this point I think we will be moving on to the next panel, but I want to thank our witnesses for their very powerful testimony. It is very useful to the subcommittee, and it will get widespread circulation within the ranks of our leadership.

I do appreciate very much what you have provided us today. Thank you.

The INTERPRETER. We wish to have all the testimonies entered into the record, Mr. Chairman.

Mr. SMITH. Yes. Please provide it right here, and it will be made a part of the record.

[Materials submitted for the record appear in the appendix.]

Mr. SMITH. I would also ask that an opening statement by Congressman Ed Royce, who was here earlier, be made a part of the record. Without objection it will be so ordered.

If our third panel now could come to the witness table? Again, I apologize for the length of this hearing, but we are trying to really go in depth into these issues.

Shep Lowman has a long and distinguished record of activism on behalf of Vietnamese refugees. He served in United States diplomatic posts in Vietnam from 1966 until the fall of Saigon in 1975. After that he served in the Department of State's Bureau of Refugee Programs, where he worked to build a public constituency for Indochinese refugees.

In 1988, he retired from the Senior Foreign Service and became executive director of Refugees International. In 1991, he became Director of International Refugee Affairs for the U.S. Catholic Conference. In all of these capacities he has traveled frequently to Southeast Asia and has done extensive pro bono work on behalf of Vietnamese refugees.

Dr. Nguyen Dinh Thang grew up in South Vietnam and entered college there after the coming of the Communist government. However, in 1978, he escaped by boat to Malaysia and came to the United States 7 months later.

He earned his Ph.D. in mechanical engineering at Virginia Tech in 1986. Since then he has worked as a scientist at the David Taylor Naval Research Lab. He has also worked with the refugee community ever since his arrival in the United States. In 1986, he founded a college entrance tutoring program for newly arrived people.

He joined Boat People SOS in 1988, and became its executive director in 1990. In the same year he joined with Dan Wolf in founding Legal Assistance for Vietnamese Asylum Seekers. Dr. Thang has visited refugee camps in Hong Kong, Thailand, Indonesia, Malaysia, and the Philippines and has worked on several hundred refugee cases.

Pam Baker practiced law in her native Scotland, then raised a family of six and returned to the practice of law. In 1982, she joined the civil service in Hong Kong as a legal aid attorney, which involved her deeply in the lives of Hong Kong's poorest citizens. Boat people detained in Hong Kong were among her clients.

She has also given seminars for the staff of the UNHCR because the UNHCR had and still has no Hong Kong lawyer on its staff. In 1990, Ms. Baker was banned from representing asylum seekers on the grounds that her services gave them false hopes. Where have I heard that before?

Daniel Wolf graduated from the University of Michigan Law School in 1986 and went to work as an attorney/advisor at the Department of State. In 1989, he joined the firm of Hughes, Hubbard & Reed on the understanding that he would devote 40 percent of his time to pro bono work on behalf of refugees and human rights issues. He spent 5 months in Hong Kong challenging screening procedures in use there.

Upon returning to the States, Mr. Wolf founded LAVAS, a legal defense organization for Vietnamese asylum seekers. Mr. Wolf is currently lead counsel in a class action suit challenging the State Department's decision to refuse to process the immigrant visa applications of Vietnamese boat people in Hong Kong. He has interviewed hundreds of Vietnamese asylum seekers inside the camps and is an expert on that issue.

Mr. Lowman, if you could begin the testimony?

STATEMENT OF SHEP LOWMAN, DIRECTOR OF INTERNATIONAL REFUGEE AFFAIRS, U.S. CATHOLIC CONFERENCE

Mr. LOWMAN. Thank you, Mr. Chairman, for this continuing opportunity to take part in this comprehensive examination of the Indochinese refugee program and the comprehensive plan of action.

Before I start, Mr. Lionel Rosenblatt, who took part in the briefing of this committee earlier and who is the president of Refugees International and a distinguished expert on refugee affairs, is still in Bosnia looking at that situation, but he did prepare a brief statement for the committee, if I could submit that for the record.

Mr. SMITH. Without objection, it will be part of the record.

[Mr. Rosenblatt's prepared statement appears in the appendix.]

Mr. LOWMAN. Also, there is a coalition of some 13 of the agencies of interaction who are active in refugee affairs who put together a statement of principles on the CPA and the Indochinese refugee program.

If I could, I would like to submit that for the record as well.

Mr. SMITH. That, too, will be made a part of the record.

Mr. LOWMAN. Thank you.

Mr. Chairman, you have heard a lot of testimony in the last few days and a lot of it today about flaws in the screening program. Clearly, I have heard Dr. Thang say many times, and I subscribe to his view, that the existence of such flaws not only means that the people that were screened out improperly have been cheated out of their opportunity and have been turned into resisters of going back to Vietnam, but it effects the credibility of the whole program and the psychology of the people in the camps. It makes it harder even for those who perhaps were not qualified to accept their screening out because they distrust the whole system.

There are a number of other matters which effect the psychology of the people in the camps and which I think create a very dangerous situation. That is one of them.

Another is the so-called magic dates, the date of June 1988, and the date in March 1989. Anybody that arrived in May 1988 in Hong Kong was a refugee. If they arrived in June 1988, 80 percent of them were not refugees. They were economic migrants. This is a pejorative term these days. Economic migrants helped to build our country, but if you are an economic migrant in a camp in Southeast Asia, that is a dirty word.

If they arrived in any other of the ASEAN countries in February 1989, they were refugees. If they arrived in March, 80 percent of them were economic migrants.

Now, you might suppose, Mr. Chairman, that this means that there was a radical change in the flow and the character of the people coming out and their political qualifications in that short period of time. The fact is, the same people were coming out. It is just that the countries of first asylum got tired of having them so they changed the rules of the game.

Now, we can say that that is fair or unfair. That is the CPA agreement. It is the way it works, but it certainly effects the psychology of the people. They left everything behind. They had not heard about this change in the rules; most of them. Most of these folks arrived either not having heard at all or certainly not understanding the implications of this change in the rules of the game.

They left everything behind—their material possessions, their family and friends—and risked their lives at sea. A lot of them drowned. They get to a camp, live in miserable circumstances and are told you are not a refugee, but an economic migrant. They feel terribly cheated. They also feel very insulted.

I have sat with many, many groups of refugees in the camps with red eyes—their eyes red and my eyes red. We are crying over their situation. They are telling me about the repressive regime that they left and how they hate communism and that they left for political reasons.

I am sitting there trying to explain to them about yes, but you have to be a refugee under the terms of the Geneva Convention,

and you have to have a well-founded fear of persecution for reasons of blah, blah, blah, blah, blah. They are saying well, that fits me, but I guess the system did not think it did. These folks feel terribly cheated, and they want to resist, even if the system is right or wrong.

One of the problems that has affected the screening and which is a major problem for the United States is that the standard used has been the standard in the Geneva Convention, which accords refugee status to someone who has a well-founded fear of return to their country of origin. We are talking about future persecution.

The way this works out in Southeast Asia is that many of the adjudicators in the countries of first asylum have looked at politically sensitive cases and have said to me in many cases well, this fellow probably had a problem at one time, but things have changed in Vietnam now so he does not have a problem any more.

This has resulted in people being screened out that fit in categories that we have historically given special precedence to as far as admission into the United States refugee program—people that worked for the former South Vietnamese Government or served in their military for years, worked for us, worked for other American institutions, were community leaders, were religious leaders. Those are the categories we always favored.

People like this now have been screened out and told you are not a refugee so go home. Some of them have actually already been forced home by force from Hong Kong.

Now, I am sure that we never had any idea that that was going to happen when we agreed to the CPA in 1989. I know the NGO's did not, and I do not believe the American delegation to Geneva believed it was going to happen that way; that this type of person was going to be forced back.

It is these very people, whatever anybody thinks about how Vietnam is better—by the way, the refugee adjudicators seem not to be reading the human rights report of the State Department or the human rights organization. Anyway, even if you do not want to argue the question of whether or not maybe they can go home safely now, they do not think so.

They think that they have a major problem, and they think that on the basis of their past experience. They left in 1989. They had a major problem in 1989. If Vietnam has improved, it certainly had not improved at that point. They are going to resist, and their fear is real. Whatever we debate about their legal claim, their fear is real.

All of these factors come together and create a situation in which these people are simply not going to go home easily. We have had 72,000 people who have gone home. A lot of those have been fishermen from Hue. There has been a certain amount of self-selection going on here.

I think some people have gone home indeed that probably should not have, but there are many people who have gone home that maybe did not have a problem. We are getting down closer and closer to the core population of resisters and it is going to take a major effort and force to get them home.

We are at that point, and at the same time the governments are getting very tired of the whole business. The NGO's have been

watching this situation develop in the last 2 years really. We have been warning of violence over the last 2 years, and we have seen violence over the last 2 years. We have seen heavy attacks by tear gas on refugee populations in Hong Kong. Pam Baker can speak to that, I am sure, chapter and verse.

We have seen, on the other hand, increasing acts of resistance by the refugees, petitions, demonstrations. That does not get them very far. Then they turn to self-destructive acts of hunger strikes and self-mutilation and even some suicides. This process gets worse and worse. The governments want them out.

Malaysia wants Sungai Besi camp back. They want to have the Asian Games there. In May, I was in Galang camp. Bulldozers were already working. They are building roads for the new economic development area that they want to have there. They want those camps back. They want the refugees home. The refugees are desperate not to go home.

Now, you have asked the question did H.R. 1561 contribute to this problem or cause this problem. What I would say and the way I would answer your question is I think that there is undoubtedly a short term causal relationship because in early May when I was going through the region, there were significant numbers of persons who were signed up for voluntary repatriation. By the end of May, most of those had pulled their applications back. Well, naturally. They wanted to see how all this comes out.

Violence? There was violence during that period, some of it quite strong. It would not surprise me if there was a partial causal relationship. If people see that they have a little hope, maybe they hold on even stronger.

What I would say is that, to the extent there is a causal relationship, it is to move forward a process that we have been warning about for the last 2 years. It is coming inevitably, and it is going to continue to come. It is facing us now, and it is going to be there in the future, and that is that governments and refugees have such different expectations and different desires that we are going to have violence unless we can find a way to get around that.

Now, for that reason many of us are very grateful to this committee for its effort to deal with this through H.R. 1561. I think many of us also believe that if we could get executive action on this that it would be preferable simply because there is a matter of timing. The executive branch has the power to do the right thing now. They do not need legislation to act and could act very quickly if they choose to do so. Since timing is important, we hope they will do that.

We were encouraged by Mrs. Oakley's testimony 2 days ago to the effect that they are looking at something, and, I would gather from what she said, looking at something not too different from what at least in general framework had been proposed by the NGO's.

I would say frankly, Mr. Chairman, that that is the other effect of your legislation. We have not seen any action like that from the administration in trying to head off a serious situation for 4 years. Whether it is done through legislation or done through the executive branch, I think this committee can take a lot of credit for it.

What kind of a proposal is going to work? There are a lot of different views, a lot of different concerns. The proposal that has been sort of formally put forward—I guess it is formally or informally—by Dan Wolf and Lionel Rosenblatt and myself has a framework that provides for the establishment, we say through a Presidential Executive order, and it certainly would have to be from that or something very definitive from the Attorney General or something that shows that the very top of the Government has made this decision, that establishes categories of persons who would be seen as presumptively eligible for refugee status on the basis of past persecution.

U.S. refugee law permits the grant of refugee status on the basis of past persecution only, and this makes it possible for us. We do not have to argue about whether Vietnam has changed. Let's just not argue about that. Let's not worry about that. Let us put that aside. We are going to talk about past persecution. We are going to talk about what has happened to you in the past.

The categories that we suggest are mostly descriptive of people that would have suffered past persecution. They are people with several years of service in the South Vietnamese military or government or several years of service with us or a year in a reeducation camp.

The orderly departure program requires 3 years in a reeducation camp. There is no particular reason for that except that that is about the number they thought the system could accommodate.

In terms of past persecution, the first years of the reeducation camp program were the worst. That is when people were dying like flies. There is no way to say that somebody that spent a year in one of those camps in 1976 was not persecuted. He is lucky if he lived.

Those are the types of categories. One can debate exactly what the framework and wording of the categories are, but that is the type of category that we are suggesting.

Why do we have to have categories? Why can we not just say screen on the basis of past persecution? We believe we need categories primarily so that the refugees themselves can have some confidence in what is being offered to them and rather quite precise categories.

Now, when you get precise then you run into matters of justice. Why should it be 4 years of service in the military? What about the guy who has 3 years and 11 months? Well, you have to have lines somewhere, and you do need to be precise. However you draw those categories, you need to be as precise as you can so that the refugee can look at the category and say I fit that category. Hey, maybe I am home free.

We would not limit the application of this proposal to persons that fit the categories. They would have the best shot because if they could show that they fit within that precise category, they would be presumed to have suffered past persecution, presumed eligible and would be resettled to the United States.

Now, everybody else that wants an interview would be permitted to have an interview.

In answer to one of your earlier questions to the earlier panel, I think there was a little misconception because we are not talking

about UNHCR being involved in this at all. This is beyond the CPA. The CPA, as far as this proposal is concerned, is over. This is a status adjudication provided by U.S. Immigration.

There are a couple of reasons for that, one of them being that probably the first asylum countries would not permit it or engage in a rescreening. UNHCR probably would not want to cooperate in such a rescreening.

Above all, given the fact that the system was so flawed in the past, I do not even think we want to have those folks involved in a rescreening. I think we want it done by American Immigration with a set of presumptive categories laid down by a senior member of the executive branch. Then maybe we have a system we can work with. Now, that really basically is what we are suggesting.

There is an important question that you raised earlier, and that is where are these interviews to be held. Our suggestion is that they would be held in Vietnam. The reason for that essentially is that we doubt that they can be held elsewhere.

I will add to that a personal view that I believe there is little downside in their being held in Vietnam from the perspective of their safety. I would want to see what had been negotiated and look at it very closely, but it is my personal view that if the United States Government is able to negotiate with the Vietnamese Government a discrete process, and I am not talking about sending back thousands to their home village and then they sit around for 6 or 8 months and wait for their ODP interview. That does not work.

We are talking about something where they go back in a very discrete process. Several hundred go back at a time. They are looked at. They are processed by American Immigration in 8 to 10 days. I think they can do that.

In many cases, they will fit a category that is going to show up in the existing file. They are processed in 8 to 10 days, and then get them out of there; ideally you could find another place in the region for them to go and wait the 6 weeks or so that it takes to do medical processing and get sponsorship assurances and all that kind of thing.

If they had to wait in Vietnam, then keep them in an area where they are in touch with the United States and U.N. officials so that there is some protection there.

My own sense is that this whole process should not take a year. It should take less than a year. I think within that period of time that the Vietnamese Government, if they make commitments and we have a close observation of what is going on, I do not feel concerned about the safety of people that go back for that interview.

There is a question and a problem, and that is will they go back. We heard earlier I think from others, and Pam expresses some concerns about whether they would go back from Hong Kong.

I might add, and I would be interested in Pam's view on this, but I heard that part of the problem with Hong Kong is that they do not see themselves as much benefited by this proposal. That is to say that the people in the camps, the northerners, do not see themselves as benefited because they know they do not have the same level of association with the United States, so they are not as likely to be beneficiaries.

There are 6,000 southerners in Hong Kong, and even the northerners have a right to ask for an interview. If they can show that they had a political problem with the government, then they would be eligible. There may be a problem there.

I do think that in the southern camps in the ASEAN countries that most of the people that see themselves as fitting within these precise categories would eventually go back for an interview. I do not think it would happen all at once. I am sure that some would sign up. Quite a large number already signed up for voluntary repatriation without that. I am sure some would sign up.

If they see themselves within the categories, they would try it out. If those people were processed quickly and it worked and then that is publicized, I would expect in the end that most of the people that see themselves as fitting those categories would in fact go back.

When that happens, a couple of things become operative. One is that some of the resistance in the camps is reduced. You begin to get some momentum of going home. If they see these people are processed and they get their resettlement, then there will be others that think they have a case that they can convince U.S. Immigration. They will go and take a shot at it.

There will be plenty that will not. There will be people that say well, I do not fit anything. They will stick in those camps. We are still going to have a problem. This is not any kind of a panacea, but I do think that it is workable.

Can anything be done to have interviews in the camps? I guess my sense is, first of all, I do not think without a great deal of negotiation and pressure that there is any chance at all. I do not know how much chance there is with that. I am concerned about the passage of time. I think our sense is that if we can get Vietnamese Government cooperation in a very precise way that that is the best way to go.

Now, that is another open question. I have discussed with various Vietnamese Government officials, engaged in consular affairs and ODP matters and that kind of thing, this sort of a possible proposal in a very generalized way; obviously not trying to negotiate or anything because that is not my role.

The impression I have is that there is a pretty fair chance that the Vietnamese would be willing to cooperate in something like this. They have an interest as well. They do not want to see riots all over Southeast Asia. That does not serve their interest either.

Those are the points that I would make on our proposal, Mr. Chairman, and just close by saying once again that we very much appreciate what you are doing. I think that it has had a very good effect. I think it has gotten a process moving that may turn into something real. We certainly look forward to continuing to keep after it. We would urge you to keep after it, and we look forward to continuing to work with you on this issue.

Mr. SMITH. Thank you, Mr. Lowman. I want to thank you for bringing all of that tremendous experience and commitment that you have had for so many years to bear on this problem, particularly at the 11th hour.

I think your point about the core constituency or the core groups that remain, people who probably believe and believe rightly that

they are truly refugees, at least many of them, will resist. There is an answer, and I think the proposal you and Mr. Wolf and Mr. Rosenblatt are forwarding is designed to insure fairness, but also to mitigate the potential for violence. You are helping to solve the problem.

The administration certainly should find it within their own advantage to grasp the brass ring here and run with it. You are doing the work that they should have been doing all along, and this probably also goes for the previous administration as well.

I again want to thank you.

Before going to Mr. Wolf, I would just ask, Ms. McKinney, do you have any comments you might want to make?

Ms. MCKINNEY. I would just say that I appreciate your strong stand in support of human rights around the world. I am happy to be here and to listen to the testimony.

Mr. SMITH. Thank you very much.

Mr. Wolf, please proceed.

STATEMENT OF DANIEL WOLF, ATTORNEY, HUGHES, HUBBARD & REED

Mr. WOLF. Mr. Chairman, thank you.

I just have a few brief remarks. As you know, Shep and I have been working on this proposal for quite a long time and have been thinking about these issues for quite a long time, and the ideas and comments that Shep has put forward are very, very similar, if not identical, to my own. I do want to reiterate a couple points that he makes.

First, I believe that this committee, and you in particular, Mr. Chairman, deserves a great deal of credit for what you have done here. I have been involved in this issue since the inception of the CPA, and I have tried time and time again to get the administration's attention on this issue to explain to them that we are dealing with a potentially crisis situation and that there is a major humanitarian problem in these camps.

Time and time again, Mr. Chairman, I have been ignored, as well as all of the other advocates I have been working with have been ignored. For the first time, and we really do owe it to you, we are not ignored any more. That is great.

Second, with respect to what Mr. Lowman has set forth, I want to reiterate the importance in any proposal that comes forward of having very, very specific categories not only for the reasons that Mr. Lowman has stated, but also because it is the right thing to do both from a humanitarian standpoint and the standpoint of fairness.

I think it is very important to understand, Mr. Chairman, that the people who went through this process went through it in 1988 and 1989 and 1990. That is when they came to the camps of first asylum. Now they are being judged by a 1994 standard.

At the time they fled, many of the people that we are talking about or certainly the people that we are talking about fled persecution. They clearly had a well founded fear at that time. If they had been interviewed in a timely manner and in a correct manner, they would have been given refugee status then.

Instead, they have had to wait for 4 years in squalid, decrepit camps while they sit around trying to figure out why my case was denied and still with something that everybody will agree is a real subjective fear about what will happen to them in going back to Vietnam even if there is some disagreement over whether or not that subjective fear is well grounded in reality. I think in many cases it is. Perhaps in some cases it is not, but in many cases I believe it is.

For that reason, I think we owe it to these people to apply categories, to apply generous categories and to give them the opportunity to resettle in this country.

With respect to the proposal itself, I believe that I agree with Mr. Lowman that it would be best if we could deal with this through administrative channels. However, I am not completely confident that what the administration is going to propose to us, which we have not seen yet, is going to be satisfactory. If it is not, I think we have to be ready to move quickly in a legislative manner to solve this problem.

I think what you have proposed is quite excellent, but I would suggest that there might be certain refinements in what you have proposed that may make the legislation work better.

I have thought about those issues for quite a while, and I think that it is important to make clear that the determinations that would be made should be made by U.S. Immigration officers and that the determinations should be based on the criteria of whether the person has fled Vietnam because of persecution or a well founded fear of persecution within the meaning of section 101[a][42][a] of the Refugee Act of 1980.

I think it should be made very clear that if you meet either of those standards, persecution or a well founded fear of persecution, you would qualify. That is clearly provided for under U.S. immigration law as interpreted in the INS' own operating manual that past persecution would qualify you for the resettlement program. That should be made explicit.

I think that the categories must be provided for. I would note, Mr. Chairman, that the categories that are specified in the Lautenberg amendment are somewhat dated. To provide a resettlement opportunity for every Catholic and every ethnic Chinese at this point may not really deal with current realities. Perhaps you would want to think about refining those categories, and I would suggest something along what we presented in our proposal.

As for the sticky issue of where the interview should be held, there is, of course, a problem that we have all recognized with conducting the interviews in the first asylum camps. The major problem is that the first asylum states are so unwilling to let this occur. I think that they have two concerns, and if you are ever going to get this done in a first asylum camp you would have to address these concerns.

I think it is going to be very difficult, if not impossible, to persuade a first asylum state to accept people in light of these concerns. Maybe some you could. Certainly I think others you would not be able to. I can give you some anecdotal examples concerning that.

The first problem essentially is that—well, really it is only one problem, I suppose, but basically if you screen everybody and you let everybody come, then the first asylum states are going to be concerned that it is going to generate a flow of new boat people. That concern is a very real one, and that is why they are not going to let everybody come in.

On the other hand, if you do not let everybody come in, you have to deal with the people who are determined by the INS immigration officer not to qualify for the U.S. program. Those people may be more reluctant than ever, or at least the feeling among the first asylum states, I can assure you, will be that those people are going to be more reluctant than ever to volunteer or to sign up for voluntary repatriation in light of the fact that they have waited around this long and something was proposed. I am afraid that they would be feeling that if they wait around longer, maybe the next batch of criteria will bring them in.

At any rate, this is going to be the perception among the first asylum states, and that is why I think it is going to be exceedingly difficult to persuade the first asylum states to permit the interviews to take place there.

Frankly, I do not know that the will is there among our own administration to exert that type of influence among the first asylum states to have it done there. I believe that doing the interviews in Vietnam, while not an ideal option, can be made or turned into a viable option. I believe it could be a viable option, assuming that the correct type of agreements and assurances are gathered from the Vietnamese Government.

I think it would be very important among those assurances, as Mr. Lowman has pointed out, that the Vietnamese Government first insure us that we are going to have access to all of these people and that anybody that we decide on we are going to take, and, second, that the interviews are going to take place quickly, preferably on a transit basis in a period of between 7 and 10 days upon the person arriving back to Vietnam.

It will be difficult, of course, to persuade people in the camps of first asylum to attend such interviews and to volunteer to return. Obviously that is going to be a difficult decision on a case-by-case basis, but I do believe that there will be some people that will sign up. If they see that the system is working, I believe that others will come through later.

I believe that that proposal is a serious one and one, as I said yesterday, that deserves serious consideration from this committee. I am hopeful that it is receiving serious consideration from the administration as we speak.

Mr. SMITH. Mr. Wolf, I want to thank you, too, for your excellent testimony and your advocacy on the part of those who have been disenfranchised. It certainly speaks so well of you personally that you spent so much time working on this.

Like the other members of this panel, it is a pleasure to work with people who are so altruistic and just care about other people, particularly when they are in this vulnerable situation. I do thank you for your testimony.

Mr. WOLF. Thank you.

Mr. SMITH. Ms. Baker.

STATEMENT OF PAM BAKER, REFUGEE CONCERN HONG KONG

Ms. BAKER. I want to thank you very much, Mr. Chairman, for allowing me to come back yet again.

At the risk of embarrassing you, I would like to tell you that you are beginning to restore my faith in the possibility of politicians being honest men. This is something which has been badly bruised of late.

Ms. MCKINNEY. Does that include women?

Ms. BAKER. Some of them. Bad experiences in England, you know.

Shep Lowman says I can give you chapter and verse on the tear gas, and I can do better than that. If I may put on the record a report which I received yesterday from my fellow volunteers on the tear gas attack in section 1 of Whitehead on May 20? I will put that on the record, if I may.

[Materials submitted for the record appear in the appendix.]

Mr. SMITH. Without objection, it will be so ordered.

Ms. BAKER. I am obliged.

Picking up on something Arthur Helton and that panel was talking about, the UNHCR, a subject which greatly concerns me. I think what has happened to them is that they have in fact stepped outside their role. The CPA has actually caused them to do that. They have taken on a role of looking after people who, in their view, are not refugees. They have to straighten out their act.

What they are doing now is they are the ones who are depriving the people in the camps of all facilities. They are the ones who are cutting education. They are the ones who stopped any recreational facilities, and they are actually now involved in forcible repatriation. It is not their role, and they really are going to have to put their house in order, certainly in my part of the world.

The marvelous Swedish gentleman whose name I cannot pronounce, I regret to say, was talking about representation. I thought perhaps your committee would be interested to know that when my bunch of volunteers in Hong Kong were representing people as they went through screening, 45 percent of our cases got through, as compared with around 10 percent of the general bunch of them.

We have heard a lot in these hearings about the preservation of the integrity of the comprehensive plan of action, but, as we have also heard, the screening, which was at the heart of the comprehensive plan of action, was not done as it was intended it should be. It was clearly corrupt. It was very inconsistent. It was not properly supervised, and it failed to find refugees who are still there locked up in the camps 7 years down the line.

This is urgent, as you have heard. I mean, the violence is escalating. The conditions are deteriorating. Something has to be done, if we are going to keep the comprehensive plan of action. Unless we put fresh heart into it, and it has no heart right now, then there is no integrity to preserve.

How are we to do it? It seems that H.R. 1561 offers us a last opportunity using the U.S. categories, and certainly I might not agree 100 percent with the categories that have been put forward so far, but that would always be up for further looking at. The criteria particularly appealing is the idea that after 7 years of incarcer-

ation, past persecution is sufficient. This gives a last chance to find the people who ought to be resettled.

We have been hearing about Track Two put forward by some very wise and experienced people, experienced both in Southeast Asia and State Department affairs. I defer, of course, to their experience, but I fear for their plan. It requires things to fall into place which may simply not fall into place.

In particular, Vietnam must not only agree to cooperate, but it has to do so in good faith and in good faith which will last through the length of time that that would take. The promises that certainly we have heard from Vietnam over the period of the comprehensive plan of action have not been kept. I personally would not have confidence that they would keep any undertakings that they made in this particular connection.

Also, there is undoubtedly a danger of refoulement of refugees with this plan, and that is a breach of international law, which it is just too great a risk, I would suggest, to take.

If I might suggest, Track Two looks good for family reunion cases. Mrs. Oakley reminded us of the ODP, which has been in existence for some years in Vietnam. She said we should not forget it.

It seems to me that a combination of Track Two and ODP would do very nicely for the many, many family reunions which await attention in the camps. How you could do it would be that if the people who are applying for family reunions have no fear of persecution, they could return temporarily to Vietnam.

Now, for many of those applicants they have no home in Vietnam. Their families are overseas. Indeed, some of them have been rejected when they have volunteered to go back to Vietnam for that very reason. You have nowhere to go. You cannot come back, so provision for some temporary place where they could stay while their reunions are implemented.

It must be a short stay. No more waiting for 10 years for ODP finally to operate, but simply a long enough stay to sort out the reunion and go through the medicals and the other things that have to be done.

Now, this plan might also extend to the resettlement of unaccompanied minors whose desperate plight in fact requires a whole hearing of its own. There is not time to go into that now, but if some provision could be made within this amendment for those children, some of them not children any more but in their late teens, who came 6 or 7 years ago and have sat waiting for their best interests to be addressed, and they have not been addressed.

If we leave perhaps Track Two and ODP to deal with family reunions, it seems to me that for the refugees, the review of their cases must be done in the countries of first asylum. I cannot speak for Thailand or Malaysia, but I believe that they would agree to this.

They, as well as the Philippines and Indonesia, have all four been considerably exposed as to the corruption that has been going on. They can hardly in good conscience refuse to allow someone to come in and do the job properly, I would submit.

What I am submitting now, Mr. Chairman, is a plan which Refugee Concern Hong Kong has been putting forward for the past 2

years. We have sent it and given it to everybody we could think of, but nobody has been taking any notice. That is why we welcome this opportunity.

What we have said is that what is required is a team of skillful, experienced, well minded lawyers—in this case, INS lawyers—hand picked and supervised by Congress because that has been one of the great failures under the CPA, the failure to supervise, and that a team should go to each of these first asylum countries for the purpose of reviewing the claims, and that is Malaysia, Indonesia, Philippines, and Thailand.

Please let us not forget, and I do not know how this is going to fit it, but there are also 100 Vietnamese boat people marooned in Singapore where they have been for the better part of quite some time, and another 371 in Japan.

Now, of the Japanese, I only know one. He is a boy who escaped from Tai A Chau and got to Japan. He was 17. His entire family have been screened in in Hong Kong. Although I have written to the UNHCR both in Hong Kong, Japan, and Geneva, I still await a reply. That boy is stuck in Japan.

All of those countries should have their own team of these well minded lawyers, and your criteria and your categories go with them.

Now, as far as Hong Kong is concerned, it is my submission that they are simply not in a position to refuse this offer to review the cases in their own camps because section 13[d] of the Immigration Ordinance of Hong Kong says that any Vietnamese resident or former resident of Vietnam who arrives in Hong Kong without papers may be detained pending a decision whether to grant or refuse him permission to remain in Hong Kong or pending his removal from Hong Kong. He may be or may not be locked up. Well, they all are.

Under section 13[d][2], this ordinance says every person detained under this section shall be permitted all reasonable facilities to enable him to obtain any authorization required for entry to another state or territory whether or not he has obtained such authorization to leave Hong Kong. They cannot, under their own law, refuse.

I would like to be very specific now and suggest that your team which you send to Hong Kong start in South Camp, High Island. There is a fairly high population of old soldiers in South Camp, High Island. Your friend, Joseph Reese, has met quite a few of them.

There are 2,300 people there in total, so there would be 1,000 cases at the most. If you had 10 INS officers, they could review those claims in a month. They could go through all of them with the cooperation of UNHCR, who have all their files. They are large files. Everything is on them. Also, the soldiers themselves, as far as they are concerned, have their names, ranks, numbers and everything else ready. It really would not take long to go through those 2,300 people.

I would then suggest perhaps that your team goes next door to North Camp, High Island, because that is the camp which is constantly targeted for these tear gas attacks and forced repatriations. The population this month is 2,100. That is until they do the next

forced repatriation. That would also take a month—no more—to review those cases and so on.

Indeed, depending on how quickly this could be started, one might almost begin to imagine that some of the people who were found to be refugees could be with their families at Tet in 1996.

Actually listening to what Dan says, there are two points here for these first asylum countries. The first point is that of course they are going to expect thousands more people to come the moment they hear that there is this possibility.

It is open to all the first asylum countries, and they have done it before, to say there is a deadline. The deadline is either today or yesterday or tomorrow. Anybody arriving from that day will not be eligible for this program. That deals with the possible flood-gates. That would have to be publicized most thoroughly in Vietnam by VOA, World Service and all those things.

That is the pull factor; now the remainder, the people who do not fit the criteria who are told you are not eligible for resettlement and who are not also or either eligible for family reunion.

What I would say to the first asylum country is you are going to be left with considerably fewer than you were left with before. You may find that those who are refugees were leaders in the camp and lent an air of cohesion to the population and that there will be more voluntary repatriations. I cannot swear to it, but I think it is quite a possibility.

They might come into a category which is known as nonobjectors, which means I do not want to say that I will go home, but I do not mind if you just take me by the hand and lead me. Then I do not lose face. That is quite important.

I hope we would get the cooperation of the UNHCR after that. I think that would be crucial. They have all those files, and that would be a very simple matter to arrange.

For myself and for the volunteers who work so hard with me, and we work with these people and with their cases every day 16 to 18 hours a day, 7 days a week, we have been putting forward this plan for 2 years. We would, therefore, pledge our wholehearted support and our assistance for a scheme which had the finding of refugees at its heart.

Thank you, Mr. Chairman.

Mr. SMITH. Thank you, Ms. Baker, for your very eloquent statement and again for your good work on behalf of these people.

I would like to ask Dr. Thang to conclude with his testimony.

STATEMENT OF NGUYEN DINH THANG, EXECUTIVE DIRECTOR, BOAT PEOPLE S.O.S.

Mr. THANG. Mr. Chairman, I would like to join all the members of the panel in recognizing that the actions of your subcommittee have opened up a number of opportunities that could not have existed otherwise.

In the recent few months, there have been a number of opportunities offered, and all of them agreed on a few basic principles and common and essential factors. First, mistakes and abuses in screening have caused a significant number of refugees to be wrongly screened out.

Second, the involuntary repatriation would violate the principle of nonrefoulement in international laws on refugee protection, which is also a primary principle under the CPA.

Third, the only way to identify this group of genuine refugees, even though they might be limited in number, is to conduct an overall review of each case among the 40,000 asylum seekers still in the camps. There is no other way.

Fourth, establishing presumptive categories of refugees is not only a fair process, but also it might help expedite the review process considerably. Even though there could be people who would not fall into any categories established, but might have a very strong and compelling refugee claim, we believe that that number would be very limited—the number of people who would require a lengthy interview.

The State Department and the UNHCR have come to agreeing, if tacitly, to these points. The House of Representatives took into account these same points when it passed the section that you introduced earlier this year.

The disagreements concentrate on the specific modality on how to conduct the interview. They concentrate on two areas: Where to conduct interviews and which presumptive categories to use.

Advocates for in-Vietnam processing work on the premise that first asylum countries would not allow processing in their territories. However, as Pam just mentioned and explained, this premise certainly does not hold for Hong Kong, which is bound by its own laws to facilitate the resettlement of those who have a chance to be resettled in Australia.

Let us remind ourselves that half of the population of the Vietnamese under the CPA are now in Hong Kong. In-camp processing can be started immediately in Hong Kong with virtually zero lag time. All we need to do is send in a team of INS lawyers and establish shop there and interview.

It may save millions of dollars in unnecessary expenses on transportation and the maintenance of transit camps in Vietnam. It would do away with many unknowns related to Vietnam, which will only further complicate an already complex situation. Its successful implementation in Hong Kong may convince other first asylum countries to follow suit.

As a matter of fact, just last week we received news from Malaysia that the Malaysian Government has agreed to UNHCR reinterviewing 40 cases for family reunion. I have been informed that there are about 200 more cases pending possible interview. That is a precedent. That is an indication that Malaysia is willing at least to consider direct resettlement for this group of cases. It is not out of the question for Malaysia or for many other countries in the region, as a matter of fact.

In the case that other countries would not cooperate, then at least the asylum seekers in those countries would feel more comfortable with the system and would have more confidence in the system and would be more willing to go back to Vietnam for in-Vietnam processing.

As for categories, let us be lenient to the extent possible so that if we err, we would err on the side of generosity. Even for people with only marginal claims, the suffering over the past 6 or 7 years

in detention should be sufficient reason for some compassionate consideration.

A final act of generosity is certainly fitting for a refugee program that has saved 1 million lives in the last two decades.

Thank you, Mr. Chairman.

Mr. SMITH. Dr. Thang, thank you for your very fine statement and for your good work as well. Your testimony has been extraordinarily comprehensive, and I do appreciate that.

What do we do now I guess is the \$64,000 question. We will as a subcommittee—and I know we have the concurrence and the full support of our leadership in Ben Gilman and other leaders in the House and a number of people in the Senate as well—continue to encourage the administration to aggressively pursue this.

I wonder if the panel, any of you, might want to comment on the time line? Obviously we have a very small window of opportunity here. Every day is important. How quickly does this have to be done in order to really be effective?

In answering that, where do you see a good touch right now for a possible visit? I know I hope to be talking to Ambassadors from countries of first asylum now that we have all of this information together to encourage them to be cooperative and to work with us. I think the solution to their problem is in what is trying to be done here by Shep, by you and Dan and others.

Would you want to comment on the window of opportunity and the administration's opportunities that they have right now?

Mr. LOWMAN. Yes, Mr. Chairman. First of all in terms of timing, it is just one of those the sooner the better situations. If it does not happen soon, then it is going to have to happen later because the situation is just going to continue to get worse and worse.

I am convinced that if the administration is unable to either come up with or be in agreement on something fairly soon, that we will have some more nasty incidents out there, and that will put more pressure on. It is just going to keep on until we can find a solution, so the sooner the better.

There is some very fortuitous timing coming up because the ASEAN ministerial takes place in August. The Secretary will be there and will have an opportunity to talk to many of our CPA partners there.

Also, if the press reports are correct, he plans maybe a stop in Hanoi and would have an opportunity perhaps to take that issue up with the Vietnamese in terms of negotiating any cooperation that he might need from them.

I think that there are opportunities right now that allow the Department to focus the Secretary's attention, which is very fortuitous.

Mr. WOLF. Mr. Chairman, the time for this has in a sense long since passed. This should have happened many years ago, many months ago.

Mr. LOWMAN. Mr. Chairman, he stole my answer from me. I should have thought of that.

Mr. WOLF. Right now is the answer. In relation to the right now, let me just make two points. One is that I am involved in a litigation, as you know, and I am constantly having to deal with the State Department asking for extensions of time. Every time they

do that, I try and tell them. They say well, what is another day? What is another 2 days? I say well, it is not that much to you or me, but it is a lot for the people sitting in that camp.

I spent 4 months in those camps myself nearly every day, and I can tell you that it is a terrible, terrible situation. Every day is 1 day too long.

The only other comment I want to make about this is that the Hong Kong Government has an annoying habit of taking 100 people, bundling them up every month and putting them on a flight. Anything that we do ought to take that into account.

We should try and see if we can persuade the Hong Kong Government to delay any further forcible repatriation flights. Not as an excuse to delay our own action, but I would also suggest that any solution that we do at this point take into account anybody from this point on who is placed on another flight, a mandatory repatriation flight.

Ms. BAKER. I was going to suggest, Mr. Chairman, that possibly the UNHCR might be invited to assist with a bit of enthusiasm and pressure in the right places. Perhaps they would like to put some of it right.

Mr. SMITH. Dr. Thang.

Mr. THANG. Yes, Mr. Chairman. While you are still working on this proposal or a similar version to this proposal, there might be not enough time for a number of people in the camps.

Since the middle of last month, there have been 18 incidents of suicide attempts in Tahanam Prison in Indonesia. Just earlier this week, I received a collect call from one of the detainees who snuck out of the prison and made a collect call to me at my office. He described a plan to voice concerns, and that is a bloody escape from prison.

For 9 months they have been arbitrarily detained, and they have repeatedly asked the UNHCR to intervene on their behalf. Always the reply comes that the only option is to return to Vietnam if they want to get out of that prison.

Now they are at the end and in a corner. They have made a pact among themselves to commit mass suicide. That just happened earlier this week when 12 persons—I am sorry, 13 persons—attempted suicide at the same time. All of them are still in the hospital.

I begged to that prisoner, to relay a message to his fellow detainees to refrain from drastic actions, but that did not work because they had been in prison for too long.

In summary, I believe that there is an urgent need to approach countries in the region, governments of the region and embassies and send out a message that we are trying to work very hard on a solution and please give us some time. Buying time is absolutely necessary now if you want to avoid and prevent violence and unnecessary loss of lives.

Thank you, Mr. Chairman.

Mr. SMITH. Mr. Lowman, in talking about your recommendation about the rescreening of the returnees in Vietnam, what would have to be done in a negotiation in Vietnam to insure that those who opt for that rescreening are protected? Are there some things that you think could be done to protect those people?

Mr. LOWMAN. Yes, I think so. I think we would want to specify that there are already camps set up in Saigon and Hanoi for those coming back to the south and to the north of Vietnam on voluntary repatriation.

Somewhere near those camps, but in a discrete camp for this flow—I think we want to keep this flow separate from anything else—you would bring in a group, probably several hundred, and they would stay at that camp.

American Immigration would have full access to them, and our JVA operations, the voluntary agency subcontractors to work up the files and so on, would have full access. I would think that we would want as well a UNHCR presence to add a little protection.

It would be understood that these people would stay in that location. Ideally, I would hope that it would be possible to simply have them viewed by the Vietnamese Government as on a transit basis so that they could come in, be cleared and those that qualify would leave.

Those that do not qualify, of course, are going to have to go over to the reintegration camp for processing and orientation to go to their home village.

A little earlier, Pam made reference to refoulement. Of course, I wanted to emphasize that our proposal calls for voluntary return, so whoever goes back goes back voluntarily and in transit is given screening and is taken, if they are cleared by U.S. Immigration, for resettlement.

We had hoped, too, that it would be possible to find, although I do not think this is an absolute condition, but that it would be possible to find, and I do not think it would be too difficult, a location in Southeast Asia where they could be moved to wait for the 6 weeks or so of processing; especially since occasionally you get a medical hold, and then it goes a little longer than that. It would be best if they could move them, let's say, to the former processing center in Bataan Peninsula or something like that.

As long as they are in Vietnam, we would want them to be in touch with both American Embassy folks and with UNHCR. We would hope that they would go in on a transit basis. If the Vietnamese balked at that, then we would want assurances from them that exit permits could be issued very expeditiously for those that are found to be qualified to leave.

Dan and I were talking about this, and we would have to have some kind of assurances that some of these folks that have gone back, and you heard some cases in the last few days that raised some concerns about this. Some of the people that go back are in fact imprisoned. The Vietnamese say that this is on the basis of past crimes committed. Maybe in some cases it is, but how do you know that? How do you know that that is a legitimate charge?

In this case and in the case of this program, we would want assurances that that would not be the case at least until after American Immigration had seen these people. If American Immigration took that individual for resettlement, regardless of any charges that might be existent in Vietnam against them, we would be able to take them out. That would be very important.

Anything else, Dan?

Mr. WOLF. Yes. Mr. Chairman, just following through on the last point mentioned by Shep is that there may be a small number of people for whom this program would not work. One of those groups may be people who have past criminal charges pending in Vietnam, in some cases criminal charges for incidents that we would not consider to be crimes, and second with respect to people who the Vietnamese Government will not clear for voluntary repatriation.

There are a number of people who have actually tried to go back to Vietnam and were not permitted to go back by the Vietnamese Government. If we cannot get their cooperation on that, then it seems to me that for people in these sort of sensitive categories we may have to have some type of other arrangement, some sort of in country arrangement in the first asylum camps for processing of certain small groups of these kinds of sensitive cases.

I think that that could complement the proposal, and I think that with a little jawboning we might be able to actually convince our first asylum friends to go along.

Mr. LOWMAN. I might add one other thing that we want to work on. I am not sure exactly what Pam was referring to when she said that the Vietnamese had not kept their commitments, but at least one place that they have not been very good about is their agreement to speed up clearances for persons that want to come home on voluntary repatriation and so on. That has been a blockage to the program overall.

We would certainly want to get their commitments to be more forthcoming on that. On the other hand, that does not really speak to their jeopardy. The main thing we would want assurances on would be that if we do have them go back for a screening by American immigration that they are not in jeopardy while that goes on. That would be the main body of assurances that we would want.

Ms. BAKER. Mr. Chairman, if I may just follow up on that? The two promises which were made, one was that everyone who returned to Vietnam would get Ho Khau, and yet we see people volunteering to return and being told no, you cannot return because you have not got Ho Khau. That is a breach.

The other one is that nobody would be persecuted or perhaps prosecuted for the last successful leaving of Vietnam. People have been put in prison for that. That is chapter and verse on two promises broken.

Mr. WOLF. If I may follow up on a point that Pam made, which I think is very important as well? I do not think it has been mentioned to this committee, but the committee should understand that the Vietnamese Government's commitment not to prosecute for the successful departure only applies to those who actually illegally departed and not to the organizers of the departure.

Now, as I understand it, the average boat size is about 50 people.

Mr. THANG. Thirty-five.

Mr. WOLF. Thirty-five? OK. You probably have at least two, if not three, on that boat who participated in the organization of the departure. With their family members, you are talking about 5 or 6 people, which is about 15 or 20 percent of the camp populations.

We need much better assurances with respect to those who organize departures that they are not going to be prosecuted before anybody thinks about sending those people back home.

Mr. THANG. Mr. Chairman, I would follow up along that line. Trust and fear are two factors that we should not underestimate.

One of the monitors, one of the workers in Vietnam who had been called to testify, and I do not think it is appropriate for me to mention names or the gender of that person or when he testified on what date. However, in private that person has disclosed to me that it is still the practice for the Vietnam delegation to go to the camp in groups of about four to five.

Among those four or five, half of them belong to the Immigration Department. The other half belong to the Bureau to the Counter-intelligence. Therefore, for a number of people in the camps who play active roles in the camps, they might have a real fear that they would be harmed if they go back.

This is not only from the side of the asylum seekers. I would doubt that the other side, the Hanoi government, would waive those kinds of interviews. I do not think that they would accept people, who go through this channel and are not accepted for resettlement by the United States, and just allow them to return to their home villages without interviewing them.

That is another factor that we have to deal with because Vietnam would insist on interviewing these people in tandem with the INS lawyers.

Mr. SMITH. Mr. Lowman.

Mr. LOWMAN. I do not know if they will make good on their agreement, but at the least steering committee meeting in March in Geneva, in fact, the Vietnamese agreed to accept people back without interviews. We will see if they perform on that, but they have agreed to it at least.

Mr. SMITH. Mr. Lowman, you testified earlier about how so many of the people feel terribly cheated and building confidence so that it is truly a voluntary repatriation is something that is very important for it to work and for people to clear out of the camps and to go where they truly belong, either a country of asylum or back to their homes in Vietnam.

Would it be helpful if the administration were to choose someone to really be the point person for this, a special representative, an Ambassador selected exclusively for this final chapter to get it right? Is this something that you have thought about, and the other panelists, that might be helpful?

We have done this with Bosnia. We have done it on issues when the typical channels, because perhaps of their full plate or they just have so much to do, or so many refugees to do, that one person says that is it. We are going to consolidate. We are going to go ahead with this new initiative, and we are going to do it right. This person—fill in the blank; perhaps yourself—is going to be the person who is going to honcho this.

Mr. LOWMAN. I had not thought about that. I do not really know whether that—how much that would help. There is an awful lot of skepticism in the camps, and I do not know if they would trust anybody from the U.S. Government, to tell you the truth. We had an NGO mission that went out to talk to the refugees. I am not sure they trusted us.

Maybe it would help, but I think really that our proposal has to hang mainly on the self-interest of the refugees. If they really feel

that there is no other choice and they see some very precise categories and say I fit that and maybe I can take a shot at it and then go and it works and others go and it works, you get a flow started. I think that really is the way it is going to work more than any personalities involved.

Mr. SMITH. It is something we will certainly look into and see if there is any interest downtown.

Mr. LOWMAN. I am sorry?

Mr. SMITH. It is something I will certainly look into and see if there is any interest downtown. It could also signal to everyone a break with one direction and embrace of another that might help solve the situation.

Do you have anything to add for the record?

Mr. THANG. Yes, Mr. Chairman. Regarding the confidence and trust factor that you just mentioned, I think that if we put ourselves in the shoes of those in the camps it would be hard to believe in the system any more after so many times that their confidence in the system has been abused.

I would guess that for the first group—the very first group—to agree to go back to Vietnam it would take some effort and some time. That might be too long for governments in the region to agree with this plan for in-Vietnam processing. Not only that, but it would take time to establish offices in Vietnam for the INS to go in. You have to consider the capacity of existing transit camps in Vietnam.

The other day we sat down and worked very informally with some officials from UNHCR in Geneva on figures. From those rough estimates, it might take about 20 to 25 months to get all the people to go through the channels back to Vietnam and processed. Some of them would be resettled. Others would be sent back to their home villages.

We are talking about 2 years now without taking into account lag time and the resistance and reluctance at the start. It might be even longer than 2 years. Would countries in the region agree to that kind of timeframe? I doubt it.

Ms. BAKER. There is no way Hong Kong would. They cannot. They have to be finished by June 30, 1997, come what may.

Mr. SMITH. Again, all the more reason why it would seem to me that the countries of first asylum—still it is in their own interests to—

Ms. BAKER. I do not think it would be a problem.

Mr. SMITH [continuing]. Embrace the idea of the rescreening. The last thing they need, it would seem to me, would be violence and death to their own people and all the other terrible things that could happen as these extraction raids go on.

As you pointed out, Mr. Lowman, this is the core group now, and probably in their own minds, rightfully or wrongly, but I think rightfully in many cases, they truly believe they are refugees and that they are being dealt a terrible injustice.

The solution seems to be at hand. Hopefully it will be embraced.

Ms. BAKER. They also now I think feel they are under siege. They feel they are almost at war with the Hong Kong authorities, which is a terrible state of affairs to have gotten them into.

Mr. SMITH. It certainly is.

Just for the record, I plan—and I know I will be joined by many people, including the chairman of our full committee, Ben Gilman—to exercise very vigorous oversight.

Forewarned is forearmed. The important inputs that we have gleaned from these hearings, and the administration hopefully as well, and from that briefing which you all participated in, is that they cannot say they did not know. The same goes for the UNHCR and all players because this is an open hearing, as have been the others except for the briefing.

I want to be in the position to praise the administration for doing a great job. They certainly have that capability and that opportunity right now staring them in the face.

As you pointed out, Mr. Lowman, with the ASEAN meeting coming up right around the corner, it could not be more properly timed to truly engage this and get it done and done right.

I thank you for your tremendous work on behalf of refugees in Southeast Asia and elsewhere, and——

Mr. WOLF. If I may?

Mr. SMITH. Yes?

Mr. WOLF. I am sorry. If I may just offer for the record a copy of the proposal that Mr. Lowman and Mr. Rosenblatt prepared?¹

Mr. SMITH. I believe we may have put it in on Tuesday, but if not we will certainly put it in for this hearing as well because I think it is important that it get widespread dissemination. I thank you.

Mr. WOLF. Thank you, Mr. Chairman.

Mr. SMITH. The hearing is adjourned.

[Whereupon, at 3:07 p.m., the subcommittee was adjourned, to reconvene subject to the call of the Chair.]

¹ Proposal for "A Humane End to the Indochinese Refugee Program" appears in the appendix on page 245.

A P P E N D I X

STATEMENT

of

**ARTHUR C. HELTON, ESQ.
DIRECTOR OF MIGRATION PROGRAMS
OPEN SOCIETY INSTITUTE**

on

**THE COMPREHENSIVE PLAN OF
ACTION FOR INDOCHINESE REFUGEES**

before the

**SUBCOMMITTEE ON INTERNATIONAL
OPERATIONS AND HUMAN RIGHTS**

HOUSE COMMITTEE ON INTERNATIONAL RELATIONS

July 27, 1995

(71)

Thank you, Chairman Smith and members of the Subcommittee, for inviting me to testify today on the Comprehensive Plan of Action for Indochinese Refugees (CPA).

I am Arthur C. Helton. I direct Migration Programs at the Open Society Institute, an operating foundation with offices in New York City. From 1982 to 1994, I directed the Refugee Project of the Lawyers Committee for Human Rights. I also am a lawyer and I teach immigration and refugee law at the New York University School of Law.

Since its inception in 1989, I have studied and commented upon the workings of the CPA. I attended the CPA conference in Geneva in 1989, as an observer, and I have examined many different refugee arrangements in Asia as well as globally. I have written articles and overseen the preparation of several reports on pertinent issues, including a March 1992 report of the Lawyers Committee on Hong Kong's Refugee -- Status Review Board and a 1994 article, published in the International Journal of Refugee Law, assessing the CPA. Today, I would like to offer a legal policy context for consideration in connection with the pertinent provisions of H.R. 1561.

Promulgated in 1989, the CPA was created primarily in response to an increase in the departure of Vietnamese boat people. It introduced a new element in the efforts to manage this movement of asylum seekers -- the possibility of return (including forced return) of those determined not to be refugees with a well-founded fear of persecution within the meaning of the 1951 United Nations Convention relating to the Status of

Refugees, and its 1967 Protocol. This was an abrupt reversal of a relatively generous program of resettlement of Indochinese refugees, established at the behest of the United States after the Vietnam war (nearly one million Vietnamese and over 125,000 Laotians since 1975). Adjudication procedures were to be implemented in the countries of reception in the region, some of which had reacted harshly to the new movement of boat people, with the assurance that those recognized as refugees would be resettled outside of the region. The Office of the United Nations High Commissioner for Refugees (UNHCR) was to monitor and advise upon the implementation of the CPA. The essence of the CPA was deterrence and migration control. The colony of Hong Kong had played a leading role and had introduced screening as a deterrent measure as early as 1988.

In terms of outcome, the statistical breakdown of adjudications according to the UNHCR as of June 1994 is set forth as below.

Country	Positive Decisions	Negative Decisions	Positive Review Decisions	Negative Review Decisions
Indonesia	3,118 (27%)	8,446	1,407 (36%)	2,516
Malaysia*	4,069 (28%)	10,282	1,443 (18%)	6,573
Thailand	2,979 (21%)	11,227	229 (3%)	7,546
Philippines	3,378 (48%)	3,672	N/A**	N/A
<u>Hong Kong</u>	<u>6,810 (11%)</u>	<u>52,698</u>	<u>1,900 (8%)</u>	<u>21,884</u>
Total	20,354 (20%)	86,325	4,974 (12%)	38,019

* These numbers refer to individuals not cases.

** As of July 1992, there were 71 positive and 83 negative decisions on review.

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. There were great variances on these matters between the different jurisdictions;
- Corrupt practices compromised the reliability of the first asylum determination processes at-times. The UNHCR concedes the existence of such practices and has undertaken a review. Those asylum seekers who did not participate may have been wrongly rejected; and
- Failure to accord to the affected individuals the benefit of the doubt; official skepticism and migration control priorities infused status determination activities. The essence of the CPA was ungenerosity.

In significant respects, the UNHCR recognized the unreliable character of status determination under the CPA with the exercise of the authority under its statutory mandate to designate individuals as refugees (Hong Kong -- 558 cases involving 1,542 individuals; Philippines -- 13 cases involving 19 persons; Thailand -- 4 individuals pending; Malaysia -- 1 individual pending). The UNHCR states that it remains willing to review any wrongly rejected cases which are brought to its attention.

There are two basic options to address the current population of some 40,000 rejected applicants in the region under the CPA. First, the UNHCR could be asked to exercise

its mandate authority on an urgent basis to avoid the forced return of any wrongly rejected applicants. The UNHCR would clearly entertain the presentation of any such cases. However, given the inherent limitations of the CPA's adjudication procedures, it is doubtful that a significant number of cases would be reversed under its approach. The first asylum country authorities would undoubtedly resist any effort to re-determine these cases, particularly under enhanced procedures.

A more promising approach would be for the United States to establish a special admissions program outside of the CPA to admit Vietnamese and Laotians of humanitarian concern. Such a program could be implemented on a categorical basis and could even be organized in the countries of origin as long as return would not jeopardize the individuals. The CPA does not prohibit such a measure of generosity. Currently, such a humanitarian program could be initiated under the U.S. refugee admissions program -- although a separate legislative authority should be sought in order to ensure coverage of the population of concern.

In sum, the time is right for an extraordinary act of leadership by the United States to address this residual population of internationally homeless people. Such an approach could repair in significant measure the hostility to genuine refugees that characterized the CPA and serve broad humanitarian interests and the interests of the United States.

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Human Rights Watch/Asia appreciates the opportunity to testify on the subject of human rights in Vietnam, a topic of relevance to the issue of repatriation of Vietnamese.

It has been suggested that the normalization of diplomatic relations between the United States and Vietnam could lead to progress in human rights conditions in Vietnam. Those who believe that human rights conditions will improve with normalized relations argue that the development of closer economic ties will bring greater prosperity, personal freedom and contact with the West, which in turn will produce over time internal demand for political liberalization and respect for fundamental freedoms. This could, in fact, occur over time. But this scenario is exactly what certain elements in the leadership of Vietnam fear, as reflected in the frequent diatribes against "peaceful evolution" that are published in the official press. Equally likely is the prospect that Hanoi will keep a tight rein on religious activities and political dissent while opening its economy, roughly following the Chinese government's model.

This mixture of tight political control and economic liberalization has, in fact, characterized the Vietnam Communist Party's policy over the last several years. Recent actions in the area of human rights reflect a profound ambivalence. On the one hand, Vietnam has invited the United Nations Working Group on Arbitrary Detention to visit its labor camps, and has hosted



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 Human Rights Watch is a not-for-profit corporation incorporating and promoting human rights in Africa, the Americas, Asia, the Middle East, and among the signatories of the Helsinki accords.

delegations from Australia and the United States to discuss human rights concerns. On the other hand, Vietnam continues to imprison political and religious dissidents, as reflected in the June 1994 detention of two prominent communists who had circulated essays that criticized the Party's historic actions. As these recent actions suggest, the picture of human rights conditions in Vietnam is neither black nor white, but a complex and changing view.

There is little doubt that the adoption of the "renovation" policy opened the door to significant human rights improvements, including the release in 1987 and 1988 of thousands of prisoners who had been consigned without trial to labor camps for "reeducation" on the basis of their political or religious identities. Under the renovation line, Vietnam has instituted codes of criminal law and procedure, laws on the press, religion and prison conditions and a new constitution. There is anecdotal evidence that the level of official interference and harassment in the daily lives of ordinary people is receding; however, surveillance of foreigners or suspected "troublemakers" continues, supported by a large nation-wide bureaucracy. People are more able to privately express their opinions of the government and Party, but public dissent is still subject to punishment. Vietnam, a signatory to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, is also becoming more engaged on human rights issues in the context of the United Nations, as demonstrated by its invitation to the U.N. Working Group on Arbitrary Detention and its active participation in the 1993 U.N. Human Rights Conference in Vienna and the 1995 U.N. World Conference on Women in Beijing.

Despite the trend of improving conditions, serious abuses persist, particularly the detention and punishment of people for the peaceful expression of their political views or their faith. Although there have been annual releases or amnesties of such prisoners, every year there are new trials of fresh dissidents as well. The legal system remains both institutionally weak and highly politicized, unable to provide a check to these abuses. Both national security charges and criminal charges have been used against political and religious detainees. The imprisoned face a range of abuses which include excessive pre-trial detention, inadequate nutrition and medical treatment, and for those who persist in criticizing the government while in detention, punitive isolation or transfers.

Hanoi's determination to keep firm control over religious institutions has led to confrontations with many of the country's churches, including the Unified Buddhist Church, the Catholic Church, and Protestant evangelicals. In some cases these confrontations have led to the imprisonment of clergy and religious believers. Although regular worship services held by recognized churches are permitted, the government exerts legal authority over every institutional aspect of religion, from the appointment of clergy, the approval of sermons, the repair of temples, to the freedom to travel and preach.

Vietnam's current human rights practices are of concern if there is a possibility that genuine refugees may be forcibly returned to Vietnam. Human Rights Watch/Asia, at that time known as Asia Watch, criticized the screening of Vietnamese asylum-seekers in Hong Kong as

serious, flawed in its December 1991 report, "Indefinite Detention and Mandatory Repatriation: The Incarceration of Vietnamese in Hong Kong," and its August 1992 report, "Refugees at Risk: Forced Repatriation of Vietnamese From Hong Kong." Our research led us to conclude that individuals with strong and credible claims to refugee status were among those who had been rejected and who were liable to deportation. On many occasions we have urged the Hong Kong government and the United Nations High Commissioner for Refugees to rescreen and reconsider cases that we believe were wrongly rejected. Human Rights Watch/Asia has not taken a position either on HR 1564 or the various proposals for resettlement of asylum-seekers. We are, however, extremely concerned by the rising levels of violence on the part of government authorities and desperate asylum-seekers brought on by the prospect of forced deportations. This dynamic of confrontation and violence makes new initiatives on the part of the international community an urgent necessity. We urge that any proposal be sensitive to the cardinal principle of international refugee law: that no one with a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion be returned to Vietnam if his or her life or freedom would be thereby threatened.

Clearly, not every Vietnamese now detained in the region need fear persecution. The balance of this testimony describes human rights conditions in detail, both in terms of continuing abuses and improvements, to help those who seek solutions spot where problems may lie ahead.

When considering the potential for persecution of any individual, it is critical to understand that conditions can vary greatly in different localities in Vietnam. One cannot understand the pressures that ethnic Hmong Catholics face from observing Sunday church attendance in Hanoi, nor can one conclude that former reeducation camp prisoners no longer face discrimination in remote villages based on a few entrepreneurial success stories from Ho Chi Minh City. Central government policies are subject to local interpretation and individual discretion, and it has been harder for the central government to enforce its will as local governments become more financially autonomous. It is also important to note that while the United States and Vietnam are moving towards reconciliation, there has not been as great an effort on the part of the Communist Party to reconcile with those compatriots it stigmatized as disloyal. These observations underscore the importance of long-term, comprehensive, and careful monitoring at the local level of those who do ultimately return.

Overview

Following the reunification of the country in 1975, the government announced a policy of "reeducation" for persons affiliated with the military and government of South Vietnam. "Reeducation" was also applied to intellectuals, professionals and clerics in the south whose loyalty to the new order was suspect. For some, this experience consisted of a few weeks of classes in communist ideology and the lessons of the war. For tens of thousands of others, "reeducation" meant years of imprisonment in hard labor camps, under conditions of

extraordinary privation and often torture. Some of the imprisoned were executed, and many others died of starvation, injuries, and want of medical care.

Many who were not imprisoned were exiled instead to "New Economic Zones" established in previously uncultivated areas. This policy was designed to relieve the war-time congestion of the cities, increase agricultural productivity, and rusticate potentially disaffected subjects. Some of these settlements became viable communities; many others did not. Often forced exiles, sent to jungle areas with little more than explosives and some crop seed, drifted back to their original homes, but in many cases were unable to obtain official residency permits. Residence permits were sometimes denied to those who were freed from "reeducation" as well. Without such permits, persons were denied a wide range of civil and social rights -- such as the ability to register marriages, send their children to school, obtain any employment that required state approval, obtain subsidized medical care or rice rations, or indeed, live legally in their own homes. A political interclass developed from those who were so legally, socially and economically stigmatized.

The developing hostilities with the Peoples Republic of China precipitated the first wave of "boat people" to flee Vietnam seeking refuge elsewhere. Ultimately, hundreds of thousands left over the next decade, many of whom fled persecution and economic privation exacerbated by political discrimination.

The 1986 Sixth Party Congress planted seeds of change by adopting the policy of "renovation" (*doi moi*). This heralded the shift to a market economy, and to greater political openness. Party Secretary Nguyen Van Linh, writing under a pen name, began urging intellectuals and journalists to play a more vocal role in criticizing social ills, such as corruption. A new emphasis on legality emerged, with the Socialist Republic of Vietnam producing a new criminal code in 1986, a criminal procedure law in 1989, a new constitution in 1992, and a law on prison reform in 1993, in addition to an investment code, a labor law, and most recently a civil code. In 1987 and 1988, thousands of persons detained without trial for "reeducation" were released. At present, all such "reeducation" detainees who were held continuously since the 1975-1976 period without trial have been freed. As a point of terminology, it should be noted that "reeducation" is still Vietnam's penal philosophy, and "reeducation camps" are simply Vietnam's prison system. These camps still hold numerous political and religious prisoners who were either arrested at a later time or sentenced at trials.

Following the collapse of the Soviet Union and the Tiananmen massacre, Vietnam took a darker view of political change and opening. In 1989, the government issued Decree 135, which called for a hard line against both economic crimes and security offenses. A new wave of arrests of intellectuals followed, and continues. However the restrictions on every day life for most citizens have eased considerably as the market economy takes root. Corruption on the part of officials is regularly denounced in the press; however, more sensitive topics such as multi-party democracy or negative reporting on communist heroes remain taboo, and censorship is tightly enforced despite a lively black market in forbidden literature.

Imprisonment for Political Dissent

Imprisonment for peaceful dissent remains one of the most serious continuing human rights violations in Vietnam. The most recent examples occurred in June 1995, when two prominent communist figures were arrested for circulating writings that were critical of their experiences with the Party. Do Trung Hieu, formerly a cadre with responsibility for religious affairs in Ho Chi Minh City, wrote an autobiographical essay describing the Communist Party's attempts to dismantle the Unified Buddhist Church after the war. He was taken into police custody on June 14, and is now believed to be in an interrogation center in Hanoi. Hoang Minh Chinh, a leading intellectual who had been imprisoned twice before for supporting "revisionist" policies, was also detained on June 14 in Hanoi, this time for circulating public demands that his name be cleared, and questioning the propriety of the constitutional provision that guarantees the Communist Party a leading role in Vietnam. A third, the communist war hero Nguyen Ho, was visited by police who attempted to take him into custody on June 23. Nguyen Ho had been detained twice previously, once for creating an independent veterans alliance, and another time for circulating an autobiography that was harshly critical of abuses committed by the Party. This time he turned over copies of his latest essays on the need for reconciliation among all Vietnamese, and informed the officers he would prefer to kill himself than be imprisoned again. To our knowledge, he is still free.

Political prisoners who have been convicted for crimes against national security under the Criminal Code include Dr. Doan Viet Hoat, serving a fifteen-year sentence on charges of "attempting to overthrow the government" for publishing an underground newsletter on current affairs and political reform, Dr. Nguyen Dan Que, sentenced to twenty years on the same charges for a public declaration calling for human rights and multi-party democracy, Nguyen Van Thuan, sentenced for associating with the former two dissidents to concurrent terms of eight and six years, and Doan Thanh Liem, serving a twelve-year sentence for "counterrevolutionary propaganda," that is, notes he prepared on constitutional reform. Other prisoners are included in the appended list.

Those imprisoned for their political beliefs face a range of abuses which include excessive pre-trial detention, inadequate medical treatment, and punitive isolation or transfers for those who continue to criticize the government while in detention. Doan Viet Hoat and Nguyen Dan Que have been kept in total isolation, with visits from their relatives allowed only sporadically. Doan Thanh Liem has developed a tuberculosis-type pulmonary disorder which is not being treated. Nguyen Van Thuan was finally transferred from a labor camp to a hospital three days after suffering a paralyzing stroke, but prison authorities will not let him go home for rehabilitative therapy, and his family must pay the cost of his hospitalization. Each of these prisoners rely on family visits to obtain medication, money and food supplements that are critical to their health.

Conflicts with Religious Groups

Hanoi's insistence on comprehensive control of religious organizations has created frictions with almost every faith in the country. The following portrays areas of conflict with the Unified Buddhist Church, once the largest Buddhist organization in south and central Vietnam, the Catholic Church, and Protestants.

Suppression of the Unified Buddhist Church

The Unified Buddhist Church has a long history of confronting Vietnam's governments on matters of principle, dating from the 1963 demonstrations and self-immolations to protest the policies of the Diem government. The church was forcibly suppressed by the communist government shortly after it took power. The latest cycle of confrontation and repression began in 1992, when church leader Thich Huyen Quang renewed public demands to the government to recognize the church and restore its property, to allow it and other religions to manage their religious affairs without government interference, and to release all religious and political prisoners. Currently Vietnam recognizes only the Vietnam Buddhist Church, a state-sponsored organization under the Fatherland Front.

Hanoi responded with interrogations, confiscations of Thich Huyen Quang's writings, and arrests, which in turn prompted new mass demonstrations by Buddhist supporters, and yet further arrests. Currently, there are at least two dozen Buddhists detained since 1992, thirteen of whom are known to be still in detention or under house arrest. Venerable Huyen Quang has been moved into a small rural pagoda, sealed off by police, because according to the Vietnamese government he "disturbed" other monks at the pagoda to which he had previously been confined; Venerable Quang Do was due to stand trial this year on charges of "destroying national unity," although there was no evidence of destructive or disruptive actions other than his criticism of communist policies on religion and his support of charitable flood relief efforts by the church. In May 1995 Venerable Quang Do was unexpectedly transferred from detention in Ho Chi Minh City to internal exile in the northern province of Nam Dinh, where he was confined to the small, remote Vu Ban pagoda, guarded by security police and unable to meet outsiders. The stand-off between the government and the church is causing tensions throughout Vietnam's Buddhist community, as members of the state supported church come under pressure to denounce the Unified Buddhist Church, which formerly had the allegiance of most sects in the south and central areas of this overwhelmingly Buddhist country.

Restrictions on the Catholic Church

Vietnam has attempted to maintain control over the Catholic church by restricting activities of the clergy and insisting that the church seek approval for all clerical appointments. Vietnam did allow some high-level clerical positions (which had lain vacant for an extended period of time) to be filled last year, but only after the Vatican withdrew its nomination of Bishop Nguyen Van Thuan, a cousin of former South Vietnamese President Ngo Dinh Diem,

to be the assistant archbishop of Ho Chi Minh City, and acceded to Hanoi's demand that it seek government approval for all such appointments. Even this consultative process has stalled, when the government rejected four nominations of the Holy See, including the candidate for archbishop adjudicator of Ho Chi Minh City. The Ministry of Religious Affairs now supports dropping direct negotiations with the Vatican in favor of negotiating with the Catholic Union Committee, a state-sponsored organization under the umbrella of the Fatherland Front.

In March 1994 the government declared that bishops and priests could travel freely within their diocese, but their movement outside of these boundaries remains restricted. Sermons are subject to censorship, the training of new clergy is restricted, and church personnel are often under surveillance. Members of several Catholic movements that the government deems reactionary remain imprisoned.

Suppression of Protestant Groups

The Christian Missionary Alliance of Vietnam, the only government-approved Protestant organization in the country, has enjoyed slightly greater freedom. However, a crackdown against ethnic Hmong converts in early 1994 demonstrated the government's continued intolerance for "house church" movements. Since 1989 a growing evangelical movement among the Hmong has claimed tens of thousands of new converts in the northern provinces of Lai Chau, Ha Tuyen and Son La. Local Vietnamese authorities have reacted with some alarm (possibly confusing this religious movement with a prior Hmong messianic independence movement, the Chao Fa sect). We have received reports of numerous arrests, beatings, imprisonment and forced labor involving these converts. Most recently, the evangelical pastor Pham Quang Vinh was arrested and interrogated for eight days in April 1995 when he was preaching to Hmong in the far northern district of Lao Cai with a Korean pastor.

The Legal Framework

Since the prison camp releases of 1987 and 1988, Vietnam's greatest effort in the area of human rights has been to create the "rule of law" through an intensive effort at legislative drafting. Implementation of the laws, however, remains problematic. The justice system in Vietnam is institutionally weak, highly politicized, and historically beset by corruption. The government is beginning to address some of these problems, actively seeking foreign assistance for training its personnel and foreign advice in drafting laws. Many judges have had only rudimentary legal training. Training for lawyers is improving, and Vietnam is sending a new generation of students out for education in law schools and legal institutes abroad, including to the United States.

It is unrealistic, however, to expect that victims of political or religious suppression will be able to vindicate their rights through the courts at the present time. Vietnam does not

allow foreign lawyers to represent clients in Vietnamese courts, and professional defenders in Vietnam are generally limited to arguing mitigating circumstances for sentencing rather than innocence. This is particularly so in political trials, which is one reason several prominent political detainees have refused legal counsel in favor of speaking on their own behalf.

The 1985 Criminal Code was designed to be the first and exclusive legislative definition of crime for the entire country. Its centerpiece is Article 2, which provides that criminal liability applies only to crimes stipulated in the code, and that criminal penalties must be determined by a court. This guarantee is repeated in slightly different form in the 1989 Criminal Procedure Code, Article 10, which provides that no one may be considered guilty or forced to undergo punishment without a court judgement that has taken legal effect. The 1992 Constitution is more explicit yet; Article 72 repeats that no one may be considered guilty and punished without a court verdict, and adds that those who are illegally arrested, detained, prosecuted and tried are entitled to material indemnity, and that those who illegally perform such acts should be "severely and justly dealt with."

Despite these guarantees, a parallel system of criminal punishment still flourishes under the rubric of administrative detention, as set forth in 1961 resolutions and circulars of the North Vietnamese government. Under these regulations, administrative detention for re-education is a non-criminal punishment applicable to minor "counter-revolutionaries" and "professional scoundrels." Mass organizations (generally people's committees) can assign up to a three-year term of administrative detention; it has been quite common in the past for such three-year terms to be renewed again and again, amounting to an indefinite prison term. The system is no doubt seen as useful by security officials, though it is patently illegal under both Vietnamese and international law.

The Criminal Code has a large section of "crimes against national security," some of which are plainly violative of international law. Examples are Article 82, entitled "the crime of anti-socialist propaganda," or Article 81, "the crime of undermining the policy of unity." The latter criminalizes "causing divisions" between the people and the government, the military, between religious and non-religious people, between the religious and the government, etc. One national security offense that is regularly lodged against peaceful critics of the Party and government is Article 73, "the crime of taking actions to overthrow the people's government." Among those convicted under this article (which can draw up to the death penalty) are Dr. Nguyen Dan Que, for signing a petition for political reform and human rights on behalf of a "movement," and Dr. Doan Viet Hoat, who published the underground newsletter *Freedom Forum*.

The Criminal Procedure Code places limits on pre-trial detention, but it appears they can be indefinitely extended by the proper authorities in national security cases. The definition of who is permitted to defend those who stand accused of crimes is broad (a lawyer, a legal representative of the accused, or a people's defender), but in practice it appears that only a limited group of government defenders are allowed to represent people in political cases.

Although defenders have the right to be present during all interrogations of the accused (Article 36.2), it is not unusual in political cases for a defender to meet his or her client only a few days or a few hours before trial.

Trials in political cases have often been closed to the general public or unannounced. At present, there seems to be complete unwillingness to allow foreigners to observe political trials.

Laws on Publishing and the Press

The 1993 Publishing Law defines the aims of publishing both in terms of disseminating information and culture, and "fighting against all ideas and actions which are detrimental to national interests and damaging to the fine characteristics, morality and lifestyle of the Vietnamese people." Pre-publication censorship is authorized "in necessary circumstances decided by the Prime Minister" (Article 2). In practice, there is often no formal order banning or censoring works; authors are simply given to understand that their works will not be published, or can be published only if censored.

No private ownership of publishing houses is allowed (they must either belong to state agencies or "social or political organizations"). Materials published in the north prior to 1945 or in the south prior to 1975 can be republished only with government permission. Strictly prohibited are materials "detrimental" to the country and the "unity" of its people, "reactionary" and "decadent" works, and material "distorting history, rejecting revolutionary achievements, discrediting great Vietnamese men and national heroes" (Article 22, also forbidding incitement of national hatred, violence or wars of aggression).

The 1989 Law on the Press is in many respects similar. The press is defined as "the mouthpiece of various organizations of the Party, the State and social organizations and a forum of the people" (Article 1). There is no private ownership of the media. Directors and editors-in-chief must have the necessary "political, moral and journalistic standards" (Article 13). The law bans pre-publication censorship (Article 2), and citizens have the right to comment, criticize and complain in the press about organizations of the Party and the state (Article 4.5). However, the press is forbidden to incite opposition to the state or to "undermine the national unity bloc" (Article 10.1), along with other prohibitions relating to national secrets, defamation, incitement of racial hatred, and the like. These restrictions were elaborated in a 1992 Council of Ministers Decree (No. 133-HDBT). It provided that the press may not publish material "harmful to the policy of all-people solidarity, which contributes to adverse public opinion," material that "interferes with the enforcement of current legal documents," nor material that could "spread obsolete customs or superstitious practices" (Article 4).

Law on Imprisonment

This law, passed in 1993, marks a step in bringing Vietnam's poor prison conditions up to minimum international standards. It prohibits explicitly "all forms of torture or insulting the reputation and dignity" for prisoners serving a jail term. However, it does not address this issue for persons in pre-trial detention, the point at which abuse is most likely to occur. The separation of female and juvenile prisoners from male prisoners is stipulated. Prisoners are "entitled to" disease-prevention protections, medical treatment and examinations. They may "complain about or denounce any individual or organ" but must "take full responsibility for any false complaints or denunciations." The law also requires prison officials to formally report deaths in custody to investigation units under the State Procuracy and medical authorities, and have the report signed by a representative of other prisoners as a witness. The impact of this law on actual prison conditions remains unclear. The Procuracy and the Interior Ministry are responsible for monitoring prison complaints, and the law does not provide penalties or procedures for addressing its violation. Vietnam does not permit monitoring by outside organizations or international groups such as the Red Cross.

Law on Religion

Vietnam does not embrace the concept of "freedom of religion" in its full sense, but rather guarantees "the freedom to believe or not to believe in a religious faith." (1992 Constitution, Article 70). Although the constitution protects "worshipping places," it warns that "no one can violate the freedom of faith or exploit it in a way that is at variance with the law and state policies."

Council of Ministers Decree 69/HDBT of 1991 reflects this basic approach. Article 5 explicitly prohibits "all activities, under the cloak of religion, which undermine the independence of the country and the Government of the Socialist Republic of Vietnam or cause damage to the integrity and unity of the people, or interfere with civil obligations". Freedom of belief is protected, as well as all "lawful and beneficial" religious activities, but the government is vested with absolute control. Article 8 provides that "all usual religious activities which are scheduled and registered do not require permission," but all other activities do. For example, permission is required for training seminars, meditation sessions, retreats, general meetings, conventions, major repairs, remodelling or construction of worshipping places, charitable activities, operation of religious schools, ordinations, promotions and transfers of clergy, operation of monasteries, and any international activities.

A list of representative cases of religious and political detainees follows.

A SAMPLE OF CURRENT POLITICAL AND RELIGIOUS PRISONERS IN VIETNAM

- **Thich Huyen Quang**, the seventy-seven-year-old acting Supreme Patriarch of the Unified Buddhist Church, is being detained at the Quang Phuoc temple, in Nghia Hanh district of Quang Ngai province. Thich Huyen Quang was previously arrested in 1982, when he was sent into internal exile at the Hoi Phuoc pagoda in Quang Ngai province for protesting the establishment of the state-sponsored Vietnam Buddhist Church. Police moved him to a more isolated temple in Nghia Hanh, Quang Ngai on December 29, 1994 after he began a hunger-strike to protest the detention of a group of Buddhists in Ho Chi Minh City. Since November of last year, Thich Huyen Quang has been denied visitors and doctors, and has been unable to receive medicine for his high blood pressure
- **Thich Quang Do**, sixty-eight-year-old writer, historian, and General Secretary of the Unified Buddhist Church, is last known to have been detained at the Vu Ban pagoda in Nam Dinh province, after five months of detention in Ho Chi Minh City. The authorities apparently have dropped plans to try him on charges of "destroying national unity" and "misusing democratic rights to encroach on the rights of citizens of the state" (Articles 1 and 205(a) under Vietnam's 1985 Criminal Code respectively) after he circulated a document accusing the Communist Party of abuses towards the Unified Buddhist Church. He was previously arrested in April 1977, along with Thich Huyen Quang and four other church leaders for protesting the government's confiscation of church properties. He was re-arrested in February 1982 and forced into internal exile at the Thien Vien pagoda in his native village of Vu Doai in Thai Binh province. In mid-1992, after a decade in exile, he returned to the Thanh Minh pagoda in Ho Chi Minh City and eventually resumed his calls for the reestablishment of the Unified Buddhist Church, and supported flood-relief work in its name. Police took him into custody at the Thanh Minh pagoda on January 4, 1995.
- **Do Trung Hieu**, formerly a communist party cadre in charge of religious affairs in Ho Chi Minh City and now a private businessman, was detained by police in Ho Chi Minh City on June 14, 1995. Hieu had written and circulated an autobiographical essay describing the Party's efforts to dismantle the Unified Buddhist Church after the war out of fear that its influence and following would spread throughout Vietnam. Hieu has reportedly been transferred to Hanoi for questioning, but his whereabouts have not been confirmed. Do Trung Hieu was previously arrested in 1990 for associating with Michael Morrow, an American businessman who was expelled from Vietnam; on that occasion, Hieu was released after a short detention.
- **Hoang Minh Chinh**, a well-known communist intellectual, was also detained in Hanoi on June 14, 1995. This was his third detention for criticizing Party policy; he had previously been arrested for advocating "revisionist" lines in 1967 and 1981. The cause of the latest detention appears to be petitions he sent to the highest levels of the Party demanding that his name be cleared for his previous jailings, and his questioning the propriety of the constitutional provision that enshrines the leading role of the Vietnam Communist Party. He is believed to be in his seventies.
- **Doan Thanh Liem**, a law professor who was educated in the United States, is serving a twelve-year sentence for "counterrevolutionary propaganda," that is, notes he had prepared on constitutional reform. He was arrested in April 1990 for his association with Michael Morrow,

Dick Hughes and Don Luce. He knew all three Americans from his participation in a well-known Saigon charity, the Shoeshine Boys. Liem, held in the Ham Tan camp, has developed a serious pulmonary condition in prison that is often associated with tuberculosis. Senator Tom Harkin's request to meet with Liem was denied during his July 1995 visit.

- **Doan Viet Hoat**, one of Vietnam's most prominent political prisoners, was transferred abruptly among three different prisons last year, ending up in the Thanh Cam camp, a facility for common criminals in a remote and malarial part of Thanh Hoa province. Arrested in November 1990, Dr. Hoat was given a fifteen-year sentence on charges of "attempting to overthrow the government" for producing the reformist newsletter *Freedom Forum*. His transfers seem to have come in reaction to public statements which he has periodically been able to release since his initial detention. The move to Thanh Cam has isolated from the outside world, and he is allowed only limited communication with his family. Dr. Hoat suffers from a kidney disorder. Following a visit early this April, the first by a family member in close to nine months, Dr. Hoat's brother reported that his health condition had improved. However, his isolation continues to make it extremely difficult for his family to provide for his medical needs and ensure his good treatment.
- **Dr. Nguyen Dan Que**, an endocrinologist who was sentenced in 1991 to twenty years of imprisonment on charges of "attempting to overthrow the government" for publicly signing a declaration calling for political reform and respect for human rights, is reported to be in fair health, having received some medication for a kidney stone. Dr. Que has been held in isolation at Xuan Loc prison camp for nearly two years, following the Vietnamese government's unwillingness to allow Senator Charles Robb to meet him. His wife is sporadically allowed to visit him.
- **Nguyen Van Thuan**, a defendant at both the *Freedom Forum* trial and the trial of Dr. Nguyen Dan Que, suffered a paralyzing stroke on February 15, 1994 at the Ham Tan labor camp. Although he was put in a truck bound for Ho Chi Minh City, no hospital accepted him for about three days, during which time the authorities would not allow him to be removed from the truck for care. He was finally admitted to the Unit 115 Military Hospital in Ho Chi Minh City, and has partially recovered from his paralysis. His family has been told that he can return home soon to heal, but that he must serve out the rest of his sentence; they are unsure if he will have to return to camp once he is better. Mr. Thuan, arrested in November 1990, was sentenced to a ten year term at the same time as Dr. Nguyen Dan Que, and received an additional twelve year term, later reduced to eight years, at the trial of Dr. Doan Viet Hoat and the other *Freedom Forum* defendants.
- **Pham Duc Kham**, arrested with Dr. Hoat for the *Freedom Forum* affair, was sentenced to sixteen years of imprisonment (later reduced to just under twelve years) for his participation. He was reportedly transferred in November 1994 from the Xuan Phuoc labor camp in Phu Yen province to an isolated prison camp in Thanh Cam village, Thanh Hoa province.
- **Do Van Thac**, a former sergeant in the South Vietnamese army, was arrested with five other members of the opposition Dai Viet Duy Dan (People's Party) on July 9, 1991. In January 1992, a court in Hanoi sentenced Do Van Thac to fourteen years' imprisonment (later commuted to twelve years) on charges of "attempting to overthrow the government," apparently for circulating

writings describing the People's Party and calling for political and economic reform. The five other defendants received sentences ranging from four to twelve years on the same charges. Do Van Thac, who is in his late sixties, suffered a stroke in February 1994 at the Ba Sao prison camp in Phu Ly, Nam Ha province, where he remains imprisoned. Mr. Thac is also suffers from heart disease and high blood pressure. His brother **Do Van Hung**, who received a twelve-year sentence (later commuted to eleven years) at the January 1991 trial, is also reported to be in poor health.

- **Pious Vu Thanh Dat Hai, Paul Nguyen Chau Dat**, and eight other members of the Congregation of Mary Co-Redemptrix remain in prison. On May 15, 1987, these persons, along with Father Dominic Tran Dinh Thu and approximately sixty other Catholic clergy and laypersons were arrested when authorities raided the compound of the order founded by Father Dominic. During the raid, authorities seized rice stocks from the community and religious literature, causing people from the surrounding area to defend the congregation (and their rice stocks) with improvised arms. Pious Vu Thanh Dat Hai, Paul Nguyen Chau Dat and twenty others were tried on October 30, 1987 and convicted of "sowing disunity between the people and the government." The two men were given terms of ten years and twenty years respectively; their present location and the location of the other congregants is uncertain.
- **Thao A Tong**, a thirty-two-year-old local official and Christian convert was arrested for proselytizing in Hong Thu village, Sinh Ho district of Lai Chau province in January, 1994. Another Hmong house church member, **Giang A Di**, was arrested with him. Both men have been charged with "taking advantage of religion to break laws and distract people from productive work for the country." There has been no news of a trial, and it is unclear where the men have been detained.
- **Pastor Nguyen Duc Loi** and **Pastor Nguyen Van Vui** are reported to have been arrested on November 20, 1994 when proselytizing among the ethnic Hre minority in Quang Ngai province. According to unconfirmed local sources, the two have been accused of pursuing political activities under the guise of religion, and after their arrest officials ordered local Christians to cease all religious activities, including prayer meetings.

Lawyers Committee for Human Rights

REFUGEE PROJECT

STATEMENT OF ELISA C. MASSIMINO

**LEGAL DIRECTOR WASHINGTON OFFICE
LAWYERS COMMITTEE FOR HUMAN RIGHTS**

HEARING ON

**THE COMPREHENSIVE PLAN OF ACTION FOR
SOUTHEAST ASIAN REFUGEES**

BEFORE THE

**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON INTERNATIONAL RELATIONS
SUBCOMMITTEE ON INTERNATIONAL OPERATIONS AND HUMAN RIGHTS**

JULY 27 1995

I. Introduction

Chairman Smith and members of the Subcommittee, thank you for inviting the Lawyers Committee to testify on the critical and complex issue of refugee screening under the Comprehensive Plan of Action (hereinafter "CPA"). Since 1978, the Lawyers Committee for Human Rights has worked to promote international human rights and refugee protection, including the provision of asylum to refugees on a fair and non-discriminatory basis.

I am the Legal Director of the Committee's Washington office. In this capacity, I work primarily on issues concerning refugee protection. In the course of our efforts to promote the human rights of refugees, the Lawyers Committee endeavors to ensure that all nations, including the United States, understand and abide by their obligations under international law. It is from this perspective that we offer our testimony on the nature of the refugee status determination procedure employed by the CPA.

II. International Obligations and Standards for Refugee Protection

A. Criteria

The 1951 Convention relating to the Status of Refugee (189 U.N.T.S. 137) and its 1967 Protocol (606 U.N.T.S. 267, 19 U.S.T. 6223), to which the United States acceded in 1968, provide, in pertinent part:

the term "refugee" shall apply to any person who . . . owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The United States incorporated this standard into its domestic laws in the Refugee Act of 1980. The

Pub.L. No. 96-212; See INS v. Cardoza-Fonseca, 480 U.S. 407 (1987).

III. Procedural Standards

The international legal regime leaves largely to the legal traditions and cultures of the individual States the precise nature of the procedures by which to determine whether individuals are refugees who deserve protection. However, minimum international standards have been promulgated. The most advanced and detailed version of those standards, in fact, was issued by the Office of the United Nations High Commissioner for Refugees (UNHCR), the U.N. body charged with supervising the application of the refugee treaties, in connection with litigation challenging the adequacy of status determination procedures for Vietnamese asylum seekers in Hong Kong. UNHCR set forth the following guidelines for adjudication procedures:

The applicant should receive the necessary guidance as to the procedure to be followed (para. (e)(ii) of Conclusion No. 8).⁶ Given the vulnerable situation of an asylum seeker in an alien environment, it is important that he/she should on arrival receive appropriate information on how to submit his/her application. Such advice is most effective on an individual basis and is provided in many countries by legal counseling services, funded by government, UNHCR or non-governmental sources.

The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned (para.(e)(iii) of Conclusion No. 8).⁷ This requirement entails, first of all, that the applicant should be given the opportunity to present his/her case as fully as possible. As refugee status is primarily an evaluation of the applicant's statement, the quality of the interview is crucial to a proper determination of the claim. Paragraphs 196-205 of the Handbook⁸ deal with this aspect of the procedure and make it clear the "while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner" and also that the examiner should "ensure that the applicant presents his case as fully as possible and with all available evidence." The interviewer therefore has a particular

⁶Reference is to Conclusion Number 8 on the Determination of Refugee Status, adopted by the governmental Executive Committee of the UNHCR Programme, 28th session (1977); see also UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (1979), at para. 192 (hereinafter "Handbook").

⁷Supra note 6.

⁸Id.

treaty definition has now been subscribed to by 127 countries in addition to the United States.

B. Remedy

While there is no categorical right to receive asylum at the international level,² there is a well-established individual entitlement of a refugee not to be returned to a place where he or she may experience persecution. The 1951 Convention, in Article 33(1) provides:

No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

This right of *non-refoulement* is the foundation for all refugee protection and is so fundamental as to have achieved the status of customary international law, binding even on States that have not acceded to the refugee treaties.³ The United States incorporated substantial aspects of the treaty obligation into its domestic law by amending its withholding of deportation statute in the 1980 Refugee Act.⁴ Congress specifically enacted the Refugee Act to create more humane and effective procedures for dealing with refugees, and to bring the United States into compliance with its obligations under international law.⁵

²The Universal Declaration of Human Rights, in Article 14(1) declares that "[e]veryone has the right to seek and enjoy in other countries asylum from persecution." General Assembly Resolution 217A (III) of 10 December 1948. See G.S. Goodwin-Gill, The Refugee in International Law (1983) at 101-123 (discussing asylum as a form of discretionary State power).

³See Goodwin-Gill, *supra* note 2, at 69-100.

⁴See INS v. Stevic, 467 U.S. 407 (1984). While the Court determined that Congress had intended to continue to utilize a domestic law standard (probability of persecution) in adjudicating withholding claims, it suggested that the Attorney General, through an exercise of discretion in asylum adjudications, could avoid any incompatibility with international standards. Id. at 428-30 n.22.

⁵See S. Rep. No 256, 95th Cong., 1st Sess. (1979); 125 Cong. Rec. 23,231 (1979); Refugee Act of 1979; Hearing on H.R. 2816 before the Subcomm. On International Law of the House Comm. On the Judiciary, 96th Cong., 1st Sess. (1979) at 27.

responsibility to ensure that the interview is comprehensive and the records reflect accurately what has been said. The reference to "necessary facilities" could, in UNHCR's view, also include legal advice and representation, if the applicant requires these in order to present his case properly.

If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or different authority, whether administrative or judicial, according to the prevailing system (para. (D)(vi) of Conclusion No. 8).⁹ Although this requirement is phrased in general terms, in UNHCR's view, the notion of "appeal for a formal reconsideration" includes some basic principles of fairness applicable equally to judicial or administrative reviews, such as the possibility for the applicant to be heard by the review body and to be able to obtain legal advice and representation in order to make his submission; for the reconsideration to be based on all relevant evidence; and for a consistent and rational application of refugee criteria in line with the guidelines established in the UNHCR Handbook. UNHCR believes that the notion of fairness also requires the review body to provide grounds for its decision, so that the applicant can be reassured that he has had a fair hearing and the criteria have been applied properly.

The applicant should be examined by "qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs" (UNHCR Handbook, para. 190).¹⁰ An understanding of the application of refugee criteria as well as a knowledge of the situation in the country of origin are necessary, in particular, for assessing an applicant's credibility and the well-foundedness of his fear of persecution.

The applicant should be granted the benefit of the doubt if his statement is coherent and plausible and does not run counter to generally known facts (paras. 203-204, UNHCR Handbook). Because of problems of obtaining evidence to substantiate a refugee claim, the evidential requirements should be approached with flexibility.¹²

IV. The International Context

Currently, more people are in flight from persecution, war, human rights violations and other

⁹Id.

¹⁰Id.

¹¹Id.

¹²UNHCR, Note on the subject of the role of UNHCR in the Hong Kong procedure for refugee status determination (1990).

events seriously disturbing the public order than at any time since World War II. The UNHCR reports over 19 million refugees around the world who have crossed international borders and who have a fear of persecution upon return.

In the United States, more than 500,000 asylum seekers have requested protection under the asylum provision of the Refugee Act of 1980. Last year, the United States authorized the admission of 121,000 refugees under the overseas admissions program established by the Refugee Act.¹³

The Preamble of the 1951 Convention reiterates the determination of the High Contracting Parties to assure refugees the widest possible exercise of the fundamental rights and freedoms embodied in the Charter of the United Nations and the Universal Declaration of Human Rights. Specifically, the Preamble urges all States to "do everything in their powers to prevent this problem from becoming a cause of tension between States;" it recognizes that "the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot be achieved without international cooperation."

V. The Comprehensive Plan of Action

A. Background

Since 1975, the flight of Vietnamese boat people has remained a chronic refugee challenge. An international conference in 1979 on Indochinese refugees initially achieved an equilibrium to manage the flow of refugees. The international arrangement provided that countries in the region would give refuge, while assuring these nations that the refugees would be resettled abroad. This plan began to unravel in 1987 when arrivals in the region outstripped diminishing resettlement commitments. This resulted in a concerted push-back policy undertaken by the Thai authorities and

¹³ 8 U.S.C. 1157 (1988).

the unilateral initiation of screening and detention policies in Hong Kong.

In an effort to preserve the possibility of refuge in countries of first asylum in the region, representatives of 76 governments met on June 13 and 14, 1989, at an International Conference on Indochinese Refugees in Geneva. The principle purpose of the conference was to endorse a plan to deal with the continuing flight of Vietnamese asylum seekers. Specifically, the governments sought to establish procedures to screen on a region-wide basis those asylum seekers who arrived after a certain cut-off date in order to determine which among them deserve resettlement as refugees, and to organize the detention and possible return, including enforced deportation, to Vietnam of those rejected after screening. Also significant was the development of a solution with respect to the "long-stayer" population, *i.e.*, those Vietnamese who had arrived in first asylum countries before the cut-off date, many of whom had been languishing in detention camps for nearly a decade.¹⁴

The result of the conference was the adoption of the Comprehensive Plan of Action, a six-point plan¹⁵ in which the Southeast Asian countries agreed to continue to provide first asylum in return for a promise of resettlement abroad of both the "long-stayer" population as well as those asylum seekers who would be determined under the screening procedure to be refugees. Through the institution of a status determination mechanism and the possibility of repatriation to Vietnam, the CPA sought to discourage clandestine departures and to establish orderly emigration as "eventually the sole mode of departure."¹⁶

B. Refugee Status Determinations Under the CPA

¹⁴UN Doc. A/44/523.

¹⁵The six points are: Clandestine Departures, Regular Departures, Reception, Refugee Status, Resettlement and Repatriation. UN Doc. A/44/523.

¹⁶*Id.* at 15.

Because an unfair screening process could result in the return of true refugees in violation of international law, a fair status determination process is the key to the legitimacy of the CPA and to ensuring that the CPA does not become a tool for facilitating violation of the *non-refoulement* obligation. The text of the CPA itself sets forth the elements of refugee status determination as well as the requirements for implementation which are to ensure fair screening.

The CPA requires the introduction of a "consistent, region-wide refugee status determination process to be conducted in accordance with national legislation and internationally accepted practice." The CPA further provides that the status determination process "will make specific provision for" status determinations, within a prescribed period, determined by a qualified national body, in accordance with the criteria recognized in the 1951 Convention and 1967 Protocol. UNHCR "will participate" both as an observer and advisor, counseling "each individual of the nature of the procedure, of the implications for rejected cases and of the right to appeal the first-level determination."⁷

VI. Procedural Flaws and Irregularities in Refugee Status Determinations Under the CPA

Despite the CPA's agreement to conduct "consistent region-wide refugee status determination[s] . . . in accordance with . . . internationally accepted practice,"⁸ refugee screening under the CPA has been seriously flawed. In 1992, the Lawyers Committee conducted an examination of the CPA screening procedure, focusing in particular on the Refugee Status Review Board in Hong Kong, and concluded that refugee status determination procedures in Hong Kong

⁷UN Doc. A/44/523 at 13-14.

⁸UN Doc. A/44/523 at 13.

were deficient in several basic respects. Our study culminated in the publication of a briefing paper,⁹ which is attached to this statement for reference and inclusion in the record.

With regard to the CPA screening procedure in Hong Kong, our conclusions reflect a finding of underlying hostility towards asylum seekers, and a striking lack of due process protections, not only in the appeals procedure but throughout the screening process. We found that the interview on which the initial decision is based is conducted in such a way that it is unlikely to induce an applicant, most of whom are uniformed 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 credible claims are first raised on appeal, the Review Board views them with extreme suspicion and skepticism. Despite the international legal requirement that credibility of a refugee claimant is presumed until disproved, the CPA process virtually requires an applicant to overcome a presumption of incredibility. Again, while international refugee law requires governments to grant applicants the benefit of doubt and err on the side of generosity, the Hong Kong screening process effectively requires an applicant to corroborate all aspects of his or her claim. In discounting the abuse an applicant may suffer if repatriated, the Review Board often misapplies the international criteria for deciding refugee claims by finding that disproportionate punishment is not "excessive."

In addition to problems relating to the adequacy of screening procedures, the Lawyers Committee has monitored closely the conditions of detention of Southeast Asian asylum seekers held in camps, focusing particularly on camps in Hong Kong. Two years ago, the Committee, in conjunction with the Women's Commission for Refugee Women and Children, filed a petition to the United Nations Working Group on Arbitrary Detention in Geneva, urging it to declare that Hong

⁹ Lawyers Committee for Human Rights, Hong Kong's Refugee Status Review Board: Problems in Status Determination for Vietnamese Asylum Seekers (March 1992).

Kong's practice of detaining Vietnamese asylum seekers is a violation of international law. Under an official policy of "humane deterrence," Hong Kong has detained tens of thousands of Vietnamese men, women and children in brutal, prison-like conditions. The stated purpose of this policy is to deter other Vietnamese from seeking asylum in Hong Kong. Upon arrival in Hong Kong, asylum seekers are held in closed detention centers surrounded by razor-wire and are subject to screening procedures to determine their refugee status. Determinations have sometimes taken up to three years. The vast majority of these asylum seekers have been "screened out" under procedures, described above, that fall far short of those mandated by international standards of due process and refugee protection. We have been asked by the UN Working Group to present oral argument on this issue when the Group meets again in September, and we expect a ruling on our petition shortly thereafter.

VII. Conclusion

The Lawyers Committee has been deeply troubled for a number of years about the forced repatriation of asylum seekers screened out under these procedures and the use of harsh detention conditions to deter refugees from seeking protection. The CPA is not the only context in which refugees fleeing by sea have been forcibly repatriated to places of persecution; recent experiences with Haitian and Cuban "boat people" fleeing directly to the United States have challenged us to remain true to our international commitments to refugees. As nations around the world grow increasingly inhospitable towards victims of persecution, it is ever more important for the United States to reassert its leadership role in refugee protection.

Lawyers Committee for Human Rights

REFUGEE PROJECT

HONG KONG'S REFUGEE STATUS REVIEW BOARD:

**Problems in Status Determination
for Vietnamese Asylum Seekers**

**A Briefing Paper Issued by the
Lawyers Committee for Human Rights**

March 1992

TABLE OF CONTENTS

	Page
Preface	1
I. Introduction	2
II. Principal Findings and Recommendations	4
A. Procedures	4
B. Substantive Criteria	6
C. Adjudicatory Philosophy	7
III. The Hong Kong Screening and Appeals Procedure	9
V. Analysis of Hong Kong Appeals Board Decisions	15
A. Governing Legal Criteria	15
B. The Decisions of the Review Board	16
1. Credibility Errors	16
2. Failure to Accord the Benefit of the Doubt and Misapplication of Criteria	24
VI. Conclusion	33

Preface

This is a report on the work of the Refugee Status Review Board in Hong Kong, the appeals body established in the Colony under the terms of the Comprehensive Plan of Action (CPA), an international arrangement which established in 1989 a system of status determination for Vietnamese asylum seekers in Asia. The report analyzes over 100 decisions of the Review Board in terms of procedures, criteria, and philosophy of decision-making, and evaluates those matters in terms of the international refugee protection standards which are to govern determinations under the CPA. Specific recommendations are made to improve adjudication in Hong Kong, focusing on screening and appeals procedures, criteria and general policy.

The principal authors of the report are Wendy E. Connuck and Beth S. Grossman, New York lawyers. The report was edited by Arthur C. Helton, Director of the Refugee Project.

I. Introduction

In October of 1991, Hong Kong authorities resumed the forcible repatriation of Vietnamese asylum seekers. As of this writing, a total of 174 people have been deported: 36 people were repatriated on February 12, 1992; 28 people were repatriated on December 11, 1991; 59 on November 9, 1991; and 51 in December of 1989. Those returned to Vietnam had been denied refugee status by Hong Kong authorities. While the numbers deported so far have been relatively few, a total of 21,158 Vietnamese have been finally rejected in the Colony's appeals process as of January 1, 1992, and are subject to return.

In 1979, a multi-lateral conference in Geneva established an arrangement whereby Asian countries would offer first asylum to Vietnamese boat people and Western nations would provide permanent resettlement for them.¹ This agreement governed until the late 1980s. By 1987, Vietnamese asylum seekers far outnumbered offers of resettlement in Western nations. This increase was attributable, in part, to the worsening of conditions within Vietnam and to the Vietnamese government's suspension of the in-country orderly departure program to the United States in 1986.²

In Geneva in 1989, another International Conference on Indochinese Refugees adopted a Comprehensive Plan of Action (CPA) to respond to this situation.³ Southeast Asian countries agreed

¹See Lawyers Committee for Human Rights, Inhumane Deterrence: the Treatment of Vietnamese Boat People in Hong Kong (1989) at 8.

²*Id.*

³UN Doc. A/44/523.

to provide first asylum to those persons who fit within the definition of "refugees" under the 1951 Convention and 1967 Protocol relating to the Status of Refugees. In return, Western nations agreed to provide resettlement abroad.⁴ However, this plan proved to have many problems, not the least of which involved establishing a fair and reliable status determination procedure for screening refugees in Hong Kong.⁵

In principle, the Hong Kong screening procedure appears to meet many minimum international standards for determining refugee status.⁶ An immigration officer interviews the asylum seeker, who is without legal representation.⁷ Sometimes a monitor from the Office of the United Nations High Commissioner for Refugees (UNHCR) is present. If the applicant is denied refugee status, the applicant may appeal to the Hong Kong Refugee Status Review Board (Review Board or Board).

However, an examination of 132 decisions of the Review Board rendered in 1990 and 1991 shows that this process remains hostile to genuine refugees. In all of these cases, refugee status was

⁴Id.

⁵See generally, Lawyers Committee for Human Rights, Inhumane Deterrence: the Treatment of Vietnamese Boat People in Hong Kong, *supra* note 1.

⁶See generally, Office of the United Nations High Commissioner for Refugees, Handbook on Procedures and Criteria for Determining Refugee Status Under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees (Geneva, Sept. 1979)(Handbook).

⁷Theoretically, the asylum seekers have an opportunity for pre-screening counseling from UNHCR personnel. However, the limited staff makes such counseling unfeasible. See Lawyers Committee for Human Rights, Uncertain Haven: Refugee Protection on the Fortieth Anniversary of the 1951 United Nations Refugee Convention (1991) at 44.

denied. Settled international standards were ignored.⁹ In general, the Review Board decisions lack adequate explanation for their conclusions. This deficiency renders review of these decisions extremely difficult. Nonetheless, the written decisions of the Review Board, such as they are, make clear the many deficiencies in decision-making. The conclusions in this report are based on an examination of these decisions.

II. Principal Findings and Recommendations

A. Procedures

There are three procedural stages to the refugee status determination procedures for Vietnamese asylum seekers in Hong Kong, all of which are in need of improvement. First, each asylum seeker is interviewed by an immigration officer. The immigration officer makes a recommendation, based on that interview, as to whether the applicant should be granted status. The immigration officer most often recommends that asylum be denied, and that recommendation is equally often adopted by the Hong Kong Immigration Department (HKID). Second, the applicant may prepare and file an appeal, with any accompanying submissions, to the Refugee Status Review Board. Third, the Review Board considers the applicant's submissions and decides whether to affirm or to overturn the HKID action. Based on an analysis of 132 decisions of the Review Board issued in 1990 and 1991, the Lawyers Committee finds that procedures in Hong Kong are flawed in several basic respects and that hundreds -- perhaps thousands -- of Vietnamese refugees have been wrongly rejected, and recommends that the status determination procedure be reformed in the following ways.

⁹Hong Kong is bound by international refugee law criteria. On September 20, 1988, the UNHCR and the government of Hong Kong signed a Statement of Understanding concerning the treatment of Vietnamese asylum seekers. In it, Hong Kong agreed to apply the "appropriate humanitarian criteria for determining refugee status." (Statement of Understanding, para. B1). These criteria are based on the UNHCR Handbook.

In the interview stage:

1. An asylum applicant should receive legal counseling prior to and legal assistance during the interview. Such legal counseling and assistance would focus the issues for decision at the outset and enhance the reliability of the process through the appeal stage.
2. The interview must be conducted in an environment and a manner that are not threatening, hostile or intimidating -- when viewed from the perspective of a presumptively bona fide refugee fleeing government persecution. The immigration officer must recognize that a refugee will often be wary of government authority, and hence possibly unwilling to speak about those things in his or her past which are punishable. This difficulty is exacerbated by the fact that the applicant is normally unassisted and invariably unrepresented prior to or during the interview.
3. Immigration officers must be better educated about current conditions in Vietnam, so that they can evaluate an applicant's claim in the appropriate historical and social context, rather than in the abstract.
4. The immigration officer should give detailed, specific reasons for his or her recommendation. The interview should be tape recorded, so that the HKID and then, if necessary, the Review Board can ensure that the recommendation follows logically and accurately from the actual interview.

In the preparation of the appeal stage:

5. The Agency for Volunteer Service (AVS) counselors, who work under the auspices of the UNHCR to represent applicants on appeal, are severely understaffed and overworked. More resources are needed, particularly if the procedures are to be accelerated and additional immigration officers will be conducting interviews.
6. As long as AVS counselors are unable to file appeals on behalf of all applicants, an internal supervisory procedure should be established to ensure more uniform treatment of cases under rational criteria.
7. The 28-day time limit for filing an appeal must be applied flexibly. This can be accomplished in a number of ways. For example, either the time limit itself can be extended, or the AVS counselor (or private counsel, or the unrepresented applicant) can be required to file a notice of intent to appeal within 28 days and can be given a longer time period for filing additional supporting submissions, if warranted. Such flexibility would have avoided the problem faced by at least one applicant, when the Review Board was skeptical of and rejected claims

raised in an AVS submission because they were filed late.⁹

In the appeal stage:

8. The applicant should be able to appear, with counsel, before the Review Board in order to submit the claim.

9. The Review Board should be required to give an adequate written explanation of its decisions, including on issues of credibility. Simply finding, as the Review Board did in many cases, that the applicant did not appear credible because his or her demeanor was "poor" is not sufficient.¹⁰

B. Substantive Criteria

10. The Review Board must endeavor in all circumstances to give the applicant the benefit of any doubt, including when evaluating his or her credibility, in accordance with well-established international refugee law principles.

11. The Review Board must recognize that a well-founded fear of persecution can be based on the mistreatment, abuse or persecution of others similarly situated. This would avoid the unjust outcome experienced by one applicant who feared that he would be persecuted for leading a church choir and for refusing to take publicly an anti-Church position because his co-choir leader was arrested and imprisoned for the same reasons.¹¹ When it rejected his claim, the Review Board failed to recognize that his well-founded fear of persecution was based on the mistreatment experienced by another similarly situated.

12. The Review Board must evaluate a claim for refugee status based on a comprehensive assessment of all relevant facts, including on a cumulative basis; any single event may not be determinative, but taken together, a series of measures may give rise to a well-founded fear of persecution. In one case, the Review Board discounted the applicant's claim because she had been married to a military official and it believed

⁹See *infra*, p. 14.

¹⁰See *infra*, pp. 19-20.

¹¹See *infra*, pp. 26-27.

that the authorities would not -- for that reason alone -- abuse her.¹² By treating one fact as dispositive with respect to a denial, the Review Board failed to consider all relevant facts.

13. The Review Board must recognize that a protection claim can be based on punishment for an allegedly "criminal" act which is in reality political in character. The fact that the Vietnamese government may criminalize certain conduct does not always render the applicant a fugitive from justice (rather than a refugee) and the punishment a criminal penalty (rather than persecution). For example, if an applicant attempted to flee the country once due to persecution and then was punished for that attempt, that punishment can be the basis for a claim for protection. Similarly, if the applicant has been denied a Ho Khau (family registration card) for political reasons, then the fact that the applicant now therefore suffers economically does not render him or her solely an economic migrant. The deprivation of food, housing, employment and education on the basis of religion, membership in a particular social group or any other of the five enumerated reasons in the refugee treaty can be persecution and give rise to a valid claim for protection. Alternatively, the Vietnamese government may make certain religious practices criminal; an applicant who is deemed a "criminal" for engaging in those practices may actually fear persecution on account of his or her religious beliefs. This point is well-illustrated by at least one case. The asylum seeker refused for religious reasons to help destroy a temple, thus subjecting himself to the threat of arrest presumably for the practice of an alleged "superstition." The Review Board found that he was in fact practicing superstition, and therefore was not being punished for his religious beliefs and was thus not entitled to protection.¹³

C. Adjudicatory Philosophy

Certain problems in status determination in Hong Kong relate to somewhat more intangible, though nonetheless significant, factors. The following changes should also be made.

14. The Review Board should not be hostile to asylum seekers, nor should it presume that all applicants are actually economic migrants masquerading as asylum seekers. While an applicant has the burden of proving that he or she is entitled to protection, the responsibility for discharging that onus rests with both the claimant and the decision-maker.

¹²See *infra*, pp. 28-29.

¹³See *infra*, pp. 27-28.

15. The Review Board should assume that AVS counselors are acting in good faith and professionally. Specifically, the Chairman of the Review Board should not accuse AVS counselors of "just put[ing] forward claims on behalf of applicants, not caring whether such claims be true or false and then trying to hide behind the Asylum Seeker when queried about any assertion which may have been made."¹⁴

16. The Review Board should recognize that, as constituted, the initial interview process will not often induce an applicant to put forth the most significant facts about his or her past. Thus, it should not view as inherently suspect those assertions which are presented for the first time in the submissions on appeal.

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.¹⁵ 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.¹⁶ 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 immigration officer, the Review Board summarily rejected the claim made in the AVS submission.

17. The Review Board should recognize that the time constraints under which applicants are required to operate may be onerous in certain circumstances, should liberally grant leave for additional time for submissions, and should not draw negative inferences from late submissions. It should not be skeptical of claims that are presented at "the eleventh hour" solely because of their untimeliness.¹⁷

18. The Review Board should recognize that immigration officers sometimes make mistakes. An applicant's assertion that he or she told

¹⁴Letter dated March 14, 1991, from Chairman Blackwell to the UNHCR Chief of Mission. See *infra*, pp. 21-22.

¹⁵See *infra*, pp. 22-23.

¹⁶See *infra*, pp. 20-21.

¹⁷See *infra*, p. 14.

the immigration officer information that was either not recorded at all or was recorded incorrectly should be credited unless specifically disproven. Thus, when an asylum seeker asserted that she did not tell the immigration officer some details because she was told only to answer questions, the Review Board should have accepted that her allegation may be true. Instead, it discredited the information and denied protection.¹⁸

If these reforms are not implemented, the screening and appeals process in Hong Kong will continue inevitably to deny protection to at least hundreds, perhaps thousands, of Vietnamese fleeing a well-founded fear of persecution upon return.¹⁹

III. The Hong Kong Screening and Appeals Procedure

Under a Statement of Understanding between the UNHCR and Hong Kong authorities, the screening and review of Vietnamese refugee status claims is to be carried out in accordance with the strictures of the 1951 Convention and 1967 Protocol relating to the Status of Refugees and the UNHCR Handbook.²⁰

Asylum seekers are given a brochure explaining the refugee status determination process; however, that brochure never discusses or explains the 1951 Convention definition of a refugee.²¹ It

¹⁸See *infra*, p. 27.

¹⁹Additionally, the Lawyers Committee reiterates the importance of the recommendations it has previously made for modifying the screening and review procedures in Hong Kong, not all of which pertain to case adjudication. See Uncertain Haven: Refugee Protection on the Fortieth Anniversary of the 1951 United Nations Refugee Convention, *supra* note 7, at 52 - 59.

²⁰See *id.* at 43.

²¹*Id.* at 44.

instead highlights voluntary repatriation.²² In theory, the asylum seekers are to receive pre-screening counseling by UNHCR legal officers. In practice, because only six legal officers are available for such a large population, very few of the asylum seekers are actually counseled before their screening interview.²³

Two Australian lawyers, under a Jesuit Refugee Service (JRS) funded project, have also provided legal advice to individual asylum seekers prior to the screening interview.²⁴ The JRS legal advisor explains the law, reviews the facts of the case with the applicant, and assesses its strengths and weaknesses.²⁵ A videotape for Vietnamese asylum seekers, developed by JRS, should help to disseminate counseling information to larger numbers of people. Alternatively, asylum seekers may retain private Hong Kong lawyers to assist in their cases.

Interviews are conducted by a Hong Kong Immigration Department officer, who is assisted by an interpreter.²⁶ The officer completes a questionnaire, assesses the applicant's credibility and makes a recommendation on the case.²⁷ These interviews are not attended by counsel for the applicant; most often, asylum seekers appear for the screening interview unrepresented, without ever having spoken to a lawyer, and with little information about the process and the standards for

²²*Id.* ("One-third of the brochure is devoted to an explanation of voluntary repatriation.").

²³*Id.*

²⁴*See id.* at 45 (describing the JRS project).

²⁵For a discussion of the difficulties in interpretation, *see* Lawyers Committee for Human Rights, Inhumane Deterrence: the Treatment of Vietnamese Boat People in Hong Kong, *supra* note 1, at 24, 32.

²⁶*See* Lawyers Committee for Human Rights, Uncertain Haven: Refugee Protection on the 40th Anniversary of the 1951 United Nations Refugee Convention, *supra* note 7, at 45 (detailing the interview procedure).

obtaining asylum.²⁷ Nonetheless, the applicant's performance during the interview is often dispositive. The interviewer's recommendation is reviewed by superiors, who make the final decision. If the final decision by the Hong Kong Immigration Department (HKID) is negative, the applicant is informed of the denial and of the right to appeal. No reasons for denial are given.

The fairness of the status determination interview is fundamental to the entire status adjudication mechanism.²⁸ Because the hearings are not public, it is difficult to assess objectively the fairness of the interview. In February 1991, the Hong Kong High Court held that an interview was so seriously flawed that a new hearing was warranted for the asylum seeker. R.v. Director of Immigration and Refugee Status Board ex parte Do Giau and others (1990 MP No. 570,622,623,624,636,931,932,933, and 934), Supreme Court of Hong Kong, High Court, Miscellaneous Proceedings (Mortimer, J.)). In that case, the immigration officer incorrectly wrote in his report that the applicant had worked for a government-run factory. This directly contradicted the applicant's assertion that the Vietnamese government had denied him identity papers because of his family's anti-Communist past and that, because of the denial, he had been forced to live an underground life.

As of January 1, 1992, HKID had completed screening for 29,939 people, of whom 4185 were screened-in (14 percent), including on family unity grounds, and 25,754 were screened-out (86

²⁷Legal officers of the UNHCR have access to the screening interviews in order to be able to monitor them, but they attend fewer than ten percent of the interviews.

²⁸See Lawyers Committee for Human Rights, Uncertain Haven: Refugee Protection on the 40th Anniversary of the 1951 United Nations Refugee Convention, *supra* note 7, at 48 (discussing the fairness of the interview process).

percent).²⁹

The review process begins when the applicant is notified of the denial. A copy of the HKID file is then given to UNHCR and to an appeals counselor working under the Agency for Volunteer Service (AVS), an independent agency under contract with UNHCR, so that the appeals counselor can consider assisting the applicant with the review.³⁰ A "Notice of Application for Review" must be lodged with the Review Board within 28 days of notice of the denial. Within the same period of time, a written submission must be given to the Review Board by the applicant and/or his or her legal representative.

The Review Board is headed by a former judge and is organized into panels, which are made up of two persons plus the Chairman (or a deputy chair). One member is titled "secretary."³¹ The general members are drawn from the civil service and the community at large. They have neither legal backgrounds nor any particular expertise with respect to refugee issues. A positive decision by one panel member suffices to overturn a negative HKID decision. As elsewhere in the region, the review is a paper review only; oral evidence is not given to the Review Board, although some asylum seekers are re-interviewed by board members. The only point in the process when the applicant may have counsel is when preparing the appeal; the application is otherwise unaided by counsel.

As of January 1, 1992, the Review Board had reviewed 10,508 cases involving 23,599

²⁹Hong Kong Government, Fact Sheet: Executive Summary (January 1992).

³⁰See Lawyers Committee for Human Rights, Uncertain Haven: Refugee Protection on the 40th Anniversary of the 1951 United Nations Refugee Convention, *supra* note 7 at 46 (describing the procedure for filing the intent to appeal).

³¹See *id.* (detailing the establishment and structure of the Review Board).

people. The Director of Immigration's decision has been upheld in 9879 cases involving 21,926 people (92.9 percent) and overturned in 629 cases involving 1673 people (7.2 percent). UNHCR has exercised its mandate on behalf of 732 individuals who have been determined refugees.³³

The shortage of counselors relative to the caseload has resulted in AVS appealing only 20 percent of the denied cases.³⁴ Some appeals counselors file many more appeals than others.³⁴ Indeed, two or three counselors tend to file the bulk of the appeals. The appeals counselor, who in principle is an advocate at the disposal of all denied asylum seekers, thus becomes to some extent a judge. If AVS does not take the appeal, the asylum seeker must prepare the appeal himself or herself without knowledge of the reasons for denial in the first place. Without AVS support, the appeal has little likelihood of succeeding.

The 28-day limit for filing an appeal imposes another obstacle that the asylum seeker must overcome and further handicaps AVS' efforts to represent all applicants. It is virtually impossible for an applicant to present a well-crafted appeal to the Review Board in this brief time. If the interviews before the immigration officer were more complete, more fair and less hostile, this restriction on the right to review might be less troubling. However, as the system now operates, the review process

³³Hong Kong Government, Fact Sheet: Executive Summary, *supra* note 29.

³⁴Approximately (but not more than) 16 AVS appeals counselors handle the appeals to the Review Board. In contrast, as many as 70 immigration officers conduct interviews and make a total of anywhere between 100 and 200 recommendations per week. Each recommendation resolves the claims in one file; each file may concern an entire family. Thus, the number of asylum claims addressed each week is much higher than the number of decisions made. The output of the immigration officials is expected to increase, perhaps to double. For 16 AVS counselors to file all of the ensuing appeals may pose an unmanageable task.

³⁵See Lawyers Committee for Human Rights, Uncertain Haven: Refugee Protection on the 40th Anniversary of the 1951 United Nations Refugee Convention, *supra* note 7, at 47 (discussing the AVS counselors).

may be an applicant's only meaningful access to adjudication. The strict time limit undermines the reliability of this review.

Should the applicant seek the assistance of the AVS counselor, that counselor may need as many as 10 to 14 days to obtain and review the file and to decide whether to file a submission on appeal. In those cases in which the AVS counselor does file an appeal, he or she operates under a severe time constraint, due in part to the overwhelming work load. When appeals are filed close to the deadline -- which the short time limit makes virtually inevitable -- the Review Board looks askance at the claims it raised. In one case, the Review Board noted that the AVS objections were not submitted until the day before the Board sat, "but nonetheless" took them into consideration. Although the appeal itself seemed to have been filed in a timely manner, the Board criticized the "11th hour" submissions and rejected the claims made therein.³⁵

In the vast majority of cases, the AVS counselor declines to file an appeal after reviewing the file. If the AVS counselor does not file the appeal, the asylum seeker is left with an abbreviated period in which to retain private assistance; the privately-obtained counsel has an even shorter amount of time in which to obtain the file, interview the asylum seeker, document his or her claim, and file the appeal. The fact that the asylum seeker is detained in a relatively remote area, without access to telephones and subject to time-consuming procedures before being able to meet with counsel, only increases the hardship imposed by the short time limit for filing the appeal.

³⁵The Lawyers Committee has copies of all the Review Board decisions referred to in this report. Each decision contains the applicant's name and VRD number (a code the Hong Kong government assigns to all cases). Out of concern for the safety of the applicants in the event they are repatriated (as at least one already has been), their names and VRD numbers are omitted from this report.

In some cases, the applicant ends up filing his or her own appeal. Presumably, this is done only after precious time has been spent trying to secure an AVS counselor or private assistance. The 28-day limit thus poses obvious difficulties.

The screening procedure in Hong Kong has been very controversial.²⁶ As in other parts of the region, worthy cases have been rejected, including Vietnamese who had been subjected to harsh re-education programs and forced labor measures. Amnesty International has criticized the procedure as having "critical flaws" and has made recommendations to enhance the procedure, including the provision of more systematic legal counseling and requiring the Review Board to state reasons for negative decisions on appeal.

The screening and review procedures have been the subject of some improvement, most particularly the decision of the Hong Kong authorities announced in 1990 to provide reasons to support negative decisions of the Review Board. Appeals taken by AVS counselors expand somewhat the resources available to boat people at that relatively late stage of the processing system. But much remains to be done to achieve fairness and reliability in the procedure.

IV. Analysis of Hong Kong Appeals Board Decisions

A. Governing Legal Criteria

The 1951 Convention relating to the Status of Refugees defines a refugee in Article 1 as a person who:

²⁶See Lawyers Committee for Human Rights, Uncertain Haven: Refugee Protection on the 40th Anniversary of the 1951 United Nations Refugee Convention, *supra* note 7, at 47 (detailing the controversy surrounding the Hong Kong screening and review procedures).

owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.³⁷

The definition itself does not require that the applicant prove actual persecution in his or her country of origin. Rather, he or she must possess a "well-founded fear of persecution" in the future. Often, it is difficult to establish the reasonableness of an applicant's fear. Documents are not readily available to substantiate the claim. Consequently, international standards require that the Review Board imbue an applicant with credibility,³⁸ unless specifically impeached, and that once credibility is established, the Board should resolve any and all doubts in the evidence in favor of the applicant.

The following review of the decisions of the Review Board reflects the ways in which the international standards have been not followed. The analysis focuses on the ways in which the Board too harshly judges the applicants' credibility, fails to give the applicants the benefit of the doubt and misapplies international refugee law criteria. The cases demonstrate the failure of the Review Board to address adequately the claims adjudicated.

B. The Decisions of the Review Board

1. Credibility Errors

The credibility of the applicant is a key factor when deciding whether to grant refugee

³⁷United Nations Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. (no. 2545), art. 1, para. A(2).

³⁸Handbook, *supra* note 6, at para. 202.

status. Although the UNHCR Handbook gives the decision-maker the discretion to determine the credibility of the asylum seeker, it also directs that the claim should be considered with leniency and reflects a presumption in favor of finding credibility.³⁹ The UNHCR guidelines recognize the difficulties that a refugee faces in articulating his or her claim, in proving it, and in showing that the allegations made are sufficient to create a well-founded fear of persecution. The guidelines thus counsel that the decision-maker endeavor to find the applicant credible.⁴⁰ While the applicant must prove his or her credibility, that burden should by no means be insurmountable. The applicant need not -- and often cannot -- definitely prove that his or her account is true; he or she need only "appear" credible.⁴¹ An applicant's failure to substantiate a claim should not impugn his or her credibility.⁴² An examination of Review Board decisions shows that the Board has switched that presumption -- it often virtually assumes that an applicant is not credible, unless he or she can prove

³⁹*Id.* at para. 202. ("Since the examiner's conclusion on the facts of the case and his personal impression of the applicant will lead to a decision that affects human lives, he must apply the criteria in a spirit of justice and understanding. . . ."). See also *id.* at para. 199. ("While an initial interview should normally suffice to bring an applicant's story to light, it may be necessary for the examiner to clarify any apparent inconsistencies and to resolve any contradictions in a further interview, and to find an explanation for any misrepresentation or concealment of material facts. Untrue statements by themselves are not a reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.").

⁴⁰See, e.g., *id.* at para. 39 (reminding the decision-maker that "a person would not normally abandon his home and country without some compelling reason"); *id.* at para. 41 (in assessing credibility, the decision-maker must consider "everything that may serve to indicate that the predominant motive for his application is fear."); *id.* at para. 46 (asking decision-makers to compensate for the fact that "[t]he expressions 'fear of persecution' or even 'persecution' are usually foreign to a refugee's normal vocabulary" and that refugees are often unable to describe their experiences in political terms.).

⁴¹*Id.* at para. 196.

⁴²*Id.* at para. 197. ("The requirement of evidence should thus not be too strictly applied in view of the difficulty of proof inherent in the special situation in which an applicant for refugee status finds himself. Allowance for such possible lack of evidence does not, however, mean that unsupported statements must necessarily be accepted as true if they are inconsistent with the general account put forward by the applicant.").

otherwise.

The UNHCR also mandates that "[t]he applicant's statements cannot . . . be considered in the abstract, and must be viewed in the context of the relevant background situation."⁴³ In a number of decisions, the Review Board judges the applicant's credibility solely on his or her outward demeanor and bases its decision on that judgment. It then often denies asylum because the applicant's demeanor somehow suggests lack of credibility. A decision that an applicant does not "appear" credible because of such highly subjective and narrow evidence is one in which the Review Board has failed to consider the applicant's statement and demeanor in context. Specifically, the Review Board must take into account the natural reluctance of someone who has faced or would face persecution to confide in governmental authorities.⁴⁴

The decisions of the Review Board reflect a profound distrust of asylum seekers. This distrust is seen in the Board's hostile and openly skeptical treatment of claims that were not raised in the immigration interview, but were instead first presented, after consultation with an AVS counselor, on appeal. This, too, represents the Review Board's tendency to allocate to the applicant an undue burden of proof as to credibility. It also shows no understanding of the fact that the first time an applicant learns of what he or she must show to establish a claim is almost always after consultation with AVS and thus only on appeal.

One case exemplifies the Review Board's tendency to impose a disproportionate burden of

⁴³*Id.* at para. 42.

⁴⁴*Id.* at para. 198. ("A person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-a-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case.")

proof as to credibility on the applicant. The applicant showed the Board a scar that she said was inflicted by the police. The Review Board did not find her credible, in part because she could not show conclusively how she was scarred.⁴³ In another case, the Review Board, after interviewing the applicant, discounts his claim of involvement in a small, anti-government organization. The Board stated that it asked the applicant questions about the organization and that it did "not accept the credibility of this aspect of the First Applicant's account." The Board also concluded that "in any case, it was clear that the organization was not much of an organization, and that its 'anti-government' activities were absolutely petty."

In a number of cases, the Review Board bases its rejection of the applicant's claim on the demeanor of the applicant during his or her interview with the Review Board. These decisions all conclude with the boiler-plate statement that:

[t]he Board has had the benefit of seeing and observing the applicant whose demeanor when questioned during the interview under Regulation 10 was poor and the Board found as a fact that he was not being truthful in his claim to refugee status; the Board did not believe him.

In such cases, the Review Board first places an inappropriate burden of proof as to credibility on the applicant, and then penalizes him or her without adequate explanation.

In a similar case, the Board, after interviewing the applicant, rejected his statement. Here, the claimant asserted, among other things, that he had criticized the government as "unfair and rotten." He testified that the police came to his house to arrest him; he escaped and departed Vietnam with his wife. The Review Board, without meaningful explanation, concluded that he did not criticize the government as stated and that he exaggerated his statements. His request for refugee status was

⁴³As discussed in note 35, *supra*, the names and VRD numbers of the applicants cannot be used in this report.

denied.

In one case, the Review Board disbelieved the applicant's story because in one instance the applicant claimed that his schooling was interrupted by a move to a New Economic Zone (NEZ) and, in another instance, that he could not finish school because there was no school at the NEZ. This alleged "discrepancy" led the Review Board to conclude that the applicant was not credible. It thus rejected his claims that he was restricted in his education because of his family background and that he had been sent to a NEZ. The Review Board denied status based on this overly harsh and conclusory determination of the applicant's credibility.⁴⁶

When evaluating newly-made claims, the Review Board is systematically skeptical of an applicant's credibility. Where the applicant's testimony before the Review Board and the immigration officer's report are inconsistent, the Board tends invariably to give credence to the immigration officer's report, not to the applicant. In one case, the testimony of the applicant before the Review Board and the investigative officer's report differed in a number of key areas. These facts included the year when the applicant was sent to a NEZ, the year when he lost his Ho Khau, and his knowledge of protests in which two people died. The Review Board simply discounted the applicant's statements without adequate explanation.

In another case, the Review Board did not accept the applicant's claim that the explosives he

⁴⁶This case also points out a larger problem. Many applicants claim that they were sent to a NEZ because of their family's past -- particularly because of former military service -- yet the Review Board fails to make the simple connection between the penalty and the "crime." It also discounts the significant punitive effects of being exiled to a NEZ: the harshness of the life, the dangers to health, the denial of access to education and employment. The Review Board often thus concludes that applicants who raise this claim are merely economic migrants, when in fact they may be refugees.

had on his person when stopped by the police were for the purpose of blowing up a bridge. The immigration officer claimed that the applicant told him that the explosives were for fishing purposes. The Board concluded that the applicant's demeanor was poor and that he had falsified his claim. The suggestion that the immigration officer had deliberately or inadvertently failed to record material information was summarily rejected.⁴⁷ The Review Board concluded that the investigative officer's report was accurate, and refugee status was denied.

Under the Hong Kong screening procedure, the applicant does not have access to legal counsel during his or her interview with the investigative officer. In a number of the cases examined, AVS lawyers made submissions to the Review Board on behalf of the applicants. Such a submission may constitute the first time an applicant has been given advice by someone representing him or her. However, only where this statement is similar to the report of the investigative officer does the Review Board accept its validity and consider it when reaching its decision. Where the AVS submission differs significantly from the investigative officer's report, the Board often discounts the statement prepared by AVS.

The Review Board's reluctance to consider information provided by an AVS counselor seems to stem from its distrust not only of the asylum seekers, but also of the AVS counselors. The Board's skeptical attitude toward AVS counselors was revealed in a March 14, 1991 letter from its Chairman, F.W. Blackwell, to the Chief of Mission for UNHCR. When an AVS counselor submitted an applicant's claim that his brother had been imprisoned following his voluntary repatriation, Chairman Blackwell admonished that:

⁴⁷Additionally, the Review Board failed to consider -- as it must -- that the applicant may have been reluctant to inform the immigration officer of his intention to blow up a bridge; that reticence should not be a basis without further explanation for rejecting a claim as not credible.

AVS must behave responsibly and not just put forward claims on behalf of applicants, not caring whether such claims be true or false and then trying to hide behind the Asylum Seeker when queried about any assertion which may have been made. . . . [A] duty is laid upon AVS to behave in a manner expected of responsible well disciplined legal counselors.

The UNHCR Chief of Mission replied in a March 21, 1991 letter that he was "disturbed" by the allegations against the AVS counselor and termed them "serious and entirely unfounded."⁴⁴

The ultimate victims of the Board's bias are the asylum seekers. As a result at least partly of this attitude by the Review Board, allegations that an applicant makes for the first time to the AVS counselor are met with a destructive skepticism. According to one Review Board decision, it is not "credible that the applicant would fail to provide the immigration officer with information of such importance to her claim for refugee status."⁴⁵ Yet, because the applicant receives no assistance in preparing for the interview, it is entirely conceivable that he or she will fail to raise many sensitive points -- particularly those which suggest that he or she had trouble in Vietnam.

Another applicant told the immigration officer that he had been drafted into the South Vietnamese army and served as a paratrooper, that he had undergone three months of re-education and then three months of forced labor as a result, that he was forced regularly to do unpaid labor,

⁴⁴See also one case in which the Review Board stated that it "finds that the truth is to be found in the Applicant's answers to the Immigration Officer . . . before he had the doubtful benefit of the assistance from AVS."

⁴⁵Here, the Review Board refused to accept the AVS submission regarding hardships and deprivations suffered by the applicant. See also one case where the Board rejected the claims submitted by AVS as "exaggerated" and instead relied on "impartially set out" findings of the immigration officer; another case where the Board decided not to interview the applicant and rejected his claim because "the reasons given by the AVS for the omissions and/or discrepancies were not accepted as credible"; a third case where the Board rejected the claims in the AVS submission as "contradictory, unsubstantiated and inconsistent" largely because they were not made to the immigration officer.

that his Ho Khai was confiscated and that he was arrested in 1982 for planning to escape. The AVS counselor, in her submission to the Review Board, added that the applicant had been forced to clear mine fields during his re-education and that he had been asked to relocate to a NEZ, refused to do so, and had been substantially and disproportionately fined and subjected to forced labor as punishment for his refusal. She further informed the Board that the applicant had been badly beaten during his 1982 detention and that, upon his release, his license to fish as a vocation was severely restricted.

The Review Board denied his claim. It described the new information provided to the AVS counselor as "[q]uite significant omissions if true." It noted that the applicant had responded negatively to the immigration officer's question as to whether he had been sent to a NEZ -- and seemed critical of his failure to volunteer that he had been asked to go and refused. The Board discounted the information provided for the first time by the AVS counselor and denied the applicant's claim.

The Review Board also refuses to accept the validity of AVS submissions where the applicant claims that the investigative officer failed to record material information. In one case, the Review Board discounted an AVS submission relating additional facts about the applicant's reporting of corrupt practices at a mine and his confrontations with management in his capacity as a workers' leader. Despite the clear relevance of such facts in determining whether the applicant feared persecution, the Review Board did not accept the statement submitted by AVS as credible. Rather, they discounted the applicant's testimony that he told the immigration officer about these events and that the investigative officer failed to record them. The only reason the Review Board offered for disbelieving the additional information was that "had the Applicant mentioned them at the screening interview, the Board does not think it possible that the [Immigration Officer] could have omitted to

record them."

Additionally, in another case, the Review Board refused to accept the applicant's statement that the immigration officer did not record certain material information. The asylum seeker was not interviewed by the Review Board, and no reason was given for rejecting the applicant's claim.

2. Failure to Accord the Benefit of the Doubt and Misapplication of Criteria

In the majority of the decisions examined, the Review Board concludes with a stock recital that "nor was there any or sufficient evidence before the Board which enabled it to find a doubt the benefit of which could be exercised in the Applicant's favor." However, in a number of cases, there indeed was a doubt the benefit of which could be exercised in favor of the asylum seeker. The Review Board's failure to accord the benefit of the doubt to the asylum seeker directly violates the international refugee law standards that Hong Kong is obligated to follow.

While the burden of proof is on the applicant to articulate a valid asylum claim, a decision-maker must assist the applicant in making and presenting his or her case.³⁰ According to international criteria, the applicant should receive the "benefit of the doubt" if his or her statement is

³⁰Handbook, *supra* note 6, at para. 196. ("Thus, while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner. Indeed, in some cases, it may be for the examiner to use all the means at his disposal to produce the necessary evidence in support of the application.")

coherent and plausible and does not run counter to generally known facts.³¹ Rather than giving the applicant the benefit of the doubt, the Review Board decisions evince hostility to applicants, and its decisions often reflect its unwillingness to accept any uncorroborated allegation as true.

While the Review Board generally and broadly fails to give applicants the benefit of any doubt, this failure often appears in three specific forms in its cases. First, an asylum seeker's fear of persecution may be based upon the experiences of other persons, including friends and family members, who are in a similar situation.³² The Review Board's decisions do not recognize that the applicant may have a well-founded fear of persecution because of the mistreatment of other similarly situated persons.

Second, a decision must be based on all relevant facts.³³ Rejecting a claim on account of a single fact may be distorted; rather, the entirety of the applicant's experience should be considered.³⁴

³¹*Id.* at paras. 203-204.

³²*Id.* at para. 43. ("These considerations need not necessarily be based upon the applicant's own personal experience. What, for example, happened to his friends and relatives and other members of the same racial or social group may well show that his fear that sooner or later he also will become a victim of persecution is well-founded.")

³³*Id.* at para. 41. ("It will be necessary to take into account the personal and family background of the applicant, his membership of a particular racial, religious, national, social or political group, his own interpretation of his situation, and his personal experiences – in other words, everything that may serve to indicate that the predominant motive for his application is fear. Fear must be reasonable. Exaggerated fear, however, may be well-founded if, in all the circumstances of the case, such a state of mind can be regarded as justified.")

³⁴*Id.* at para. 53. ("In addition, an applicant may have been subjected to various measures not in themselves amounting to persecution (e.g. discrimination in different forms), in some cases combined with other adverse factors (e.g. general atmosphere of insecurity in the country of origin). In such situations, the various elements involved may, if taken together, produce an effect on the mind of the applicant that can reasonably justify a claim to well-founded fear of persecution on 'cumulative grounds'. Needless to say, it is not possible to lay down a general rule as to what cumulative reasons

In many of the Review Board decisions, it is impossible to determine whether the Board based its decision on all of the asylum seeker's experiences. In other decisions, it is evident that the denial of refugee status was based on one event, not the totality of the applicant's experience.³⁵

Third, the Review Board often fails to apply the refugee definition correctly. All of these errors, in whichever form they appear, stem from the same problem: the Board's failure to find a valid claim when the applicant has raised serious concerns that he or she may face persecution in Vietnam.

In one case, the Review Board concluded that the applicant did not have a well-founded fear of persecution. The applicant's father, a civil engineer with the South Vietnamese government, was re-educated for one month and then imprisoned for three years without trial. Because of his family background, the applicant was denied university admission and was ineligible for a government job. Furthermore, the applicant was an active member of the Catholic Church, teaching bible studies and leading a choir. In 1988, he received threats from the authorities because he would not sign a petition condemning a canonization ceremony and would not relinquish his post as choir leader. After these threats and the arrest of his co-leader of the church choir, the applicant went into hiding and subsequently escaped from Vietnam.

can give rise to a valid claim to refugee status. This will necessarily depend on all the circumstances, including the particular geographical, historical and ethnological context.").

³⁵Thus, the Review Board often fails to recognize that "[w]here no single incident stands out above the others, sometimes a small incident may be 'the last straw'; and although no single incident may be sufficient, all the incidents related by the applicant taken together, could make his fear 'well-founded.'" *Id.* at para. 201.

In this case, the Review Board interviewed the applicant and accepted the validity of his statement. However, the Board concluded that he did not have a well-founded fear of persecution because of his religious beliefs. The decision noted that a bishop and other priests who refused to sign the petition had not left the country, and the Review Board reasoned that the applicant had no reason to flee Vietnam.

The Review Board used similar reasoning in denying another asylum seeker's claim. The applicant asserted that she had resisted the police during an Easter celebration, was arrested, and escaped detention. The Review Board found that "she was not a minister of the church" and thus "there was no reason why she should take a more active action than the priests of the church." Again, the fact that some clergy of the church did not suffer persecution is not a sufficient basis for finding that the applicant did not.

Even the Review Board's finding that an applicant was credible is not sufficient to ensure him the benefit of the doubt. Here, the applicant fled Vietnam after he was threatened with and evaded arrest. He had refused to assist with the destruction of a temple and organized a petition urging that it be saved. His actions, he told the immigration officer, stemmed from his religious beliefs that "the temple had mystic power," that those who damaged it received "punishment from God," and that he "dare[d] not" participate in its destruction. As a result of his refusal to destroy the temple, the Vietnamese authorities attempted to arrest him. He went into hiding and subsequently fled with his family. The Review Board found his story credible.

The Review Board nonetheless concluded that the applicant was motivated by his

superstitions, not his religious beliefs.⁵⁴ The Review Board thus found that he had not shown a well-founded fear of persecution based on religion.⁵⁷ Surely, if the applicant's entitlement to asylum depended on whether his deeply-held beliefs were "religious" or "superstitious," then the Board should have applied the criteria in a liberal fashion and not in the grudging fashion which led to the denial of his claim.

In yet another case, the Review Board concluded that the applicant did not have any well-founded fear of persecution despite her arrest and mistreatment by the police. The applicant was a devout Buddhist and the former wife of a military chief. She ignored a directive to perform unpaid labor on a Saturday when there was a scheduled religious ceremony. As a result, she was demoted at her government job. The Review Board implied that she should have changed the date of the religious observance and concluded that "[i]t was foolish of [her] to defy the order of the manager" and that "any management would take a serious view."

The applicant's house was then raided by the police during a religious ceremony. She was kicked in the face and detained in prison for almost five months. She showed the Review Board a scar on her arm, which she testified was caused when the police placed burnt paper on her arm; the Board found that "[t]hat of course is not conclusive evidence."

⁵⁴It is troubling that the Review Board based its finding in large part on the fact that the applicant said he "dared" not harm the temple. The words "dare not," the Review Board reasoned, suggested superstition, while words like "would not" are more consistent with religion. Given the problems with accurate translations, an asylum claim should not hinge on such evanescent elements.

⁵⁷In real terms, this distinction is one without a difference. The practice of "superstition" is a crime in Vietnam, and its practitioners face persecution on the basis of their beliefs. The Vietnamese government then characterizes some religious practices as "superstition," thereby criminalizing them.

The Vietnamese government had charged the applicant with:

(1) deliberately practising [sic] superstition; (2) deliberately gathering the crowd to conduct malign and nonsense propaganda against the state's lines; (3) deliberately protesting against cadres on duty and causing injury to them; (4) [and] falsifying C.V. in order to work for government agencies.

The applicant fled before trial and, in her absence, was sentenced to twelve months imprisonment.

The Review Board stated that it "did not regard the sentence as excessive."³⁴

The Review Board concluded that the applicant did not have a well-founded fear of persecution because of her religious beliefs based solely on the fact that she did not hold any position in the temple. Furthermore, the Review Board discounted her claim of police abuse because it believed that the police would not abuse someone who had been married to a military chief. The Board allowed these isolated facts to outweigh the total related experiences of the applicant. The benefit of the doubt was simply not given.

In another decision, the Review Board discounted any fear of persecution on the part 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.³⁵ 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.

³⁴One noted commentator, Ate Grahl-Madsen, concluded that "incarceration for a period of three months (perhaps less) constitutes 'persecution.' In other words, a person may claim refugeehood rather than subject himself to three months detention for political reasons." A. Grahl-Madsen, *The Status of Refugees in International Law* (1966) at 214. By that standard, a year in prison for the exercise of religious beliefs is persecution.

³⁵It is unclear from the decision whether the applicant's first arrest resulted from his aid to the Chinese.

In another case, the Review Board summarily refused refugee status. The applicant and his wife were dismissed from their teaching posts after an explosion at her brother's wedding; a staff member of the British embassy was injured. The authorities suspected that the applicant and his family were involved in the matter. After the explosion, the applicants were kept under surveillance by the authorities. The Review Board, however, determined that the applicants' motive for leaving Vietnam concerned their dissatisfaction with the school authorities and their dismissal from their teaching posts. Without further explanation, the Review Board concluded that they did not possess a well-founded fear of persecution. Furthermore, the Board rejected the AVS submission that the explosion was arranged by government authorities who disapproved of the relationship between a staff member of the British embassy and the applicant's family. The Review Board dismissed this argument solely because it "is unable" to accept such a proposition.

In another case, the Board clearly refused to give the applicants any benefit of the doubt. The applicant attempted to flee with his family in 1977, fearing reprisals for his family's military activity during the war. They were caught. His wife was detained briefly, and he evaded the authorities until 1983, when he was arrested and held for three years of re-education. Upon his release and because of their failed escape, the family's Ho Khau was confiscated; he and his wife thus had to work illegally. They feared that their illegal employment will subject them to further reprisals.

Additionally, the female applicant offered two further arguments in favor of being granted protection. She first asserted that because of her siblings' successful escape from Vietnam, her father was imprisoned briefly, tortured, and rendered incapacitated by that abuse. Since the applicant's flight, her mother has had her property confiscated. The applicant fears further repercussions should she return. Second, she left Vietnam because of the loss of the family's Ho Khau -- without which

her children cannot receive birth certificates or even basic education.

The Review Board reasoned that "the loss of his [sic] Registration Book was due to his criminal records." They thus considered the applicants to be economic migrants, fleeing only the dire economic circumstances occasioned by its loss. The Review Board never considered the political dimensions of the claim. The applicants first attempted to leave the country for reasons which they asserted were political; they were punished for that flight. They feared further punishment. Such assertions can be a valid basis for refugee protection.⁴⁰

In order to give the applicant the benefit of the doubt, the Review Board must acknowledge that when the Vietnamese government penalizes someone for having fled or attempted to flee, that penalty may be political persecution and not simply a criminal penalty. The Board must also acknowledge that when a person or family has been denied a Ho Khau for political reasons, and when they leave because of the severe economic consequences of that loss, their flight is that of a refugee.⁴¹

⁴⁰According to the Handbook: "The legislation of certain States imposes severe penalties on nationals who depart from the country in an unlawful manner or remain abroad without authorization. Where there is reason to believe that a person, due to his illegal departure or unauthorized stay abroad is liable to such severe penalties his recognition as a refugee will be justified if it can be shown that his motives for leaving or remaining outside the country are related to ... [his well-founded fear of persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion]." *Id.* at para. 61.

⁴¹An additional concern is the Review Board's failure to consider the wife's claim. The Board states only that "the motive of his wife was to follow her husband." However, she raised arguments for protection that depended on her arrest, her family background, and her continued suffering due to the confiscation of the Ho Khau. She is entitled to have these claims fully considered. To the extent that her claims are slighted because she is "only" the wife, that is impermissible gender discrimination. See also another case in which the Review Board never even addressed the wife's claim that she was persecuted for being Catholic.

In another case, the Review Board summarily rejected the validity of an applicant's fear of persecution. The asylum seeker, in response to a request by the General Secretary of the Communist Party, wrote two poems and drew one picture which were disapproved of by the authorities. One of the poems depicted the hard work of the coal miners; the applicant was criticized for it by his superiors. The drawing depicted Ho Chi Minh surrounded by children; Vietnamese officials criticized the drawing for making Ho Chi Minh look angry, thus tarnishing his image. A second poem described corrupt practices of public security officers. The applicant was questioned by the authorities, but not arrested. He lost his job and states that he was told he would be brought to trial. After this incident, the applicant and his wife fled Vietnam.

This applicant's claim was rejected by the Review Board, which concluded that the applicant "is one of those who thinks he has been unfairly treated and makes a mountain out of a mole [sic] hill." The Board stated that the applicant may have made sarcastic remarks about his superiors, but they were not expressions of political opinions. The Review Board concluded that any fear on the part of the applicant was not well-founded.

In the case of another applicant and his brother, the Review Board's cursory review and rejection of the claims is inconsistent with giving those applicants the benefit of the doubt. Their father had fought first against the French and then against the communists. One brother was killed during his service with South Vietnamese army; their mother and four sisters were also killed during the course of the war. After the war, their father was sent for re-education for six years -- a penalty which even the Review Board considered "quite heavy." While his father suffered in re-education camps, the remaining family members were exiled to a NEZ specifically because of their father's wrongdoing. In the NEZ, their movements were restricted, they were located in a war zone, and

they were denied a high school education. Another brother attempted to flee in 1986, was caught and sentenced to three-and-a-half years in prison. The Review Board simply and inexplicably concluded that the evidence before it was "insufficient." The Review Board consistently discounts the risks faced by asylum seekers and applies criteria in a grudging and narrow fashion.⁶²

VI. Conclusion

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

⁶²This theme runs throughout the cases. In another case, one applicant claims that he was involved in activity which the government disfavored and was caught trying to flee. The Review Board rejected his claim, reasoning that he would face no punishment worse than being branded an organizer of a boat trip. The Board failed to recognize the magnitude of the penalty involved for such a "crime" and the political context of the offense. Similarly, another applicant claimed that he had served with South Vietnamese army and would be punished for it; the Review Board accepted both of those assertions as credible, but decided that "there is no evidence that he would face excessive punishment." In another case, the Review determined for itself that the anti-government organization to which the applicant belonged was "petty" and that no harm would befall the applicant for his involvement with it. The Board did not consider that the Vietnamese government could treat such an organization as serious and punish the applicant accordingly.

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 thus misapplies the international criteria for deciding claims for refugee protection. Those Vietnamese refugees who are repatriated as a result of the Review Board's distorted decisions may be victims of persecution.

**Written Statement of Kim Ngo
Before the International Relations Subcommittee on
International Operations and Human Rights
July 27, 1995**

I came to the US ten months ago after six long years in Palawan Camp in the Philippines. I would like to thank the Subcommittee for giving me this opportunity to tell you about the corrupt screening system in the Philippines, of which I was a victim.

I began studying Catholicism in a monastery when I was 8-year old. In 1975, when the Communists took over South Vietnam, they closed down our monastery. I had to practice religion in secrecy. On August 15, 1985 I became a nun and started to preach in suburban areas.

In 1988, Catholic followers were to organize for the canonization of Vietnamese martyrs according to a directive of the Vatican. The Government opposed this and accused the martyrs as traitors. As a nun, it was my duty to explain to the Catholic followers that the Government's accusation was wrong. For that reason, on July 12, 1988, I was imprisoned. The authorities accused me of spreading anti-government propagandas. The guards physically and mentally abused me. I was released after three months, put under surveillance, and forced to abandon all religious activities. After this traumatic experience, I felt I could no longer competently carry out my religious duties as a nun and sought my Mother Superior's permission to leave nun-hood.

In February 1989, I was again arrested because of suspected involvement in an anti-communist organization. After three days of interrogations, I was released temporarily but was required to report back the following day. I took advantage of this temporary release to go into hiding and subsequently to escape from Vietnam in September 1989.

In the Philippines, I was screened by Ms. Rosario Teano. In the interview, Ms. Teano asked me only three questions:

- 1) Do you have any relatives overseas?
- 2) Are your relatives willing to sponsor you?
- 3) Do your relatives send you monthly remittances?

I was then dismissed.

A few days later, Nhung and Thong, two middle-persons working for Ms. Teano came to advise me to pay for my refugee status. Like many others in the camp, I had no choice but to pay. I handed to Ms. Teano 300 US dollars, which was all I had. Six months later I was denied refugee status. Nhung told me that Ms. Teano deemed the amount inadequate considering that I had relatives in the US. She wanted \$1,000 more.

With the help of a local friend, I sought the help of the Catholic Church. Cardinal Sin quickly interceded with the Government on my behalf. In October 1993, I was granted refugee status on appeal.

I consider myself fortunate. I know of many compelling cases whose refugee status has been denied. In these cases, the asylum seekers had neither the money to pay for their refugee status, nor the intervention of kind and influential persons like Cardinal Sin. Without Cardinal Sin's help, I would more than likely be facing forced repatriation today.

I earnestly urge members of Congress and the Administration to take prompt actions to help save the victims of unfair and corrupt screening system. Thank you.

PREPARED STATEMENT BY THE VENERABLE
THICH PHUOC SUNG (aka) Tu Van Le

International Operations and Human Rights Subcommittee
United States House of Representatives
Thursday, July 27, 1995

Mr. Chairman and members of the Committee, I thank you for the opportunity to be here today. As a victim of the screening corruption in Galang, Indonesia, I would like to share with the Committee my experience.

My secular name is Tu Van Le. My religious name is Thich Phuoc Sung. I am a Buddhist monk currently residing at the Khanh Anh Temple in the City of Rosemead, California. I was born in Vinh Long, a town in the deltas of South Vietnam.

Before the Fall of Saigon in 1975, I attended a Buddhist seminary and was preparing to be a monk. After 1975, I continued to undertake my religious studies and to practice my religion surreptitiously because of the crackdown on all religions by the communist regime. In order to practice and preach Buddhism, most Buddhist monks were encouraged to join a government-sponsored Buddhist organization. I refused to join because the organization is no more than a propaganda tool, and not a purely religious society.

In 1980, I signed a petition with my religious mentor, the Venerable Thich Hoang Phu, to demand the return of our Buddhist temple which was confiscated by the communist authorities. My mentor was arrested and I had to go into hiding after word leaked that the authorities were looking for my whereabouts. I was arrested several months later when I tried to escape by boat from Vietnam. The communist authorities charged me with subversion and leading a revolt against the Revolution. I was imprisoned for three months and served two years hard labor.

After my release in 1982, my identity card was taken away by the authorities. Although I still practiced Buddhism, I had to do so secretly for fear of further persecution from the communists. I led an itinerant life, residing at numerous temples. The security police constantly harassed the monks and checked their identity cards. Throughout this period, I made several unsuccessful attempts to escape from Vietnam. Again, in March 1987, I was arrested and imprisoned for attempting to escape from Vietnam. I was released by December of the same year.

I successfully left Vietnam by boat on April 19, 1990 and arrived to Indonesia on May 4, 1990. After three months in Galang, I had a preliminary interview with representatives of the UNHCR and subsequently with the Indonesian P3V office, the screening authorities in Galang.

Although I was severely persecuted by the Vietnamese communist authorities, I failed screening twice and unsuccessfully appealed to both the Review and Appeal Boards in the camp. While in Galang, I served as the head of the Buddhist order in the camp. There were nearly a dozen other Buddhist monks in Galang during my stay.

Ven. Thich Phuoc Sung's Testimony
Page 2

After the second appeal and rejection of my appeal in April 1993, I was informed by a follower that he has connections with an Indonesian who knew how to help with getting appeals approved for refugee status. About one week later, word came back that approval for my petition would cost \$7,000.00 U.S. dollars, since it was difficult to overturn previous decisions after the third appeal. After hearing this news, I had to make a decision to ask for loans and donations from fellow religious leaders, followers, and friends, in the camp and from overseas Vietnamese communities to come up with the amount demanded.

The \$7,000.00 dollars were given to this Vietnamese follower who in turn passed the money to the Indonesian connection and was finally given to the Indonesian screening authorities, who have the ultimate decision to screen me in after this third appeal. I believe that the Indonesian committee which has jurisdiction over my files was aware of the extortion and was involved in this misdeed. I was notified of the screening approval on August 1993 and left for the U.S. on March 1, 1994.

From my four years of detention in Galang and having served as the Buddhist leader in the camp, I solemnly attest to the following activities and observations in Galang during this period:

1. The screening process conducted by the UNHCR and Indonesian immigration officials are arbitrary and unfair. Although asylum laws are quite clear, application and interpretation of these laws during screening and interview sessions are haphazard at best and biased at worst.

2. Corruption and extortion, both in terms of money and sex by various UNHCR and Indonesian officials, are well known by the camp inhabitants.

3. Legitimate political refugees like myself and many others have been rejected asylum status because we do not have the money to bribe the Indonesian officials. The prevalence of demands by Indonesian immigration officials for "grease money" seriously hurt the credibility of the screening process.

4. Although the UNHCR is chartered to protect the interests of the refugees, this international agency is now co-opted by the host country and, on most occasions, have sided and white-washed the many misdeeds that occurred in Galang.

5. As a result of the unfair screening policy and the favoritism displayed toward those who can offer money and sex, there is a complete break-down on the credibility of the screening and appeal process. The camp inhabitants have little, if any, trust in the Indonesians and the UNHCR officials concerning screening and the results of this process.

Ven. Thich Phuoc Sung's Testimony
Page 3

6. Again, as a result of the unfair screening policy, there is now in Galang a desperate but dangerous attempt from the Vietnamese refugees to bribe Indonesian security officers to have free boat access and to escape to Australia.

7. Many Vietnamese detainees, in their depression and lost of faith in the system, have protested the injustices by various lethal means, such as self immolation, hanging, hara-kari, among others.

8. Most detainees now in Galang refused to be voluntarily repatriated to Vietnam until real reforms in the screening procedures are made and the perpetrators of the extortion are brought to justice.

Committee on International Relations
United States House of Representatives

Congressional Subcommittee of International Operations and Human Rights

Congressman Christopher H. Smith, Chairman

July 27, 1995

Testimony by Wa Vue on Behalf of Vue Mai

Testimony of Wa Vue before the Congressional
Subcommittee of International Operations and Human Rights
July 27, 1995

Good morning Mr. Chairman and members of the committee. I am Wa Vue and I live in Fresno, California. I am a naturalized American Citizen and my presence here is to represent my father, Vue Mai, the elected Hmong refugee leader of the camp of Ban Vinai in Thailand. He returned to Laos on November 10, 1992 under the auspices of the UNHCR, the U.S. Department of State, the U.S. Embassy in Bangkok and the Thai National Security Council. He was asked to help with on site planning for the return of refugees from Thailand and for economic development of sites selected for settlement by the returnees. I consider it a great honor and privilege to testify before you on the repatriation program. Additionally, I am grateful for the opportunity to tell you about my father's invaluable contribution to this program and how the impact of his disappearance affects my immediate family and my relatives at large.

My father Vue Mai was born on May 3, 1937 in the Xiengkhoung province of Laos. After completing the sixth grade, he entered a military communication training in 1953 to serve in the Royal Lao Armed Forces. From 1960 to May 1975, he served both the Laotian Army and the CIA in the fight against North Vietnamese and Pathet Lao communist forces. When Indochina fell to the communists in 1975 as a military Major he had no choice but to take the road of exile with thousands of fellow Hmong to Thailand.

In addition to his position as elected refugee leader of the Ban Vinai camp in Thailand, he also became a high ranking member of the United Front For The Liberation of Laos a resistance movement that tried to overthrow the communist Laotian government. In 1990, personnel from the U.S. Embassy in Bangkok and the United Nations High Commission for Refugees met regularly with him and persuaded him to support the repatriation program for Hmongs in Laos. Once he was persuaded, the U. S. State Department granted a visa to my father to make an official visit to Washington, D. C.

In Washington, Vue Mai met with Officials of the State Department such as Sarah E. Moten, Deputy Assistant Secretary for Refugee Assistance; Doug H. Hunter, Office of Policy and Budget Coordinator; and Robert Funseth, Senior Deputy Assistant. These officials encouraged Vue Mai to lead the refugees back to Laos. They also promised financial assistance to the returning refugees for economic self-sufficiency in Laos. In doing so, he was to drop all participation in the resistance movement.

Following the collapse of the Soviet Union and based on his contacts with Thai military units and the Thai National Security Council Chief General Charab Kullavanijaya, and the U.S. Embassy officials in Bangkok, Vue Mai felt that continuation of the resistance movement was unnecessary.

After his return to Thailand, Vue Mai continued again to work closely with high level ranking Thai officials, UNHCR and the U.S. Embassy officials in Bangkok. While living in Bangkok, he continued planning the return of his people, staying in close collaboration with the Thai authorities, UNHCR and American officials, who had convinced him that it was safe to return to Laos. On November 10, 1992, Vue Mai was escorted by a State Department representative, Thai and UNHCR officials on the ferry ride back across the Mekong river to Vientiane, Laos, along with trucks loaded with basic supplies destined to the returnees. That was a day of plenty excitement and promises; Vue Mai always wanted to become a role model for his people. Believing that Laos has changed with the new situation of the world, Vue Mai had never doubted that he would disappear in the exercise of his pioneer duty...

In Vientiane, Laos, he met with UNHCR, U.S. personnel, and Lao government officials regularly to discuss possible resettlement sites for the Hmong returnees. Sometimes he expressed frustration about the slow progress of the repatriation implementation and how difficult it was to find and to obtain appropriate lands for the refugees. According to Mrs. Vue Mai, a resident of Fresno, California, who paid two visits to Vientiane, her husband's activities consisted of only contacting the US Embassy, UNHCR, the Lao Ministry of Foreign Affairs, the Interior Ministry, and the Welfare and Labor Department for business related to the implementation of the Tripartite Agreement of Luang Prabang signed by Thailand and the UNHCR with Laos. Vue Mai was very careful not to associate himself with any other organizations that could damage his reputation. For "protection" and "safety" the Ministry of Interior assigned a Hmong police officer to Vue Mai to facilitate communications between him and the Lao authorities. His activities were somewhat controlled, and had he maintained any relationship with the resistance in or outside Laos, the Lao intelligence service should have known and should have been able to provide evidence since his disappearance almost two years ago.

Mr. Chairman and members of the committee, please allow me some minutes to read a reliable assessment of Vue Mai's activities by Mr. Soyasith L. Ya of Sacramento, CA who had the last opportunity to meet with Vue Mai in Vientiane about the repatriation program just two weeks before his mysterious disappearance.

" Following Vue Mai's return to Laos and recognizing that sooner or later thousands of Hmong refugees will have to repatriate; I felt that a meeting with Vue Mai would give me first hand information on the implementation of the repatriation for the Hmong.

The first meeting took place at the Hotel Saysana where I stayed. Vue Mai gave me a general overview of the repatriation program and he told me about his activities in Vietiane since his return... The obstacles that Vue Mai encountered in the land appropriation for the returnees were first due to the Lao officials at the provincial levels and secondly to the local population who did not have a good understanding of the repatriation program and who tried to claim that all the lands considered for the returnees belong to them from generation to generation.

My last meeting with Vue Mai was our visit to the U.S. Embassy in Vientiane. Because of a change of embassy staff; I had to reintroduce Vue Mai to the embassy's new first secretary, Mr. Frank Light, who just arrived and didn't have enough time to become familiar with Vue Mai's special leadership role in repatriation. Vue Mai mentioned his disappointment due to the lack of material and financial support, and said that he might join his family in the U.S., which was his only source of financial assistance. We both wished the U.S. government would consider allowing the maximum of Hmong refugees in Thailand to be reunited with their relatives already in the U.S. Even though I acknowledged that the majority of Hmong were having difficulty resettling in the United States and adjusting or assimilating into the mainstream of American Society. "

His decision to return to Laos was a risky one; but he took it without hesitation. He believed that lending support to the repatriation program would provide more alternatives to alleviating the refugee situation in Thailand and in the U.S. He said that the winners have to be the ones who can bring peace, social justice, and economic prosperity to the people.

Since my father, Vue Mai, has disappeared, all my sisters, brothers and my mother and I are affected mentally and physically. I would like to ask the U.S. government, concerned individuals and humanitarian agencies to take strong action on the Lao government for an official answer of his disappearance in Vientiane. After hearing many conflicting rumors but no evidence on his whereabouts, dead or alive; we are requesting a private investigation by the American Government.

My mother made a trip back to Laos exactly one year ago and received very little cooperation from authorities in her extensive search for my father. She has felt devastated ever since his disappearance. The worry, frustration and anxiety she has experienced has made her grow thin.

My family believes that the United States, the Thai Government, and the UNHCR must assume some responsibility for the disappearance of my father who sacrificed all his personal life for the repatriation program. Please consider Vue Mai as a man missing in action and take the necessary measures to locate him.

When I testified before Congress on April 26, 1994, I made a plea on behalf of the 450 members of my Vue clan in the camp of Napho who did not want to be forced to repatriate back to Laos. My plea was ignored and most of the clan members are now living a frightening existence back in Laos.

We feel very disappointed because the Vue clan had expressed concern and said that their lives were a nightmare ever since the news of my father's disappearance. All of them changed their decision regarding repatriation and wanted to resettle in America once they realized how dangerous Laos had become under the Communist Dictatorship. Most of them were well qualified to come to the United States and we submitted a list of their names to the UNHCR and U.S. Embassy in Bangkok in November of 1993; shortly after my father's disappearance.

The reports we receive from them now are very distressing. They complain that Laos is a closed society and communication is difficult. Recently they wrote me that they are frightened for their safety due to the fact that they are related to Vue Mai. Apparently, all communication with the outside world is censored and I fear that they are only able to barely hint at the miserable existence they are living in Laos. I would like to make a plea on behalf of my Vue clan members for the State Department and UNHCR to attempt providing close supervision of my people in terms of safety.

I want to thank the Committee on Foreign Affairs for their letter to the Department of State last November in regard to information received about Vietnamese and Laotian authorities capturing my father for interrogation. I hope that my father is not enduring the same kind of tortures that Senator John McCain has described. My family worries constantly; especially now that there is so much discussion about MIA's and POW's.

I thank this Subcommittee on International Operations and Human Rights for giving me an opportunity to speak on behalf of my father and my people. I am well aware of all your dedicated efforts and my family extends their deepest gratitude.

Respectfully submitted,

Wa Vue

Summary of Mrs Vue Mai Trip to Laos
July 30th, 1994 - August 20th, 1994

The purpose of my trip to Laos was to find the truth with regards to my husband Vue Mai who disappeared on September 11th, 1993 in Vientiane.

On July 30th, 1994, at about noon Vientiane time, I arrived at Wat Tai airport. Mr Frank Light, the First Secretary of U.S. Embassy to Laos, was at there to take me to the Ekalat hotel where I spent two nights.

On August 1st, 1994, at 8:50 am, Mr Light and I met with U.S. Ambassador Victor Tomseth at the American Embassy. I discussed with him the purpose of my trip and raised question about my husband's disappearance. He reported that he had continued to ask information from the Lao government officials about my husband's situation, but he had not received any formal information yet. At 10:00 am, we met with the UNHCR officials, Mr Michael Zwack and Mrs Suzuki at their office in Vientiane. Both of them said that they had not received any information from the Lao Government on my husband either. They told me that the Lao government would be willing to report any new information at their disposal, and discuss the matter with me during my stay in Vientiane. We then met with Mrs Latda Pathammavong (International Organizations Department, Ministry of Foreign Affairs) at 11:00 am at her office. She reported the following information:

1. The Lao government did not have any involvement regarding my husband's disappearance.
 2. The Lao government had evidence that my husband was still in contact with the resistance, and their members had come to contact my husband in a regular basis.
 3. My husband had a relationship with another woman.
- During the meeting, I asked Mrs Latda to arrange meetings with the following Lao officials:
1. Ministry of Interior officials.
 2. Ministry of Welfare and Labor officials.
 3. Mr Phoumany (Hmong under cover policemen assigned to my husband).
 4. And if possible the Prime Minister.

She promised me that she would arrange the above appointments. I waited for 18 days and continued to follow up with Mr Light's phone calls. Those meetings were never arranged.

On August 5th, 1994, at 4:00 pm, Mr Phoumany called me at my relatives'. He told me that he would meet me, but would discuss only problems not related to my husband's disappearance, and without any witness. I then replied that I needed the UNHCR or

U.S. Embassy officials to witness the meeting and wanted to discuss about my husband's situation. He refused and rejected the meeting.

On August 18th, 1994, Mrs Latda called me to confirm that she had arranged an appointment for Mr Light and I to meet with the Ministry of Interior officials on August 19th, 1994, at 9:30 am at her office. We waited more than one hour without anyone showing up on the day of the appointment.

During my 18 days in Vientiane, I had met with relatives, friends, and neighbors to discuss my husband's disappearance. I was able to discover the following information:

1. One of highest ranking Lao government official (Did not want to release his name for security reason) had told me that it was certain that the Lao under cover police agency arrested my husband. He also mentioned that the Lao government may have taken my husband to Ban Thabot and Ban Hai along the way to Patsan. He added that my husband was kept under close supervision by the Lao undercover police, called "Fifty-Three", since he arrived in Vientiane, and his arrest was denied by other Lao government officials.

2. One of the tri-cycles taxi driver, told me that the tri-cycles taxi driver that took my husband to his arrest, had been relocated by the Lao government to an unknown place shortly after my husband's disappearance.

On August 18th, 1994, Mrs Latda promised to give me all the evidences she has about my husband's contacts with the resistance group at 9:00 am August 19th, 1994, at her office. I waited at the appointment for an hour without her showing up. I received no information.

On August 18th, 1994, I met with Ambassador Tomseth and Mr Light at 12:00 noon. I shared with them the information that I had discovered. I appreciated for their help and support given to my trip, and confirmed the date of my return to the U.S.

On August 20th, 1994, I left for Bangkok, Thailand. There, I tried to meet with the Thai National Security Council officials, but I did not get a response from the organization.

On August 25th, 1994, I left Thailand for the U.S. and arrived in Fresno, California in the same date.

Mrs Vue Mai,

ADDENDUM TO TESTIMONY 1

During my trip to Thailand in October 1993, I met with my relative. He told me that he would not be able to continue to help me with the investigation because the Ministry of Interior of the Lao government(LPDR) was putting pressure on him to keep quiet.

In fact, one of the neighborhood chiefs who had been friendly with my father was accused of doing a poor job and he might be fired soon. My cousin wrote to me several times after my October visit because he was afraid the government was listening in. He told me that an Official from the LPDR had visited him and told him to stop making trouble about Vue Mai.

Attention from the State Department may have caused the pressure on my relative.

I told him we need to be very careful any time we send a letter.

During my October trip, Mr. Edward Wilkinson at the Bangkok Embassy wrote a letter for me to the Lao Embassy asking them to grant me a VISA. They did not grant me a VISA.

Despite the help from the State Department, neither my mother nor I have had any cooperation from the Lao government. In addition to the lack of cooperation, they have also put pressure on my cousin when he tried to help with the investigation.

I have attached a copy of a letter from Dennis Grace, JVA to Edward Wilkinson, Refugee Counselor U.S. Embassy, Bangkok which describes the situation my relatives suffered at Ban Napho.

ADDENDUM TO TESTIMONY 2

Joint Voluntary Agency

U.S. INDIVIDUALS REFUGEE RESETTLEMENT PROGRAM (THAILAND)

To: Edward Wilkinson, Refugee Counselor
 From: Dennis Grace, JVA Thailand *DG*
 Date: February 27, 1995
 Subject: Allegation of intimidation of Yue clan in Ban Napho camp

URGENT

I received a phone call this morning, from Yue Ma, a young Hmong woman known to Embassy officials and others since she appeared in a photograph in a December 14, 1989 Bangkok Post story on the Lao resistance. Speaking on behalf of Yue Wa Li, the leader of the Yue clan in Ban Napho camp, she passed the following report.

Yesterday afternoon, the 26th of February, over twenty guards and four policemen rounded up the Yue clan members whose names are on the scheduled 28 February repatriation movement to Khammouane province, Laos. Over a nine hour period, ending at approximately midnight, the group was subjected to severe intimidation. Heads of families were called into a room one by one and coerced into putting their thumb prints on a piece of paper which declared their agreement to return to Laos on the 28th of February.

Yue Wa Li, his family, and a few others, including Yue Ma, begged to be excluded from the repatriation movement, stating again their fear for their safety in Laos. At the end of the session, this small group was told that they would be leaving camp by bus on the 28th, but that their bus would take them to Sikhui camp, where they would be interned.

COMMENT. During the past month, Yue Ma had called me on two occasions to ask if the American Embassy was going to take action on Yue Wa Li's repeated requests for US resettlement for his group and to report that the UNHCR and the Camp Commander's staff was putting a great deal of pressure on the group to leave for Khammouane on the appointed day. She claimed that the UNHCR officials, lead by Erna Hendrikson, had told the Yue group that if they didn't go to Laos on the 28th of February, they would lose their refugee status and would no longer be of concern to the UNHCR. She reported on one occasion that Erna had shouted at Yue Wa Li during an angry session because he wanted to take his name off the movement list. A call from this office to Khun Prachuap of the UNHCR team in Ban Napho after Yue Ma's first telephone contact didn't provide much information. He was obviously frustrated, and under a lot of pressure.

The substance of today's call, however, was disturbing, and if true, a very serious matter. I think that the allegation should be investigated. I expect the UNHCR to say that there was no problem, but at least it should be possible to find out whether the people were rounded up yesterday during the period from three in the afternoon until midnight. It should also be possible to ascertain whether there were a number of guards and police involved. Yue Wa Li, Yue Ma, and others should be interviewed in an attempt to determine whether there is truth to today's allegation of intimidation of the Yue clan in Ban Napho camp.

27 FEB 1995

2 AND MIGRATION AFFAIRS OFFICE • REFUGEE SECTION
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STATEMENT TO HOUSE INTERNATIONAL OPERATIONS
AND HUMAN RIGHTS SUBCOMMITTEE

Congressman Chris Smith, Chairman

July 27, 1995, 10:30am

BY TER MOUA,

Hmong Refugee from Laos

Mr. Chairman, members of the committee, my name is Ter Moua. I am a Hmong refugee who fled the communist regime of Laos in 1983. I am still developing my English, but I would ask that you bear with me this morning as I try my best to share with the committee what I know about Laos and the Hmong refugees.

Since arriving in the United States in 1988, I have developed great respect for this nation--for its freedoms, for its strength in the world, and for its support for global freedom. In truth, however, my respect for this country goes back much further. Twenty some years ago, as a young boy in Laos, I remember watching my father and my uncle who went to war to help the United States in its effort to defend the freedom of Southeast Asia. At about nine years of age, I can remember that the communist North Vietnamese Army shelled our town. They destroyed our house. They killed our animals. And they destroyed our lives. We were in hiding in bunkers that night, and it was on this night that I fully realized that the North Vietnamese and Lao communists intended to take my country and kill my people. Unfortunately, my fears proved correct. My country fell to communism in 1975, and since then the story of Laos has been one of death, destruction, and suffering for my people.

Growing up in Laos around this war, my father always told me that the United States was a great and free country, and that they would help us. And I also know that the United States--like my own people --paid a great price in trying to keep Laos free, so it is a great honor to be able to speak with this committee this morning, and especially to share with you the ongoing suffering of my people, many of whom remain under the

brutal communist regime in Laos and others who have fled to Thailand, where they are in refugee camps, in prisons, and in hiding.

Mr. Chairman, I have traveled here today from Eau Claire, Wisconsin to ask for the help of this great nation in saving the lives of some 40,000 of my countrymen who face certain persecution or death if they are forced back to Laos from refugee camps in Thailand. Many of these Hmong in Thailand are combat veterans who fought side-by-side with the Americans against communist forces. And I must say, Mr. Chairman, that I am here this morning with fear: Some of my family remain in Laos, and the communist government in Laos has proved over and over again that it will persecute and kill those who talk too much, and even the families of those who talk too much. I have seen many of these people disappear, and we never learn what happens to them. No one ever investigates their disappearance because people know that if they try to find these people, they too will disappear.

But I have thought about all of this, and while I am here this morning filled with fear, I also am convinced that I have no choice but to bring the truth to this committee and to this Congress. I do this because I care greatly about my people, my friends, my family, my brothers, and especially my mom--who have faced forced repatriation and death at the hands of the communist regime in Laos. I speak the truth this morning because I know that without the truth being heard in this Congress, we have no hope that the killing and suffering will stop in Laos.

Mr. Chairman, let me tell you the truth about what is happening to my people and my country:

First, I know that the United Nations and even some officials in the American government have told Congress that no Hmong people in Thailand have been forced back to Laos. Mr. Chairman, this is not true. Like many other Hmong people, my family of nine people, including my mother and my four younger brothers, were forced back to Laos in April 1994 by the United Nations and officials from Thailand. My mother was a widow of a Hmong combat veteran who fought with the Americans under the command of General Vang Pao of the Royal Lao Army during the Vietnam War. In 1975, the communist soldiers tried to capture my family and me, but we escaped and fled to the jungle where we hid and did our best to avoid being killed by the communists.

My father died in 1989, several years after chemical attacks from the communist forces, leaving my mother a widow with six children. In 1991, my mother and brothers were approved for resettlement in the United States, but three years later, United Nations and Thai officials forced my family and several hundred other Hmong onto buses for Laos. They were told: "You go back to Laos, or we will beat you, torture you, and put you in jail." My family believed they had no other choice but to board this bus. But the fact is that my family did not want to return to Laos. They fear living under communism. But they were forced to return. No matter what this committee is told by the United Nations or others, it needs to know that the United Nations has been forcing hundreds and hundreds, possibly thousands, of Hmong back to Laos. Once in Laos, Hmong have disappeared, and some --like my brother--have been killed by the communist regime. I have always believed that the United Nations should protect the lives of the Hmong, but

the truth is that it is not protecting the Hmong and it is forcing Hmong back to one of the world's worst communist governments.

A second fact that this committee needs to know is that the United Nations tells the Hmong that once they are forced back to Laos, they will be safe, given food, and given a place to live. Mr. Chairman, this also is a lie. The truth is that, once in Laos, the Hmong are singled out for persecution by the communist regime. In the case of my 25-year-old brother Chao, he was denied food and went out to get food for his one-year-old baby. But my brother never came back. Several days later, my mother went to the place where my brother was killed. There, she found my brother beaten to death. Some of his teeth were missing, and his face was badly beaten. She asked the authorities what happened to him, and she was told that he had died in a fishing accident. Mr. Chairman, the water in that river was knee deep. No one dies in fishing accidents in this kind of river, and no one in that village has any doubt what happened to my brother: He was killed by the communists only 18 days after he was forced back to Laos.

So once again, Mr. Chairman, the United Nations has lied to the Hmong and it has lied to this Congress. Laos is not a safe place for the Hmong. The United Nations tells Congress that it monitors and protects the Hmong in Laos. Mr. Chairman, my family in Laos never even saw any United Nations officials. If the United Nations says that it is responsible for monitoring the safety of the Hmong, let me ask you this: Why is it, Mr. Chairman, that no United Nations official--not even one, as far as I know--ever came to my family's village to investigate the murder of my brother.

We need such security, Mr. Chairman, because there is no freedom in Laos. There is no democracy in Laos. And the communist regime in Laos has the power to do anything: To persecute, to kill, to do whatever it wishes, particularly against ethnic minorities like the Hmong. The communists hate the Hmong who fought with the Americans and, because of this you will find that of the 40,000 Hmong in Thailand, almost all Hmong are very scared to return to Laos. Laos is not safe for the Hmong, and the Hmong know it. The rest of my family is so terrified of the communist regime in Laos that they have fled to a Buddhist temple outside of Bangkok, Thailand, where one Buddhist monk is protecting about 18,000 Hmong who face persecution if returned to Laos. Many Hmong continue to flee Laos for Thailand, and until there is democracy in Laos I think that the Hmong will continue to flee.

There is something else that the United Nations has wrongly told Congress. They have told you that there is no corruption in processing refugees by the United Nations and Thai officials. Again, Mr. Chairman, you have been lied to. I spent time in these camps, and my family has spent time in these camps, and there is a lot of corruption with the refugee process. In the case of my family, I was told by my family that if they were going to be granted refugee status, they would need to pay about \$2,000 to the Thai officials who worked in the refugee camps. I wanted my family to get back their refugee status, so my brother and I sent this money to save their lives. But the Thais took this money, and sent my family back to Laos anyway. Mr. Chairman, I want to ask you and I want to ask this committee: What will the United States do to stop this sort of corruption? The American people support the United Nations, they support the refugee camps in Thailand,

and--while the United Nations may tell you differently--any Hmong knows that this system is very corrupt and very dangerous.

Mr. Chairman, I trust this committee to do the right thing for the Hmong. I know that this Congress has done many great things for freedom around the world. I was fortunate to be in this country and to see the Berlin Wall come down. I was very happy when communism collapsed in the Soviet Union, and I know that these things did not happen by accident. They happened because America supported freedom around the world. Now, Mr. Chairman, I ask that you turn your attention to Laos, and I would like to conclude by offering just a few recommendations on how this Congress can support freedom in Laos and how it can make sure that Hmong refugees in Thailand are united with their families in the West, and that they are not returned to communism.

First, this Congress should reject any proposal to continue American foreign aid to the government of Laos. This aid is helping to keep this horrible regime in power, and, on behalf of the Hmong, I ask that you stop aiding this regime. Stop sending the support to the communists that allow them to continue their abuse of the Hmong and the Lao people. I was interested to read that this Congress is thinking about cutting foreign aid to countries around the world. Mr. Chairman, Laos is a good place to start. I know America and I know Laos. This great Congress, this great country should have nothing to do with a government that kills its people, that persecutes its people, and that rejects everything that this country believes.

Second, this Congress must realize that the United Nations has not and I suppose never will admit: The refugee process in Thailand is totally flawed. It is corrupt., and it is

unfair. This system is supposed to protect and assist the weak in their moment of need is instead hurting these people that it is responsible for helping. Mr. Chairman, the time has come to save the Hmong. The Hmong are friends of the United States. Many of them lost their families and friends fighting with America. They look to this country as their only hope now, and so I would ask this Congress to provide them with what they need. We fought for America. We fought for freedom. Now we need this country to fight for us. Do not allow the Hmong to be returned forcibly to communism. Like most Americans, the Hmong hate communism. But, Mr. Chairman, the Hmong are being sent back to it. They are being repatriated, and this must be stopped immediately if the Hmong are to be saved. Let the Hmong in the camps in Thailand, in the Buddhist temple outside Bangkok, and those who are in hiding or who have been detained should be allowed to be resettled in the West. The Hmong deserve this, and this Congress should ensure that this is done.

Finally, I would ask that this committee and this Congress remember Laos. Our country is not now free, but together we should do everything we can to bring democracy back to Laos. I would ask, Mr. Chairman, that this Congress assist in making this happen. We Hmong have paid a big price for freedom, and I would like to thank this sub-committee for allowing me to testify on behalf of my brother who was murdered by the communists in Laos and my mother, who I love so very much but who I have lost because she was forced back to Laos when she should be living with me here in this country.

I know that this committee will hear from many official voices--from the United Nations, from groups working with refugees, and from this government. The Hmong are

great friends of America, but we regret that many of these individuals are misguided about the Hmong and the situation in Laos. Some of these people have many more credentials than I, Mr. Chairman. But for them, their work is only a job. For me, this has been my life--and being here today is not a day at the office; it is a very sad event. I am here today as a victim of communism. And my family in Laos has been a victim of a flawed refugee process that many these officials will tell you is working. Mr. Chairman, it is not working. People are dying. My brother already has died, and I know that it will continue unless this committee does what I hope it will do: This committee must take action.

Thank you, Mr. Chairman.

COMMITTEE ON INTERNATIONAL RELATIONS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON D.C., 20515

Subcommittee on International Operations and Human Rights

Christopher H. Smith, Chairman

July 27, 1995

Testimony of Tou Ger Vang
Fresno, CA

Hearing on the Comprehensive Plan of Action

Testimony of Tou Ger Vang to the Committee on International Relations, Subcommittee on International Operations and Human Rights Hearing: the Comprehensive Plan of Action, July 27, 1995

Mr. Chairman, Members of the Subcommittee:

Thank you for giving me the opportunity to speak in our great nation's capital on behalf of my people in danger in Thailand and Laos.

My name is Tou Ger Vang. I am 45 years old. During the Vietnam War I was a Lieutenant in the Royal Lao Army, Military Region II, under General Vang Pao. I joined the military when I was 12 years old. After the Pathet Lao (Communist Lao) soldiers led by North Vietnamese officers took over my village, I became a student/soldier at Long Chieng base: we would study in class, go out to fight the enemy when necessary, and then return to our schoolbooks. At that time my father was vice-District Chief in Navang, Muong Vangxai, Xiengkhouang Province; during the Japanese occupation, my father had served as a soldier with the French forces.

In 1961 the Hmong accepted a sacred role with the American advisors in Laos. We joined with them to fight against the Vietnamese communist invaders who had run us out of our villages. We joined with them to defend our infant democracy in Laos. We joined with them to defend freedom in Indochina. We had a sacred role and we were very effective.

The Hmong intelligence and combat Special Guerrilla Units (SGUs), trained by U.S. advisors, repeatedly disrupted the Ho Chi Minh Trail complex, costing the enemy billions of dollars in military equipment and supplies. SGUs rescued hundreds of downed U.S. pilots, saving them from torture and death in Vietnamese jails and prisons. SGUs fought Communist ground forces, capturing the strategic Plain of Jars and protecting American personnel. SGUs protected installations that allowed all-weather, all-hour interdiction against the enemy. Hmong SGUs inflicted fifteen years of heavy damage on the enemy. We were very effective--we became the Vietnamese and Lao Communists most feared and hated enemy.

In the fifteen years of joint combat with the Americans, Hmong military casualties were more than 35,000; we cannot estimate how many thousands of our civilians were killed during the war.

After the Communist takeover in 1975 we were hunted and killed by order of the government in Vientiane. These orders to exterminate us were broadcast over the government's radio station. Hmong trying to flee over the Hin Heup Bridge into Thailand were slaughtered. This was the beginning of the Communist revenge that we suffer today.

At Hin Heup the pattern of genocide first became clear. At Hin Heup the pattern of cover-up became established. The government claimed within Laos, and to the outside world, that Hmong slaughtered Hmong at Hin Heup--LyTeck (Hmong), former Royal Lao government official gave the orders to fire--but the former Prime Minister Souvannaphouma gave the original order to LyTeck. Many in the Royal government cooperated with the new Communist government, until they too were betrayed and killed.

My father was shot to death while walking to his rice fields in 1976 by the Pathet Lao--Lao Peoples Democratic Republic (LPDR)--soldiers. My older brothers went after the murderers, but they escaped. The soldiers soon returned with more soldiers, and my brothers won that small battle.

In 1978 my mother and my older brother were shot and killed by LPDR soldiers while they were in a boat on the Mekong trying to escape to Thailand. My mother-in-law and father-in-law were killed in that same boat. Thirteen of my family were killed by LPDR soldiers in that boat on the Mekong--one survived.

Amnesty International says that "between 1.2 million and 2.5 million Cambodian, Vietnamese, and Laotian people have perished in this genocide since 1975, and the genocide is continuing today in these countries." My wife and I have lost 33 family members, killed in Laos by the Communists since 1975.

Lowland Lao told their Hmong neighbors and friends that the LPDR, under orders from the Vietnamese, had an extermination policy for the Hmong and others who had helped the Americans--but especially for the Hmong. Old friends--lowland Lao--would pretend not to know me. I asked one of them what was wrong. He told me, "If they see me talking to you, I won't have a throat any more." LPDR and Vietnam signed a formal cooperation agreement in 1977. The government was always watching its citizens. It is still watching.

Now I will come to present time. It is a tremendous risk that we undertook to give these names publicly. I say "we" because the families of the victims needed to discuss the risk--the safety of the survivors in Laos and even the safety of family members here--or danger to myself. But it's important that the Congress and the people of the United States know what happens to Hmong and others in Laos.

On the night of May 11, 1995, at approximately 8:00 pm, several Pathet Lao (LPDR) soldiers broke into my brother-in-law Za Xiong Yang and sister-in-law Xia Vue's house in Ban Mouang Village, City and District of Mouang Mok, Xiengkhouang Province, Laos. The family was sleeping. The soldiers opened fire and destroyed the entire building with their gunfire. The soldiers believed that all the family members had been killed; they stole all the silver bars the family owned. The soldiers returned to the murder site and found that some of the family members had survived the assault.

Za Xiong Yang received several shots to his chest and multiple shots to his body. His last words to his son and youngest brother were, "Please love all your brothers and sisters who are still alive." He was 55 years old. His wife, Xia Vue, was shot once through the eye; the back of her head blew off and she died instantly. She was 53 years old. Both funerals were held in Ban Mouang.

La Yang, Za Xiong's brother was shot through the waist, and his wife was shot through the shin; the bullet blew off three inches of muscle in her calf. Neng Yang, Za Xiong's older son was shot in his right ankle. Pao Shoua Yang, Za Xiong's daughter was shot through her right ankle. The survivors were treated at Hospital #103 in Vientiane. We were told about the murders by

phone on May 16.

I am happy to say that the survivors have been released from the hospital, although they say their recovery is slow. But what happens to them now? Their parents were murdered. Neng is 18 years old and was just married before the murders; Pao Shoua is only about 11 years old. They wrote and asked me if they could come to us in America, or if they should go back to Ban Mouang. I am worried sick about their safety, and about their survival.

What happened in Ban Mouang on May 11 is the Hmong story in Laos. Civilians were murdered. The Lao government is the sole authority in Laos. If it sends its soldiers to kill civilians, then the soldiers do it. Witnesses are terrified to report what happened because soldiers can come for them, too. Who can witnesses report to? And even if is reported, the communists will say someone else did it, or it was because of drugs, or any convenient blame.

This family had stayed behind in Laos in 1975. They were moved at gunpoint to Ban Mouang in 1976: "You move where we tell you, or you give us your weapons and go live in the jungle. Then we'll see who dies first." Hmong were moved around like this. In their years at Ban Mouang, Za Xiong Yang and Xia Vue obeyed the LPDR officials and they made no trouble. They did nothing against the LPDR and they were murdered.

Because of this pattern, because the LPDR kills its own citizens, the refugees at Napho--5,000 of them--signed a petition to not be sent back to Laos. And because of this petition, six refugees from Napho camp have been in Thai prisons since September 1994.

Neng Vang was a returnee, repatriated from Napho Camp on March 29, 1995 to Nambat Village, Luang Prabang Province. On the evening of May 26, 1995, he was returning from fishing at the river with two boys younger than himself. Uniformed Pathet Lao soldiers were standing along the path. One opened fire. Neng Vang was shot twice in the chest, the bullets emerged from his back, and he died. Neng Vang would have been 20 years old in November.

His older brother and father still live in Nambat village. His family in Sacramento and Fresno were told about the murder by phone. Neng Vang and his family volunteered to repatriate. They believed that their lives would be better in Laos than in Thailand, or in America.

The Department of State says that they have checked on human rights abuses in Laos, with no results. UNHCR states that with the exception of Vue Mai's disappearance, they find no "credible evidence" of human rights violations in Laos. State Department and UNHCR have checked for us and I personally thank them from my heart for trying to investigate for us. Let me say that the problem of credibility is the problem of LPDR credibility. Also, there is a limit to the feasibility of State Department or UNHCR investigation inside Laos, as well as limits to the feasibility of legal rescue for those persecuted inside Laos.

As I stated before: witnesses are terrified to come forward; intimidation is standard practice; an LPDR government official does not have to be present with a monitor during an interview

for intimidation to occur--neighbors or fellow villagers can be used to inform and enforce compliance. Because the State Department and UNHCR do not uncover evidence does not mean that there is no violence.

Like other nations in our repressive situation, we Hmong have our own "underground communication network". We see the pattern of reprisal and blame, and it has not changed in twenty years. We understand the silence of the witnesses, and the lies of the victims--silence and lies are survival tools in the LPDR. Who in the camps, old soldiers at risk, want to return to being chosen out and placed in reeducation camps from which they never return? We know that returnees are questioned about military service, although the LPDR claims there is no discrimination. We are watching from inside, too. We are watching to try to save lives, and we often feel helpless.

It is like the Jewish holocaust--no one knew until it was too late. No one believed the reports and no one helped the Jews. And now there are those today who want the world to believe that the Jewish Holocaust did not happen.

We know that King Sisavang Vathana and members of the Royal Family were arrested and then assassinated. We know that 46,000 government officials were sent to reeducation camp. Some have survived. Outsiders may say that the killings and persecutions are over. They are not over. 500,000 people fled Laos because of persecution that did not stop. There must be an end to repatriation of all refugees at risk. There are many incidences of violations in Laos today. Some of the most frightening are the chemical attacks. A small hospital in Sayaboury underwent chemical attacks in late 1994-early 1995.

Our problem is the present government of LPDR and its policies. Repatriation cannot continue with the present policies. Right now, LPDR soldiers are massed in Nam Heo, central Laos. People cannot farm. It is not over. The UNHCR investigated the death of Chong Moua Thao, but it doesn't appear complete. The LPDR is an impenetrable regime--and that is what must change.

The LPDR violated the 1954 Geneva Agreement on Indochina, the 1962 Geneva Accord, and the Paris and Vientiane Agreements of 1973. For my people, I request, since the government of the United States has normalized its relations with Vietnam, that the United States make diplomatic efforts to negotiate a new peace agreement for the benefit of the people of Laos and the region. I request for my people that the government of the United States help bring about democratic reforms in Laos, including multi-party, free, general elections. We all implore you to persuade the government of Thailand to halt repatriation until we have a democratic government in Laos.

I will end with a quote from A.M. Rosenthal of The New York Times. He wrote about the ship of Jewish refugees which was forced to sail back to Germany because no one would accept them. He said, "But about the Vietnamese and Laotians, Americans will never be able to say we did not know." I appeal to you personally to help bring Neng Yang and Pao Shoua Yang--my young orphans--to life, safety, and freedom in the United States.

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July 27, 1995

The Rt. Hon. Christopher F. Patten
 Governor of Hong Kong
 Hong Kong

Dear Governor Patten:

Human Rights Watch/Asia appreciates the interest of the Hong Kong government in seeking to make the final chapter of the exodus from Vietnam a humanitarian one. However, we are deeply concerned by the escalating violence that characterizes the Hong Kong government's handling of forced deportation of Vietnamese asylum-seekers. Recent police actions have involved massive and indiscriminate use of tear gas against women and children in enclosures and allegations of police brutality. We recognize that some Vietnamese have in turn used violence against correctional and police officers, and we regret the injuries that have been suffered on all sides. Nevertheless, it is clear that Hong Kong authorities have pursued a confrontational course that has increased the likelihood of violent resistance from the imprisoned Vietnamese population. For this reason, we urge you to order an immediate and comprehensive inquiry into the use of force in camp relocation and deportation actions.

Human Rights Watch/Asia, formerly known as Asia Watch, has criticized the refugee status determination process as flawed, resulting in the arbitrary detention of some persons who have valid claims to protection, in contravention of the International Covenant on Civil and Political Rights and international refugee law. The perception that claims to refugee status have been unfairly rejected has reinforced the resistance of Vietnamese in Hong Kong's camps to repatriation to Vietnam in any form.

Both protests on the part of asylum-seekers and use of tear gas on the part of police have been taking place since Hong Kong adopted its policy of incarcerating Vietnamese in 1988. The two phenomena, however, reached new intensity and became more closely linked when in 1994 governments throughout the region began discussions on accelerating deportation and bringing to a close the Comprehensive Plan of Action, the regional agreement governing refugee

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screening and asylum.

— Over the first months of 1994, thousands of Vietnamese asylum-seekers held well-organized and peaceful mass demonstrations against forced repatriation to Vietnam. This show of opposition apparently convinced the Hong Kong government that mounting its own show of mass police force was desirable to counter the growing mood of resistance. On April 7, 1994, over 1,200 officers in riot gear conducted a dawn raid to transfer asylum-seekers from Section 7 of the Whitehead Detention Centre in preparation for deportation. An independent commission of inquiry that you authorized confirmed that the officers had fired more than 500 rounds of tear gas at the enclosed population and had gratuitously assaulted at least some asylum-seekers during the raid, although it was not able to investigate the allegations of assault submitted by all 102 Vietnamese who complained. The inquiry revealed more than 300 reported injuries to the Vietnamese, some of them serious, although government officials had initially acknowledged only a handful.

The commission of inquiry found the use of tear gas excessive, the deployment of tear gas and mace premature, the efforts to use counseling in lieu of force inadequate, and the information released to the public concerning the use of tear gas and the extent of injuries inaccurate. It recommended that counselling should be enhanced, negotiation used wherever possible rather than tear gas, and independent monitors should be present to observe and report on all future operations in order to "give greater confidence" to the Vietnamese and the public.

These recommendations have in large part been ignored, although the government observed a moratorium on transfers for six months and recruited independent monitors for later operations.

Far from subduing protests to deportation actions, the April 1994 police action appears to have destroyed the camp population's belief in the goodwill of the Hong Kong authorities and replaced it with a dynamic of martyrdom and resistance. In September 1994 police again used tear gas and truncheons to break up passive resistance to a deportation action, and by 1995 repatriation operations faced active and violent resistance from some of the asylum-seekers. The September action and the succeeding three operations were all directed against the same people who were targets in the April 7, 1994 incident.

On May 11, 1995, approximately 900 Hong Kong officers moved into the High Island detention center to transfer thirty-eight Vietnamese scheduled for deportation to Victoria Prison. Tear gas and assault on the part of the police were matched by Vietnamese hurling burning blankets and stoves, and one Buddhist monk attempted self-immolation. A forced repatriation flight six days later also provoked resistance on the part of the Vietnamese. On May 18, 1995, news of a U.S. legislative proposal to re-screen and resettle the remaining Vietnamese asylum-seekers reached Hong Kong (Human Rights Watch/Asia has not taken any position on this proposal, nor does it believe that the blame for subsequent violent incidents can be shifted to this particular event).

On May 20, 1995, while tensions were still riding high over these events, Hong Kong decided to deploy 2,200 officers in riot gear to move 1,500 people, 70 percent of whom were women and children, from Section 1 in the Whitehead Detention Centre to High Island, in preparation for deportation. The Vietnamese of Section 1 organized a barricade with bed boards, tying themselves to each other with ropes and placing women and children behind the cordon. According to the Vietnamese, the "counseling" offered by officers for less than half an hour consisted of demands to cooperate with the removal and warnings of dire consequences should they refuse. A team of non-governmental monitors and justices of the peace reported that Vietnamese threw liquids, chairs and vacuum flasks at the officers, who pushed against the cordon with their shields. Vietnamese reported that the officers beat with truncheons those in the front line and sprayed mace in their faces. At this point, Vietnamese in adjacent Section 2 who were witnessing this scene hurled hand-fashioned weapons at the officers advancing in Section 1. Vietnamese in Section 1 who fled the advancing officers breached the fence separating Section 1 from Section 2 in the detention facility; police then fired tear gas towards the breach and directly in the path of men, women and children.

The operation of subduing and extracting the fleeing Vietnamese went into the next day. By the end of the operation, officers had fired some 3,250 canisters of tear gas at asylum-seekers enclosed in the detention facility, some six times the amount that drew the commission of inquiry's censure in the April 1994 raid. According to reports from Vietnamese involved in the raid, tear gas was hurled into huts where they had attempted to take shelter, the police in some instances closing windows and doors and then pulling the choking people out by their hair. A one-year-old baby girl inside one hut with her aunt fainted from tear gas, and was severely burned when a well-intentioned police officer tried to revive her under a tap that unknown to him issued boiling water.

There have also been disturbing allegations of gratuitous beatings of asylum-seekers, as in the April 1994 raid. In the May 1995 incident, one of those injured was a sixty-five-year-old woman, unarmed, who was forced to the ground by officers when the barricade line broke, kicked in the ribs, hit with a truncheon, and sprayed with mace. Others were allegedly hit with tear gas canisters, which appear to have been fired directly at fleeing individuals. The independent monitors reported relatively few details of the two-day proceeding, and were for significant stretches of time removed at a distance from the action. The government has refused to release videotapes made of the operation, while at the same time suggesting that such tapes would prove that Vietnamese were culpable of assault.

It is troubling that various lawyers who have interviewed the Vietnamese report that many were unwilling to press complaints of assault or seek medical treatment because of a perception that complainants would be targeted for prompt deportation. There is some basis for this perception. Of the almost 400 Vietnamese who pressed complaints of injury and loss of property from the April 1994 raid, only three have so far been granted Legal Aid, and more than eighty have been deported. Brian Bresnihan, the Refugee Coordinator, declared that deportation of Vietnamese asylum-seekers would not be delayed on account of application for Legal Aid.

Late on the night of June 7, 1995, disturbances broke out in the High Island camp, from which ninety-four asylum-seekers were targeted to be transferred for deportation the following morning. Thousands of asylum-seekers from one section of the camp poured through an unguarded gate to another section. Virtually every detail of the ensuing conflict with police and correctional officers is disputed. The press painted a picture of a melee in which detainees rioted and set fire to buildings, while the Vietnamese recounted fleeing from one section to another in the wake of hot tear gas canisters which ignited gas cylinders and canopies, starting the fires. Although police and correctional officers were on the scene at night, monitors were not informed that the operation had begun and did not arrive until morning, when the violence had already passed. This time, however, they reported a close-up view of serious injuries to both asylum-seekers and police, underscoring questions as to what had actually transpired.

Based on these events and reports, we would like to make the following observations and recommendations for you to consider.

- The use of tear gas in the confined spaces of the detention camps presents a serious danger to people where it is impossible for them to disperse. The indiscriminate use of tear gas and mace is particularly dangerous when: the elderly, women and small children are likely to be exposed. Vietnamese have been injured by being struck by tear gas canisters, a practice that can produce serious and possibly fatal wounds, according to the warnings these canisters carry. There is no evidence that serious efforts are being made at negotiation, mediation or counseling, or even that operations are being spaced in such a way as to allow the tensions that they raise to subside. This in turn casts doubt that the Hong Kong government is using tear gas only to the extent necessary.
- Allegations of assault and excessive force by Hong Kong officers against Vietnamese asylum-seekers in the May and June raids have not been publicly investigated, and Vietnamese are intimidated from pursuing legal claims or medical treatment by the perception that previous complainants faced indifference or retribution in the form of early deportation.
- Independent monitoring has not been adequate to present a complete picture of events. The government has failed to ensure that monitors are on the scene in a position to closely observe from the first to the last phase of the operation, including a reasonable time following the operation to make an accounting of injuries and medical care.
- The resort to massive police actions, with only minimal efforts at dialogue with protesting asylum-seekers, is producing increasingly violent and hostile responses from the camp detainees who believe that they are under attack. We note that Hong Kong has succeeded in conducting deportation operations without resort to mass show of force as recently as March and April 1995, when adequate time was allotted to give Vietnamese advance warning of their selection for deportation, to allow demonstrations to cool off, and to encourage voluntary transfers for repatriation over a period of weeks.

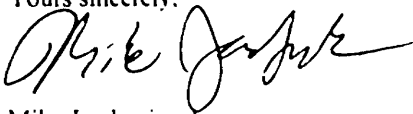
Human Rights Watch/Asia is concerned that unless these problems are addressed, violent confrontations between authorities and asylum-seekers will escalate, threatening loss of life on both sides. The Hong Kong government, by placing asylum-seekers in a situation of custodial detention, is responsible for their safety, even under circumstances of unrest. Hong Kong's government is responsible for protecting the human rights of the Vietnamese, including their right to physical safety.

We urge you to order an immediate and public review of the procedures for deportation operations. Such a review should address the following concerns:

1. Police videotapes of the operations should be released, and asylum-seekers interviewed to provide a counterpoint to the incomplete and frequently contradictory statements of officials involved in the operations.
2. Independent monitoring should be improved so that it does increase confidence on the part of both the Vietnamese and the public.
3. Serious, patient and professional efforts at counseling, mediation and negotiation should be used in lieu of tear gas wherever possible, and sufficient time should be allowed for such efforts. Given the embattled relationship that has developed between asylum-seekers and correctional officers, it may be constructive to involve nongovernmental mediators in tense situations.
4. The use of tear gas in the May and June incidents should be subjected to immediate and public review as to whether it constituted minimum necessary force under the circumstances and otherwise comported with Hong Kong law.
5. Immediate public inquiries into police assaults of asylum-seekers must be launched, with the assurance that complainants and witnesses will not be deported before their cases can be examined

We look forward to your response.

Yours sincerely,



Mike Jendrzeczyk
Acting Executive Director

**STATEMENT OF
LIONEL A. ROSENBLATT, PRESIDENT
REFUGEES INTERNATIONAL
July 27, 1995**

For 20 years, the U.S. has taken a strong lead in protecting and assisting Indochinese refugees. In one of the most important humanitarian achievements since World War II, over 1.5 million refugees from Vietnam, Cambodia and Laos were provided temporary asylum in countries of Southeast Asia and then resettled in the U.S. and other countries. This would not have happened without American government leadership.

Several years ago, as a way to insure that Vietnamese boat people continued to receive temporary asylum in the region, the UNHCR and more than eighty countries, including Vietnam, agreed to implement the Comprehensive Plan of Action. Under this CPA, screening of all newly arriving Vietnamese asylum seekers was put in place and only those screened in as political refugees were permitted resettlement; those screened out as "economic" refugees were to return to Vietnam.

To the surprise and concern of many observers, screening was conducted rather restrictively. Former associates of the U.S. war effort were often not screened in. The UNHCR exercised only sparingly its "mandate" prerogative to accord refugee status to such cases on appeal. This left stranded in the camps a significant number of individuals who had served with the U.S. or former government of Vietnam.

More than 75,000 Vietnamese have returned to Vietnam since the beginning of the CPA, but voluntary repatriation rates have been dropping since late last year and nearly 40,000 remain in camps in the region. The countries of asylum are growing impatient and there is concern that forced repatriation could occur in the very near future. Already, in Hong Kong, there have been mandatory return flights to Vietnam. This relatively restrained use of force by British-managed troops could become much more violent elsewhere in the region.

The challenge is to head off the possibility of forcible repatriation, and gain time to promote voluntary return, while also addressing the cases of those screened out for whom the United States has a particular concern. For some time, especially since it became clear that the UNHCR was unwilling to exercise its mandate in the cases of those screened-out Vietnamese with close associations to the U.S. or the former government of Vietnam, Refugees International has felt that the way to do this is to open a so-called Track II which would work as follows.

Statement of Lionel A. Rosenblatt
Page Two

The central premise of Track II is to permit those asylum seekers with past U.S.-connected service or other sensitive backgrounds to present their bona fides to a U.S. official. This would probably have to be accomplished through an interview in Vietnam; any asylum seeker could return for such an interview.

Those approved by the U.S. official in such interviews would remain in transit status and be processed expeditiously for departure to the United States.

Such a program would have to be coordinated closely by the U.S. government to insure that former associates and others who could face persecution are actually accepted by the U.S.

We also need assurances from the Vietnamese government that it will permit those accepted by the U.S. to remain in transit status while in Vietnam and to depart without being subject to the normally extensive exit formalities. The time to seek such assurances from the Vietnamese government is now as the Clinton Administration begins to work out the details of normalized relations with Vietnam. To leave this issue off the agenda would be an abrogation of our humanitarian responsibilities.

There is no more fitting issue than this unfinished humanitarian business to prove that the U.S. and Vietnam can work effectively together.

To prevent the use of force against the boat people, the Track II solution should be in place before the ASEAN heads of state meet on August 1.

The Hmong refugees in Thailand face a unique problem. Many have been screened in and the U.S. has requested from the Thai government access to those who wish to resettle. We hope that this can be accomplished without delay, while still permitting those who wish to return voluntarily to Laos to do so.

President Clinton is the fifth president to have stewardship of the Indochinese refugee program. We need his leadership to bring the final chapter to an honorable conclusion. Certainly the last thing the President needs is to be pilloried for having allowed one of our great humanitarian accomplishments to end tragically.

REFUGEE CONCERN HONG KONG

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Kowloon, Hong Kong**

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**Report into the events of 20th May 1995
at the Whitehead Detention Centre**

July 1995

Contents

PART ONE - INTRODUCTION

1.1 - 1.2	Preliminary remarks and description of operation.	1
1.3	Call for enquiry and rejection	2

PART TWO - THE STATUS OF ASYLUM SEEKERS - THE "SCREENING PROCESS"

2.1	Refugee status	4
2.2 - 2.3	Screening process	4
2.4	Flaws in the screening process - risk of <i>refoulement</i>	5
2.5	Effect of unjust screening process	6

PART THREE - WHITEHEAD - DESCRIPTION OF CAMP AND OCCUPANTS

3.1	The camp and its occupants	7
3.2	Section 1 - the layout	8
3.3	Section 1 - the occupants	8

PART FOUR - PREVIOUS OPERATIONS AND EVENTS LEADING UP TO 20TH MAY 1995

4.1	Previous operations of this kind	9
4.1.1	Whitehead - Section 7, 7th April 1994	
4.1.2	Whitehead - Section 8, April 1995	
4.2	Events leading to 20th May 1995	10
4.2.1	The announcement	
4.2.2	High Island 13th May, 1995	
4.2.3	US Congress	
4.2.4	Insufficient notice	

PART FIVE - POLICE AND CSD PREPARATION FOR THE VIOLENCE

5.1	Joint operation	12
5.2	The anticipation of trouble	12
5.3	CSD intelligence	12
5.4	Operational Guidelines	13
5.5	Pre-operation briefings	13
5.6	Worst case scenario	13

PART SIX - THE EVENTS OF 20TH MAY 1995

6.1	The "rioting Vietnamese"	15
6.2	3,250 tear gas canisters	15
6.3 - 6.4	Escalation of the "riot"	15
6.5	Doubts over Government reports	16
6.6	The Independent Monitors	16
6.6.1	Appointment	
6.6.2	Reform from April 7th 1994	
6.6.3	The commencement of the removal	
6.6.4	Analysis	
6.7	Vietnamese version of events	19
6.7.1	Description from behind the barrier	
6.7.2	Photographs	
6.7.3	Absence of weapons in Section 1	
6.7.4	Use of batons - assaults	
6.8	Arrests	24
6.9	"Escape" from Section 1	24
6.10 - 6.11	Monitors' descriptions of subsequent operation	25
6.12	Further injuries	26
6.13	The baby girl	27

PART SEVEN - OFFICIAL RESPONSE TO ALLEGATIONS

7.1	The use of truncheons	29
7.2	Violence of the Vietnamese	29
7.3	Women and children as "human shields"	31
7.4	The specific use of tear gas	31
	7.4.1 Allegation No 1: canisters fired directly at people	
	7.4.2 Allegation No 2: tear gas used to clear huts	

PART EIGHT - THE INJURIES

8.1	Initial estimate	33
8.2	Preliminary estimates - misleading	33
8.3	Lack of precision in Government statements - inconsistencies	33
8.4	The non-reporting of injuries and assaults	34
8.5	Tear gas	36
	8.5.1 Chemical composition	
	8.5.2 Use	
	8.5.3 Monitors' concern over its use	
	8.5.4 Lasting effects of tear gas and mace	
	8.5.5 Possible long-term effects	
8.6	Actual numbers of injuries	38
8.7	Psychological damage	39
	8.7.1 The hidden injury	
	8.7.2 Long-term trauma	
	8.7.3 Post Traumatic Stress Disorder	
	8.7.4 Symptoms	
	8.7.5 Likelihood of psychological damage	

PART NINE - LEGAL CONSIDERATIONS

9.1	Valid order for transfer	42
	9.1.1 Section 13D(5) Immigration Ordinance	

9.1.2	Notification of transfer	
9.2	Involvement of Police and CSD	43
9.3	"Reasonable force"	43
9.3.1	Operational guidelines	
9.3.2	Police General Orders	
9.3.3	CSD use of force	
9.4	Public Order Ordinance	44
9.5	Requests for videotapes of operation	45

PART 10 - FINDINGS AND RECOMMENDATIONS

10.1	The Monitors	47
10.2	Findings	48
10.3	Recommendations	50
	Conclusion	51

Annexures

- A. Letter from RCHK to Governor Patten (refer para 1.3).
- B. Plan of Whitehead Detention Centre (para 3.1).
- C. Photographs of commencement of the operation (para 6.7.2).
- D. List of assaults (para 6.7.4).
- E. Correspondence between Christine Loh and Secretary for Security (para 7.1).

PART ONE - INTRODUCTION

1.1 The operation at the Whitehead Detention Centre on 20th May 1995 was one of a series of operations aimed at clearing the camp of its approximately 10,000 occupants, most of whom came to Hong Kong from the North of Vietnam. The exercise was aimed at the transfer, by force if necessary, of the inhabitants of Section 1, of which there were about 1,500. To achieve the removal and transfer involved the use of substantial personnel and equipment, including:

- 2,248 police and CSD, most equipped with riot gear, including plastic and rattan shields, truncheons, tear gas launchers, and gas masks;
- 3,250 tear gas canisters;
- an (as yet) undetermined number of cans of mace spray, and CS gas hand grenades;
- two armoured Saxon vehicles, with tear gas launchers.

The removal exercise resulted in hundreds of reported injuries, to CSD, police and Vietnamese.

1.2 Confrontations between the Vietnamese and the Government's security forces are not new to Hong Kong.

The history of confrontations between the Vietnamese and the Hong Kong security forces dates back to an incident at the Heilingchau Detention Centre on 19th July 1988, which became the subject of an investigation which

found that excessive force had been used. The recommendations of the investigating Justices of the Peace were not implemented.

Tear gas has been used many times against the Vietnamese detainees over the past seven years, although the level of its use in the 20th May operation was without precedent. The chemicals in tear gas are noxious, and the effects incapacitating. Whether it is being used for a legitimate purpose and in a legitimate manner is a matter of considerable concern. When police action leads to injury to persons, whatever their status, this is also a matter of legitimate public concern, internationally and locally.

- 1.3 Refugee Concern submitted a letter to the Governor of Hong Kong, Christopher Patten, on 21st May, expressing concern particularly for the children affected by the seemingly indiscriminate use of tear gas, and calling for a judicial inquiry into the incident.¹ Speaking at a press conference on Monday 22nd, Mr Patten gave his reply:

We certainly won't be doing any such thing. The whole community knows perfectly well what happened over the weekend. The community knows that our disciplined services reacted with considerable restraint in dealing with a violent and dangerous situation. ...Those who were responsible for the dangerous situation which arose from time to time are those who were present in the camps, the Vietnamese migrants themselves. Our men and women were carrying out their duty in an exemplary fashion.²

Our own investigations have lead us to the conclusion that the local and international community does not know "perfectly well what happened." Factually, there are areas of fundamental conflict between the version of the events on 20th May 1995 as related in the media and by the Government,

¹ A copy of the letter is attached as Annexure A. The reference to "19th May 1995" should obviously be "20th May 1995"

² Source: Government Information Service press release "Governor's media session" 22 May 1995

and the versions provided to us in the course of our investigation. We have attempted wherever possible to verify the sources of this information by cross checking against evidence and other statements.

In rejecting the need for an inquiry, the Governor is legitimizing the use of high levels of paramilitary-style force against innocent men, women and children. To achieve the objective of repatriation at any cost, such incommensurate measures continue at a time when alternative methods of resolving the boat people crisis are being newly proposed and debated in the world's largest resettlement country, the United States.

Mr Patten's assessment that his forces acted "with considerable restraint", and "in an exemplary fashion", is also misplaced. This report describes police practices which, if allowed to continue would almost certainly result in serious, and possibly fatal injuries.

This document records and analyses the evidence which has been obtained to date. The investigation is by no means complete, and should and will continue.

**PART TWO - THE STATUS OF REMAINING ASYLUM SEEKERS:
THE "SCREENING" PROCESS**

- 2.1 The Vietnamese asylum seekers held in detention in Hong Kong sought refuge in the Territory in order to be recognised officially as coming within the internationally accepted definition of "Refugee" in the *Convention and Protocol Relating to the Status of Refugees* ("Refugee Convention").³ Only those arriving after 16th June 1988 were required to satisfy the definition; those who came prior thereto received refugee status without having to apply and be screened. After a period of time most of those presumptive refugees were resettled in third countries, principally the United States, Canada and Australia.
- 2.2 Most of the 20,500 people remaining in the camps in Hong Kong⁴ have undergone a process of screening for refugee status which has in each case taken several years to be completed. Commonly this has involved applying to three separate bodies - the Hong Kong Immigration Department, the Refugee Status Review Board (in the event of failure at the first stage there is a right of appeal to this Board), and a final plea to the United Nations High Commissioner for Refugees ("UNHCR") for it to exercise its overriding mandate to declare that the asylum-seeker is a genuine refugee despite the previous rejections.

³ The 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol, defines a refugee as someone who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence is unable or, owing to such fear, is unwilling to return to it."

⁴ Aside from Whitehead, the other two main refugee camps in Hong Kong are High Island Detention Centre and the island detention centre of Tai A Chau.

- 2.3 The screening process has taken from 18 months to 5 years to be completed, largely depending on the individual's date of arrival. Those who arrived in 1988 and were the first to be screened were dealt with faster than the later arrivals, due to the substantially larger numbers of arrivals from 1989 to 1991 and the limited resources allocated by the Government to the screening process.⁵ All but a handful of those remaining in detention have exhausted their right of appeal.
- 2.4 The refugee determination process in Hong Kong has drawn criticism from several quarters for its fundamental flaws, including Amnesty International⁶, the Lawyers Committee for Human Rights⁷, and most recently the majority of the United States House of Representatives. The process has been seen as largely self-serving, aiming for a high number of rejections to satisfy the need to deter further departures from Vietnam.

The Principle of Non-Refoulement, or the prohibition against return of a genuine refugee to the country from which he or she fled, lies at the heart of the Refugee Convention, and is the primary purpose behind it. Article 33 of the Convention states as follows:

Prohibition of expulsion or return
("refoulement")

1. No Contracting State shall expel or return ("*refouler*") a refugee in any manner whatsoever to the frontiers of territories where his life or

⁵ Arrivals, post "cut-off" were, from 1988 onwards:

1988	10,328
1989	34,112
1990	6,595
1991	20,208

Numbers arriving since that time have been negligible. Only 474 arrived in the period Jan 1992 to Dec 1994.

⁶ *Memorandum to the Government of Hong Kong and the United Kingdom regarding the Protection of Vietnamese Asylum Seekers in Hong Kong* Amnesty International 1990.

⁷ *Hong Kong's Refugee Status review Board: Problems in Status Determination for Vietnamese Asylum Seekers*, Lawyers Committee for Human Rights a Briefing Paper issued March 1992.

freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.⁹

- 2.5 It is fair to say that the majority of those who remain in Hong Kong feel they have been unfairly screened. This is certainly a major factor, although not the only one, in the unwillingness of the Vietnamese in the camps to go home. To put it in a broader context, any person would feel aggrieved if the judge who heard their case exhibited an obvious bias. The decision may be correct in any one case, but the methods may not. This screening process has produced a profound resentment among the asylum-seeker population.

⁹ If, as has been widely claimed, the process in Hong Kong is fundamentally flawed, then the Hong Kong Government is repatriating genuine refugees in the face of Article 33. A person does acquire refugee status by process of application, but rather his/her status as one is recognised by the process - UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, para 28.

PART THREE - WHITEHEAD: DESCRIPTION OF CAMP AND OCCUPANTS**3.1 The Camp**

The Whitehead Detention Centre is the oldest of the three main camps remaining in Hong Kong. It is also the largest, currently with a population of approximately 10,000. Whitehead is situated at Wu Kwai Sha Tsui, in the district of Shatin, in the New Territories of Hong Kong. It was purposely built as a closed camp for the Vietnamese and is designated as a detention centre under the Immigration Ordinance⁹, the primary Hong Kong Statute relating to the Vietnamese.

Whitehead is divided into 10 sections for detention of asylum-seekers (See Annexure B). The sections are divided by barbed wire topped fences, 5.6 metres in height. A perimeter fence of equal proportion surrounds the entire camp. Sections 1 to 4 and sections 5 to 8 are separated by a road, known commonly in the camp as "Nathan Road" after the main thoroughfare in Kowloon. Sections 1 and 2 are separated from Sections 3 and 4 by two fences of the kind just described, as are Sections 5 and 6 from Sections 7 and 8.

Normally, those in Section 1 have access to section 2 and vice versa. Those detained in Sections 3 and 4 on the one hand, and 5 & 6 on the other, have the same ability. This is partly for practical purposes since the dual sections of 1 & 2, 3 & 4 and 5 & 6 are serviced by the same medical clinic, welfare offices and CSD staff.

At the time of the operation on 20th May, there were no occupants in either of Sections 7 or 8. Those sections were cleared in prior transfer operations.

⁹ Cap 115.

The former Sections 9 and 10 of Whitehead now hold those who have enrolled in the UNHCR voluntary repatriation programme and are awaiting arrangements for their return to Vietnam. They have been renamed Volrep Camps A (for Northerners) and B (for Southerners).

3.2 Section 1 - Layout

Section 1 contains 14 dormitory style huts of one or two storeys. Each hut is 33.5 metres long, 12.5 metres wide, and each storey contains three tiers of bunks, each bunk space being approximately 1.8 metres wide, 2 metres deep and 1 metre high. The capacity of each dormitory is 90 persons, with two dormitories in each hut. On 20th May 1995, the huts were at 80%-90% of capacity.

Section 1 is positioned at the eastern end of Whitehead, facing the empty Sections 7 and 8, and adjoining Section 2. The main access is by way of a double gate near the adjoining fence to Section 2. In all there are four access points to the Section. In front of the collection of huts is an open area approximately 150m by 80m, slightly larger than a soccer pitch.

3.3 Section 1 - Occupants

On the morning of the 20th of May, Section 1 consisted of approximately 1,500 people. Approximately half of these were children under 18 years, another 20% women and the remaining 30% men. It is assumed that all of those transferred had been screened out as non-refugees. Whilst not specifically acknowledged as other than an exercise in the continual programme of clearing Whitehead, it is known from past exercises that for the people transferred it is the first step towards their forced repatriation.

PART FOUR - PRIOR OPERATIONS AND EVENTS LEADING UP TO 20 MAY 1995

4.1 Previous operations of this kind

4.1.1 Section 7 - April 7th 1994

Those in charge of the transfer of section 1 from Whitehead to High Island had two previous such transfers to guide them, one peaceful and the other marked by violence and injury. The move of the population of Section 7 on April 7th 1994, which resulted in substantial injuries and loss of property, led to a Government commissioned inquiry into the incident by two Justices of the Peace. Their Report, published 10 June 1994¹⁰ was critical of several aspects of the operation, much of which has direct relevance to the recent events. *Inter alia*, the Report

- Criticized the CSD for using mace and CS gas too soon;¹¹
- Found that the CSD and Police had underestimated the risk of injury from the use of tear gas;¹²
- Was highly critical of the CSD for not seizing opportunities to open a dialogue with the Vietnamese in order to reach a settlement without the use of further tear gas;¹³
- Found that the quantity of tear gas used was excessive. A total of 510 canisters and grenades were used in three rounds.¹⁴

¹⁰ Report of 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 10 June 1995 ("JPs' Report")

¹¹ *Ibid*, para 5.12(c)

¹² *Ibid*, para 5.17(b)

¹³ *Ibid*, para 5.18(d)

¹⁴ *Ibid*, paras 5.15, 5.20.

The operation on April 7th and the subsequent inquiry halted the Orderly Repatriation Program for more than 5 months. The Chief Immigration Officer in charge of the Vietnamese, Mr Choy Ping Tai, giving evidence in unrelated court proceedings in December 1994, explained the decision as a necessary one in the circumstances:

You may recall that we had this Whitehead roof camp incident on 7 April, when some Vietnamese migrants complained or alleged being assaulted, ...and the community concern about the level of force used during the operation, and for this reason the Governor ordered the matter to be investigated and he established a commission of inquiry. It wasn't until early June that the report was forwarded to the Governor and the Government had to consider the recommendations on camp transfer. It would not make good sense to continue with ORPs if we could not do, say camp transfer.¹⁵

4.1.2 Section 8 - April 1995

By stark contrast, the move of about the same number of people from Section 8 in April this year passed without incident. There are a number of possible reasons for this. Unlike the April 7th operation, which was carried out without prior warning, the population of Section 8 was told that they were to be moved at some point in the future. Peaceful demonstrations initially followed, but the anger and tension gradually subsided. People were transferred as they came forward volunteering to do so. Within two or three weeks, everyone had volunteered to be transferred. No force was used.

4.2 Events leading up to 20th May

In the week or so leading up to the operation tension in both Whitehead and High Island was running high. There are a number of factors which may have contributed to this.

¹⁵ In Re: Chung Tu Quan and others, High Court of Hong Kong, proceedings before Mr Justice Keith, 22nd December 1995.

4.2.1 First, there was the announcement itself. The people of Section 1 were informed that they would be the next to move on 12th May. They were not told when the move would take place, or whether they would be given any notice of the date of the move.

4.2.2 Second, the announcement of the transfer of the people in Section 1 was followed immediately by the removal of 84 people from High Island to Victoria Prison, in preparation for their repatriation. This was a violent operation, involving the use of tear gas and water cannons, and resulted in numerous injuries to the Vietnamese, the police and CSD officers involved.

NGOs criticized as provocative the decision to effect the transfer of Section 1 so soon after the violence in High Island. The Commissioner for Correctional Services, Mr Peter Lai Ming-kee, defended the decision as necessary to ensure the early closure of Whitehead.¹⁶

4.2.3 Third, a few days prior to the operation, news filtered through of the moves in the US Congress which were interpreted as offering new hope to those who had been rejected as economic migrants that they might nevertheless be considered for resettlement in the States.

4.2.4 Fourth, the notice given to the population of Section 1 of the move was insufficient. One week was clearly inadequate to allow people to get used to the idea and for the tension to subside.

¹⁶ Marnie O'Neill, "Police fear worst from boat people", Eastern Express 20th May 1995

PART FIVE - POLICE AND CSD PREPARATION FOR VIOLENCE

5.1 The operation on 20th May to transfer Section 1 of Whitehead was, as with past transfers, a joint operation conducted by the CSD with support from the Police Tactical Unit ("PTU") of the Royal Hong Kong Police Force.

5.2 **The anticipation of trouble**

The people in Section 1 were told on Friday 19th May 1995 that they would be transferred the next day. They were not informed of the time.

Despite the incident-free transfer of Section 8 a month earlier, the police and CSD anticipated resistance. Commissioner Lai stated to the press "We expect trouble. We always expect trouble."¹⁷

5.3 It is likely that the CSD intelligence in Whitehead was in part the basis for this expectation. Although the information was incorrect, prior to April 7th last year, their sources revealed that:

The VMs were preparing piles of clothing for setting fire to. They had numerous buckets of water to deal with any tear gas. Metal fixtures in dormitories were converted into home made weapons. They loosened up the rooftop nuts and false ceilings. The VMs would pull down the fences between Sections 7 and 8, in the event of entry by the security forces.¹⁸

Our information is that the authorities did not conduct a weapons search of Section 1, as might have been done, immediately prior to the operation on 20th May 1995.

¹⁷ Ibid.

¹⁸ JPs' Report para 3.23. "VMs" is short for Vietnamese Migrants, the description used by officials for those asylum-seekers who have been screened out as non-refugees.

5.4 Operational Guidelines

At the same time, specific Operational Guidelines have been issued in the past, warning officers, both police and CSD, in some detail of the reactions they might face:

"Attempted escapes and suicides, setting fire, forcing children and women to barricade, blocking of entrances, hostage taking and attacking staff with offensive weapons are likely"¹⁹

It is likely that the guidelines for the operation on 20th May were very similar, if not identical to the above.

5.5 Pre-operation briefings

In addition, specific briefings, if similar to previous operations, would have reinforced the level of anticipation in the minds of the officers. It is likely that the officers were told, as were those involved in the April 7th removal that, *inter alia*

- The VMs might throw stones, or metal objects or might attack with homemade weapons
- The VMs might pour boiling water or molten plastic
- The VMs might attempt self immolation²⁰

5.6 Those tasked with the transfer of the 1,500 from Section 1 were apparently expecting a worst case scenario. This was reported as being justification for the late warning given to Section 1 of the transfer. A front page newspaper article on 20th May claimed that

¹⁹ JPs' Report para 3.18.

²⁰ JPs' Report, para 3.25.

[O]fficers at the camp and Security Branch policy makers believe the group in Section 1 is far more militant [than Section 8]. They claim the advance notice will have allowed the Vietnamese to make plans to challenge their removal.²¹

The same report quoted a senior police officer as stating that the role the police would play in the operation was only to intervene "when resistance reache[s] a level unable to be safely handled by CSD staff."

²¹ Scott McKenzie, "Take no Risks, clearance force told" South China Morning Post 20th May 1995.

PART SIX - THE EVENTS OF MAY 20TH 1995

- 6.1 Some newspaper reports of Sunday 21st May 1995 supported the Governor's portrayal of events as the successful quelling of an inmate-initiated riot using minimum force. This is perhaps a reflection of the fact that the only version of events available at the time was that release by Government sources.

More than 800 rounds of tear gas were fired at rioting Vietnamese, who took to the roofs of nearby huts and attacked police and CSD officers when they charged into Section One at 9.30am yesterday.²²

- 6.2 Three thousand two hundred and fifty (3,250) tear gas canisters were fired over a period of approximately eight hours on 20th May.²³ This was more than five times the amount used on April 7th 1994. The Acting Secretary for Security Mr Ken Woodhouse, said that the utilization of this quantity of tear gas nevertheless had represented the "minimum use of force". "Once you have to grapple with people and struggle with very dangerous weapons, the potential for danger on both sides becomes very high."²⁴
- 6.3 CSD Assistant Commissioner, Ms Bonnie Wong, said that the level of resistance had been greater than the Government had anticipated. She stated "[w]e were moving 1,500 people, but found that we were actually tackling more than 5,000 people."²⁵

²² "Chaos as Viets battle move" Sunday Post 21 May, 1995, page 1

²³ Sally Blyth, Norma Connolly and Ben Calvert "UN move to avert fresh exodus" Eastern Express 23 May 1995, page 1.

²⁴ Ibid

²⁵ Ibid.

6.4 What was to be a transfer completed in one day became a two day operation. The police and CSD officers had to search Sections 2, 3 and 4 for those from Section 1 who had broken through the adjoining fences.

6.5 The government and news reports left in doubt exactly when the first tear gas shots were fired, and against which section of people in Whitehead it was used. Photographs of seized weapons (including spears) were published in the Sunday newspaper accounts of the event. The impression was of a pitched battle involving most of those in Sections 1 to 4 fiercely fighting the security forces involved in the operation. In these circumstances, the widespread use of tear gas was, according to those in charge of the operation, obviously necessary.

6.6 The Monitors

6.6.1 A team of 4 monitors were appointed by the Governor to observe and report on the operation to the Chief Secretary and, in particular, in the words of the monitors themselves, to "see whether any excessive or unnecessary force [was] being exercised by the CSD and the Police"²⁶ The Monitors comprised two Justices of the Peace, and one representative from each of the non-Government organisations Medecins Sans Frontieres (MSF) and Oxfam.

6.6.2 The advent of the monitors was one of the recommendations in the JPs' Report on the 7th April 1994 transfer which was adopted by the Government. Monitors have been used for all transfer operations and repatriation exercises since the resumption of the Orderly Repatriation Program in September 1994.

²⁶ A Report by Independent Monitors on the Transfer of Vietnamese Migrants from Whitehead Detention Centre to High Island Detention Centre on 20 & 21 May 1995, 22 May 1995 ("Monitors' Report").

6.6.3 The commencement of the removal

The first hour of the operation to remove Section 1 is crucial to the understanding of the subsequent events, and the violence and injuries which resulted. The relevant parts of the Monitors' Report are reproduced in full:

0930 hrs

We arrived at the scene and saw the VMs in section 1 had built up a cordon with wooden boards for protecting themselves. Several hundreds of VMs including women, children and young men took part in the cordoning.

We saw that rubbish were placed at the main gate to block off the CSD staff from getting into the section. The VMs were chanting slogans: "Against Communism...Against forced repatriation...We refuse to be repatriated back to Vietnam..." (rough translation)

Some VMs on the rooftops of the huts in section 2 were observing the situation in section 1.

0935 hrs

The CSD staff moved into section 1, followed by the Police, and started counselling to the VMs. Then, we saw that during the counselling by the CSD staff, the VMs threw hot water, yellow liquid, chairs, vacuum flasks at them. The CSD staff forced the VMs backwards with their shields and some VMs in section 1 went up to the rooftops of the huts.

At this time, the VMs on the rooftops in section 2 began throwing stones at the CSD staff and the Police in section 1 in support of the action taken by the VMs in section 1.

0955hrs

In view of the actions by the VMs, the monitors were given helmets to protect themselves from being hit by throwing objects.

1000hrs

Tear-gas was fired by the CSD/Police at section 2. The monitors were given gas masks.²⁷

²⁷ Which must have greatly reduced their ability to see the events from then on.

Some VMs in section 1 were carried away by the CSD staff without any resistance to section 7, which was vacant and being used as a holding area. Most of the VMs who were moved to section 7 refused to disclose their identity to the CSD staff when being asked. At 1005 hrs, one monitor saw the first lot of VMs walk onto the trucks by themselves, except for one woman who had to be carried by the CSD staff.

The four of us then split ourselves into two monitoring groups - one team with two JPs (the JP team) and the other with the NGO representatives (NGO team). The two teams observed the operation at two different locations respectively during the morning session.

The JP team saw the VMs in section 1 "escaping" into section 2 through a broken gate/fence in between the two sections.

All monitors saw some VMs in section 2, 3 and 4 were on the rooftops of the huts. The VMs in section 2 reacted violently towards the CSD staff - they threw stones and spears at the disciplined forces. The CSD/Police staff kept firing tear-gas grenades at section 2 area.

1020 hrs

For safety reason, all monitors were told to pull out of the scene and we were asked to go to some observation points which were very far away from the action spot. But we could see that tear-gas was continuously fired by CSD/Police at section 2.²⁸

The next entry in the Report is of approximately 12.00noon.

6.6.4 The Monitors' Report (also referred herein as the "Report") is the only independent report of the operations; "independent" in the sense of being truly disinterested, neither overtly on one side or the other. There are several important gaps in these crucial segments of the Report, and other aspects which give rise to questions. For instance, it is greatly lacking in detail, recording only a few generalized observations. Is it fair to assume that by "the scene" the Monitors are referring to Section 1 itself, ie. that they were

²⁸ Id, pp2-4.

observing the events from inside section 1? If so, where precisely were they placed before the Police/CSD suggested they retreat at 1020 hours? Can it be assumed that the Report is a comprehensive record of everything of significance which occurred over the period of time set out in the Report? What of the actions of both the CSD/Police and the Vietnamese that were outside the view of the monitors?

6.7 Vietnamese version

6.7.1 The view from behind the barrier is significantly more detailed. The following is an account of one of the leaders of Section 1 provided to a solicitor a few days after the transfer to High Island:

We assembled in the open square of Section 1 between 3.00am and 4.00am, fearing that we might be locked in the huts by the police at any time. We had been told the previous day that we would be moved on the Saturday, but they hadn't given us a time.²⁹ We formed a large semi-circle in front of one of the huts. The men took up positions at the front of the group, some of them tying themselves together with ropes to form a chain. The women and children were kept in the centre of the group, shielded by those on the outside.

At 9.00am a group of CSD officers entered the Section with Francis Tse, the Senior Welfare Officer of Whitehead. A warning was given that if the people in the section did not cooperate in the removal operation, harsh measures would be used. We were given 30 minutes to consider this warning, during which the officials remained inside the Section.

At 9.20am, as they could see that we hadn't changed our minds, the delegation withdrew from the Section.

At 9.30am, hundreds of police and CSD officers entered the section, dressed in riot gear and equipped with shields, cans of mace, and truncheons. Some carried guns for launching tear gas canisters.

²⁹ The Vietnamese in Section 1 were finally informed between 7.00am and 8.30am on 20th May that the removal operation would commence at 9.30am - Monitors' Report p1.

Those at the front of the semi-circle were holding barriers made out of wood taken from bunks. The banners carried slogans protesting our removal, which were written in Chinese, English and Vietnamese.

The police (who were ahead of the CSD officers) pushed forward in a line and from each side. Mace and truncheons were used to break through the line. The mace was sprayed in the faces of those in front of the group, forcing them to their knees.

On seeing their husbands and relatives beaten, some of the women rushed forward to the front line and were also beaten with truncheons.

It was not long before the police broke the line, and a large group (approx 400 persons) was pushed towards the rear of the Section. A large number of the remainder were pushed/fled towards the fence separating Sections 1 and 2.

At some point, perhaps seeing what had happened to those in Section 1, Section 2 detainees surged towards the fence between the two sections and managed to break the lock of the gate, enabling large numbers of those in Section 1 to flee into the adjoining section.

Seeing this, police commenced firing tear gas towards the breach in the fence. At this stage men, women and children (including babies) were in the line of fire.

The firing of tear gas emanated at this time from both within Section 1 and outside the perimeter of the camp.

By this time (approx 10.00am) firing of tear gas canisters had started into Section 2. The police were also using handheld grenades. Some of the canisters and grenades were aimed at those fleeing from Section 1.

I could see some of the people in Section 2 throwing missiles of varying kinds at the Police in Section 1.

Another break in the Section 1/2 fence occurred, this time at the rear of the Section, enabling others to escape. The front breach was guarded with people from Section 2 with hand-fashioned spears.

At about the same time a number of arrests were made in Section 1, and those arrested were handcuffed or had their hands bound with plastic wire. They were taken, some frogmarched, to Section 7 to await transfer to High Island.

6.7.2 Photographs of the incident

Annexure C is a series of photographs taken by one of the detainees depicting the scene prior to and during the operation.³⁰ The photographs clearly show:

- (1) The positioning of the men on the perimeter of the group in an arc, with the women and children in the centre of the group;
- (2) The push of the police and the breaking of the line of resistance;
- (3) The riot gear of the police, with a line of police with plastic shields, and some with smaller rattan shields, cans of mace, and truncheons; and
- (4) The apparent effect of the use of mace.

6.7.3 Of particular significance is the apparent absence in the photographs of any weapons on the part of the Vietnamese. The same member of Section 1 who gave the above account explained:

We were conscious of the need to offer passive resistance only and not to fight back against the police.

Well before the transfer, we had elected a committee of leaders in the section to plan for such a transfer. When the announcement was made, a meeting was held at which we agreed that the entire section would resist the transfer, on the basis that it was a precursor - the first step - towards our forced repatriation to Vietnam. At the same time, we agreed that if individuals wanted to go voluntarily to High Island, no pressure would be placed on them to stay.³¹

A series of peaceful demonstrations was planned, to be held in the open area of Section 1 at 2pm every day, with speeches and a march around the Section. The protests commenced on 13th May and continued to 18th May.

6.7.4 The use of batons - assaults

Statements from the Vietnamese involved in the transfer indicate that, not only were batons used, but their use was widespread, and in an apparently

³⁰ The camera used was subsequently confiscated by camp officials.

³¹ Some 200 people did volunteer and were transferred prior to 20th May.

indiscriminate manner. Annexure D to this report is a list of those formerly detained in Section 1 who were assaulted with batons, or shields, some in addition to being sprayed with mace.³² The list preserves the anonymity of those who claim to have been assaulted for reasons which are explained later in this report.³³ Included in the list is a 65 year old woman who found herself in the midst of the violence. She stated to a solicitor in the days following the operation:

I was in Section 1 at the time of the raid on 20th May. I was in a group of women and children behind a line of men when the police began to push forwards. When this happened I didn't move. The line of men broke and the police charged forwards with the shields and truncheons. I was holding on to a blanket and my bag. The police grabbed my bag and forced me to the ground. My arms were twisted and they sprayed mace in my face. I was kicked in the left side of my rib cage and hit with a truncheon in the upper part of my right arm. I remember there being several police officers surrounding me. I don't remember much more than that because then I fainted. When I woke up I was in the medical clinic, in Section 2. I remained there until about 12 midnight when I was taken to High Island. I believe that the Doctor I saw in High Island wrote down "police assault" in his notes.

The police and CSD were able to round up the majority of those in Section 1 but a substantial proportion, perhaps as many as 600, escaped into other sections which resulted in the prolongation of the operation. Some of those who did not flee to Section 2 fled to their huts instead. One person stated:

I was in the line of mainly men at the beginning of the operation. I was sprayed with mace which made my eyes sting and face feel like it was burning. The line broke, and I ran to bathe my face in water. A lot of people were beaten and arrested. Many, including me, ran into their hut. The police fired tear gas into the huts, shut the doors and windows, waited for approximately two minutes, and then proceeded to come in and pull us out, some by the hair.

³² The list excludes those from Sections 2, 3 and 4 who became involved on 20th May.

³³ See para 8.4.

Another who fled to his hut gives the following account of what happened when he emerged:

We were hiding in our hut after being pushed back by the police. The police threw tear gas grenades into our hut. I was forced by the tear gas smoke in the hut to come out. We were suffocating inside. When I came out I was forced to the ground and a beaten with a shield.

Another man, aged 60, was in the centre group at the time of the initial confrontation:

I remember the police broke through the line and came towards us. They were spraying a lot of mace everywhere. One officer came towards me and sprayed mace into my eyes. I reached for a bottle of water to bathe them. The policeman perhaps thought I was reaching for a weapon, as he hit me with his truncheon on the left side of my neck/shoulder. I collapsed to the ground. I was then arrested and taken away to Section 8.

There are numerous other accounts from those who were hit with batons and shields, as well as from those who witnessed their use.

Allegations of unjustified assaults have been denied by the Police director of operations, Senior Assistant Commissioner Toby Emmet. He stated on 22nd May, 1995:

I was there and I never saw any gratuitous assaults by any of the police officers, but what I did see was gratuitous violence on the [Vietnamese] part³⁴

6.8 An estimated 900 people were finally arrested in Section 1 during the initial hour or so of the operation, and taken to Section 7 to await removal to High

³⁴ "Camp raid assaults claimed", South China Morning Post 23 May 1995.

Island.³⁵ The remaining 600 or so had been able to flee through one or other of the two breaks in adjoining fence and into Section 2.

A number of these did not stop in Section 2 but went further. At some stage, breaks had been created in the double fence separating Sections 3 & 4, and it was to these sections an unknown number of the people from Section 1 fled.

- 6.9 The "escape" of those from Section 1 was related to the monitors by the CSD and Police commanders:

Around 1300 hrs

An interim briefing was given to the monitors by Mr Toby EMMET (RHKPF³⁶) and Miss Bonnie WONG (CSD) who updated us on the latest situation. They told us that over 500 VMs from section 1 were missing and possibly hiding in sections 2, 3 and 4. By this time, section 1 had already been cleared. _

Later in the afternoon, at approximately 5.00pm, a second briefing was held for the benefit of the monitors, with Emmet and Wong:

We were told by Mr Emmet that over 500 VMs were found missing from section 1 but that in the morning operation, only 20 VMs had escaped into section 2. He believed that the 500 odd VMs had gone into section 2 in the week after the announcement was made. Two monitors were not convinced that this could be the case.

The basis for the doubt expressed by two of the monitors of the explanation given by Mr Emmet is not stated in the Report. Only the two Justices of the Peace were able to report on seeing the "escape" from Section 1 to Section 2 - (see above extract under "1000hrs"). It is possible that the JPs saw far

³⁵ Monitors' Report p3

³⁶ Royal Hong Kong Police Force

more than the number estimated by Mr Emmet fleeing from Section 1 to Section 2 in the morning of the operation. Moreover, Mr Emmet's statement is contradicted by statements in the possession of this organisation from the Vietnamese who witnessed the events.

At the same 5.00pm briefing on 20th May, the monitors were told of the action the Police had decided to take to round up those missing from Section 1:

We were told that the Police decided to take out the 1,400 Vietnamese males (aged above 16³⁷) from section 2, 3 and 4 to the holding area in section 8 in order to identify the 500 - 600 missing VMs of section 1. We were also told that the women and children in section 3 had moved into section 4 whilst those left in section 3 were mainly those VMs armed with spears, broken debris and bricks. We were told that more than 1,000 rounds of tear-gas had already been fired since the beginning of the operation.

Given the final figure of 3,250 canisters (excluding grenades) used during the operation, and that the firing had been continuous from 9.30/10.00am onwards it is quite likely that the amount fired by this stage was substantially in excess of 1,000.

- 6.10 The Monitors' Report does not record the process of clearing Section 2, indicating perhaps they did not see it happen. Neither does the Report describe in any detail the operation in sections 3 and 4:

After we saw section 2 being vacated and occupied by the Police, we went to different observation points by the waterfront. Then we saw fire break out in several huts in section 4 which was quickly put out by the fireman. The Police/CSD staff quickly broke into the huts in section 4 and moved out the VMs. The situation was soon put under control by the Police. The Vietnamese males in section 4 were being moved by the Police/CSD staff to section 8. In addition, some women

³⁷ There was no recorded explanation from Mr Emmet for the targeting at this stage of those above 16, rather than the generally accepted age of majority of 18.

and children suspected to be from section 1 were also taken to section 8.

Afterwards, we went inside section 2 to see the damages. We saw broken fences, buckets full of debris by the fence, broken tiles removed from bathroom were spread all over the floors, burnt blankets were found by two monitors when they visited one of the huts. The laundry and water supply area was also damaged.

Then we went to section 8. We saw the Vietnamese men being escorted (without resistance) by the CSD staff in small groups to the holding area.

Around 2100 hrs

At this point, it is our common view that the situation had been fully under control and we decided to end our monitoring.

- 6.11 The Monitors' Report does not refer to any announcement or warning given to those in Sections 2, 3 and 4 by the police of their intention to "screen" all of the males over 16 for missing Section 1 detainees. Whether or not there was such a warning is very relevant to the reasonableness of the measures the police used in this latter part of the operation.
- 6.12 It was during the police operation to clear Sections 2, 3 and 4 that further assaults occurred and injuries were sustained.

One man was trying to get his family out of Section 2 into Section 3 where, as reported earlier, there was a break in the double fence. The police fired tear gas canisters at him, some of which struck him on the body. The police then caught him and beat him with truncheons. He became unconscious. When he came to he was in the Special Unit of the unoccupied Sections 7 & 8, which were being used to hold those being transferred, whilst the transportation was being arranged. Although he was not a Section 1 detainee, according to the revised plan announced to the monitors, he was required to be rounded up.

In the special unit, his head wounds were stitched. photographs were taken of his injuries. He was taken back to Section 2 on Monday 22nd May where he saw a doctor in the clinic, and further photographs were taken of his injury. Those in Section 2 consider him to be the most seriously injured from this section.

6.13 The baby girl

It was reported on Sunday 21st May 1995 that a one-year-old Vietnamese baby girl had been admitted to hospital suffering from burns to her face and arm following the operation the previous day.³⁸ When asked for his comments at a press briefing on 22nd May, the Acting Secretary for Security Mr Ken Woodhouse said that the burns were "a result of teargas"³⁹

Mr Woodhouse was also asked about the use of tear gas against children. The same newspaper report states that in reply he said that women and children were repeatedly asked to go into their huts, but refused to do so.

The circumstances in which the baby girl was hurt are as follows. She was inside one of the huts in Section 3, being held by her aunt, her mother's sister. Police surrounded the hut, and threw hand grenades into the hut, to force the occupants to come out, as part of the round up of all the men in these sections over the age of 16. When they emerged, the baby had fainted and it was feared that she had stopped breathing. Her mother had also fainted. The baby was carried out by her aunt who was also suffering from the effects of the tear gas.

³⁸ "Baby girl joins long roll call of casualties" Sunday Standard, 21st May 1995.

³⁹ Id. fn 24

One of the policemen took the child and ran towards the Section 3/4 clinic. The child's aunt followed. On route to the clinic, there is a hot water heater, with dual taps, a temperature gauge and indicator lights, red and green. Red indicating that the water is not yet hot enough, and green indicating that boiling point has been reached.

On seeing this, and apparently in an effort to revive the child, the police officer held the child's head under one of the taps and turned it on. Horrified at what had happened, the officer handed the child back to the aunt, who had by this time caught up, and whose screams were not enough to prevent the injury. She ran with the child to the clinic, and reported what had happened.

The child's mother, who had by this time been revived, was called and she and the child were taken to hospital. The baby was admitted at 9.13pm, at the Prince of Wales Hospital in Shatin, a 20-minute journey from Whitehead.⁴⁰ Allowing time for initial treatment to have taken place at the camp Clinic, this places the time of the police raid on the hut in section 3 at between 7.30pm and 8.30pm. The baby remained in hospital for two weeks, and has now returned to the camp. The burns have resulted in serious scarring.

⁴⁰ "Commissioner rejects call for public inquiry" South China Morning Post, 24th May 1995.

PART SEVEN - OFFICIAL RESPONSE TO ALLEGATIONS

7.1 The use of truncheons.

The use of police batons against the Vietnamese is something which has been denied by the Administration. In a letter to Legislative Counsellor Ms Christine Loh the Secretary for Security Mr Peter Lai Hing-ling defended the force which was used during the operation:

Tear smoke was used in considerable quantities to bring the riot-like situation under control; it was the minimum use of force in the circumstances. The alternative would have involved the use of batons which would have resulted in many more injuries. 180 Police and CSD officers were treated for injuries on 20 May. 27 Vietnamese were treated including a baby girl who was hospitalized with burns from hot water.

The letter is part of a series of letters from Christine Loh to the Secretary for Security which together form Annexure E to this report. The above extract is from Mr Lai's letter of 13th June 1995, which was in response to the original letter from Christine Loh raising a number of concerns following the Section 1 operation.

The series of letters is as follows:

- A. Letter from Christine Loh to Secretary for Security 25/5/95
- B. Letter from Secretary for Security to Christine Loh 13/6/95
- C. Letter from Christine Loh to Secretary for Security 16/6/95
- D. Letter from Acting Secretary for Security to Christine Loh 11/7/95

7.2 Violence of the Vietnamese

On the level of violence used by Section 1 detainees against the approaching police and CSD officers Mr Lai stated in letter B:

The level of violence used against the disciplined services was unprecedented and the Vietnamese responsible were, for the most

part, from Sections 2 - 6 and thus not even involved in the transfer exercise.

This is consistent with the photographs of the incident and the statements from the Vietnamese in both Section 1 and other sections, whilst it stops short of saying that those in Section 1 were not violent at all. The subsequent letter D from the Acting Secretary for Security Mr Woodhouse, in contradistinction, implies that Section 1 was violent:

In the transfer of the Section 1 population to High Island, we applied exactly the same notice procedures as were adopted for the peaceful transfer of the Section 8 population in April.⁴¹ We did engage the Vietnamese in dialogue, but, they decided to resort to violence. To bring a riot-like situation under control, we used tear-smoke, which, in the circumstances, constituted the minimum use of force. The alternative strategy would have been to resort to physical contact with the armed and violent Vietnamese; which would have led to more serious injuries on both sides.

This passage, from the first page of letter D, strongly implies that

- (1) those in Section 1 resorted to violence;
- (2) those in Section 1 were armed;
- (3) there was no physical contact by the police and CSD officers with the Vietnamese in section 1.⁴²

The largely passive resistance adopted by the Vietnamese in section 1, as seen in the photographs, conflicts with Mr Woodhouse's general assertions. Again, there is an implied denial of the use of batons or shields against the Vietnamese, to be weighed against the numerous complaints of assault, evidence of bruises suffered by the Section 1 detainees, and wounds requiring stitches all allegedly inflicted by the use of police truncheons.

⁴¹ This is not correct - see para 4.1.2 above.

⁴² And explicitly denied later in the letter - page 3 point 3(d).

7.3 Women and children as "human shields"

One of the most serious allegations levelled against the Vietnamese in section 1 by the police was that, quite apart from protecting their women and children, they had used them as "human shields".⁴³ Letter D offers a milder allegation, suggesting that "[w]omen and children were involved in the initial organized resistance which confronted the disciplined services on entry to Section 1" but that "apart from that, children were not used as 'shields'".⁴⁴ This is a substantial 'watering down' of the allegation.

7.4 The specific use of tear gas

7.4.1 Allegation No 1: that tear gas canisters were fired directly at people.

The information gathered from the camps strongly suggests that the police were firing tear gas canisters directly at the Vietnamese, particularly those fleeing from one section to another. This has been denied, but it is admitted that "tear smoke was fired in the direction of the Vietnamese fleeing from Section 1 to prevent their escape."⁴⁵

The firing of tear gas canisters intentionally at persons is specifically referred to on the instructions (in English) on each canister -

No. 565HK SKAT(tm) SHELL
 Chemical Irritating Agent (CS)
 WARNING...DANGER
 FOR USE BY TRAINED PERSONNEL ONLY
 MAY START FIRES
 FOR OUTDOOR USE ONLY
 Must not be fired directly at
 persons as Death or Injury may
 result. Give Medical Aid to Persons
 seriously affected.
Federal Laboratories
 SALTSBURG, PENNSYLVANIA 15681

⁴³ Id, fn 40.

⁴⁴ Letter D, page 2.

⁴⁵ Letter D, page 3.

It is only a small step from the firing of tear gas canisters "in the direction of" persons, and the firing of canisters at persons.

7.4.2 Allegation No 2: that it was used to clear huts.

Furthermore, it is denied that tear gas grenades or canisters were fired into huts.⁴⁶ This has been stated by many Vietnamese, including those from sections other than Section 1, as the preferred method of clearing huts. As a tactic, it is logical, and achieves the desired objectives of incapacitating the targeted person, and forcing them to leave their shelter.

Tear gas has recently been used in this fashion in another field of combat - by the French against those protesting its decision to resume nuclear testing. On 10 July, French forces stormed the Greenpeace vessel Rainbow Warrior II, which had invaded French territorial waters and entered the military exclusion zone. One of the methods used in capturing the ship was to throw tear gas grenades into the bridge. It was effective, but widely condemned. Australian Foreign Minister Kim Beazley said that he considered it "unthinkable that you could use [tear gas] in a confined space."

⁴⁶ Letter D, page 2 point 2(iv).

PART EIGHT - THE INJURIES

8.1 According to Government press briefings during and after the operation, the vast majority of injuries were sustained by police and CSD officers. The Government stated on 20th May 1995 that approximately 195 persons had received treatment for injuries.

Of this number, 127 (65%) were police, 41 (21%) CSD and just 27 (14%) Vietnamese. Most of the police and CSD were suffering from heat exhaustion. The most serious injury to a police or CSD officer was a broken bone caused by the impact of a large rock thrown from Section 2.

8.2 The estimation of numbers of those injured in such operations is a matter of considerable sensitivity, due to the controversy surrounding the alleged cover-up of the number of physical injuries in the 1994 April raid on Section 7. Following the allegations at that time an extensive investigation culminated in Mr Ken Woodhouse, then Deputy Secretary for Security stating publicly:

There has been no cover up; on the contrary, when doubts were expressed, we immediately took the initiative to check with the British Red Cross who provided most of the data. This review revealed that, contrary to our assumption, people continued to report injuries to the British Red Cross in the days following the operation; our assumption that they would report immediately was, therefore, incorrect.⁴⁷

8.3 It is surprising that the official statements following 20th May concerning the injury toll have not been precise or detailed. There are also doubts as to the reliability of such statements. There is a direct contradiction between the letter from Secretary for Security Mr Peter Lai that "27 Vietnamese were

⁴⁷ JPs' Report para 3.111 (emphasis added).

treated..."⁴⁸ and the Government Information Service ("GIS") press release which predated his letter by three weeks:

Up till 8 am this (Wednesday) morning, another 6 Vietnamese Migrants (VMs) sought medical treatment in connection with the Whitehead Camp transfer Operation on May 20, making the total number of VM injury to 73. All the cases were attended to by the Medical officers on duty.

Among the additional 46, 16 were from Whitehead Detention Centre (WHDC), two of whom did not have any injury marks on them; and 30 were from High Island Detention Centre, 12 of whom did not have any injury marks on them.

Some injured VMs in WHDC were injured by the stones threw at the police and Correctional Services Department officers during the course of the operation.⁴⁹

The latest official figure of the numbers of Vietnamese who have reported being injured is contained in the follow-up letter from Mr Woodhouse, dated 11th July 1995.⁵⁰

In the use of the term "injury marks" the GIS release goes some way to supporting the claim of the Vietnamese to have been assaulted by police batons (an assault with a shield is unlikely to leave a specific mark), and/or having been struck by tear gas canisters.

8.4 The non-reporting of injuries and assaults.

It may be that the official number of those who have sought treatment following 20th May 1995 is accurate. A substantial proportion of those who were either assaulted or suffered injuries have not made a report or sought treatment. The most common reason for not reporting injury and/or assault

⁴⁸ Annexure E, letter B, page 2.

⁴⁹ GIS release dated 24th May 1995, Serial no GIS950524015.

⁵⁰ Annexure E, letter D, page 4.

is the fear of being made an early target for forced repatriation if they do. The fate of those injured in the transfer operation on April 7th 1994 is seen as a disincentive.

388 Vietnamese have lodged claims with the Legal Aid Department for lost property and injury arising out of the April 7 1994 transfer of Section 7 of Whitehead. The Legislative Council has recently enquired into allegations of delay in the considering of the applications.

The Legal Aid Department and the Security Branch were called to special sittings of the respective Panels overseeing the conduct of each. At these sittings the Security Branch has denied specifically targeting for forced repatriation those from Section 7 who had made claims. At the same time, Mr Brian Bresnihan, the Governments Refugee Coordinator, refused to give an assurance not to deport those with outstanding claims before their claims had been finalised.

The paper submitted to the Legislative Council Panel on Administration of Justice and Legal Services which sets out the position of the Security Branch on the issue states:

Insofar as the repatriation of all such legal aid applicants is concerned, the position of the Administration is clear. An application for legal aid does not constitute grounds to stay a removal order. Were this not the position, VMs could always delay their repatriation by applying for legal aid. That said, the individual circumstances of each VM is carefully examined before a decision is made to repatriate him.⁵¹

⁵¹ Vietnamese Migrants Legal Aid Applications arising from the incident in the Whitehead Detention Centre on 7 April 1994, Security Branch Government Secretariat, June 1995.

The same paper states that of the nearly 400 applicants for compensation arising from April 7th, 84 had been returned to Vietnam under the Orderly Repatriation Programme.⁵²

The Vietnamese injured on 20th May 1995 are not convinced that their claims will be considered prior to their repatriation, or that their making of a claim will not count against them. Instead, they consider that if they raise a fuss, they stand a very good chance at being placed on the list for forcible return.

8.5 Tear gas

8.5.1 Orthochlorobenzylidenemalononitrile, or CS for short, is one of the chemical compounds commonly referred to as tear gas. CS is the most commonly used of the compounds. CS gas is recognised as being capable of causing a variety of ill-effects, including:

intense irritation of the eyes, causing crying or temporary blindness; irritation of the mucous membranes of the nose, trachea, or lungs, causing coughing; irritation of the throat and stomach, with the induction of vomiting and possibly diarrhea; and irritation of the skin.⁵³

8.5.2 Fifteen Chemicals have been used around the world as tear gas agents, four extensively. Orthochloroacetophenone (CN) is the forerunner of CS and is the active chemical ingredient in mace.

Because of its unpleasant effects, CS gas has been successfully used to disperse crowds, and break-up riots. There are any number of examples of

⁵² Ibid, para 3.

⁵³ *Tear Gas - Harassing Agent or Toxic Chemical Weapon?* JAMA 4 August 1989 ("Doctors' Report")

its use in countries experiencing civilian unrest, eg., Northern Ireland, but its use in confined areas is more controversial.

8.5.3 Two of the independent monitors of the operation on 20th May expressed concern over the use of tear gas during the removal. Peter Chan of Oxfam suggested that "the effect of the teargas on the camp population should be assessed." Ms Caroline Beetz of MSF stated:

I am worried about the effect of tear-gas on the most vulnerable section of the population, that is, women and children. I wonder that if the well-being of the children had been of the highest concern to all parties, then a more peaceful way could have been achieved and therefore the need to use tear-gas would have been diminished.⁵⁴

8.5.4 A study in recent years has questioned the assumption that tear gas produces no long term lasting effects. A group of doctors with expertise in the area of respiratory medicine visited South Korea and investigated the use of tear gas in dispersal of political demonstrations which had taken place in June 1987. During the visit they heard accounts of

police firing canisters and throwing tear gas grenades directly into crowd gatherings and enclosed spaces, such as rooms, motor vehicles, and subway corridors. Persons who were close to the exploding tear gas grenades and canisters commonly sustained penetrating trauma from plastic fragments that was exacerbated by the presence of tear gas chemical. Many individuals sustained blistering burns from direct contact with the tear gas powder.⁵⁵

The Doctors' Report also comments that CN (the active ingredient in mace) "is generally acknowledged to be of greater toxicity than CS, being more likely to cause permanent corneal damage on contact with the eye."

⁵⁴ Monitors' Report page 10

⁵⁵ Id fn 55, page 661

8.5.5 The possible long-term effects of CS or CN gas are unknown. The possibility that it may have adverse reproductive effects or cause cancer have been discussed among physicians.⁵⁶

8.6 Actual numbers of injuries

The operation on 20th May left hundreds of Section 1 Vietnamese suffering in varying degrees the effects of tear gas inhalation, mace spray, baton assaults, and burns and bruises from impact of canisters.

In addition to those injured by assaults - Annexure D - in excess of 300 men women and children from Section 1 were substantially affected by CS in gaseous or liquid form, either by the direct spraying of mace at the head and/or neck area, or by ingestion of CS smoke into the lungs. A large proportion fainted as a consequence. Some of those affected were babies, only a few months old. Many of those who had mace sprayed into their eyes suffered from blurred vision for a lengthy but as yet undetermined period. Almost all have had difficulty breathing, and some of those include persons with a prior and documented history of chest complaints and breathing difficulties. This includes the 65 year-old woman whose story appears earlier in this report.

The treatment of those who were targeted in the section 1 raid and who suffered some form of injury is not fully known at this time. It is known that because of the large number some were unable to be treated immediately, and it is likely that unless those injuries were obvious externally, they were not treated for some time after the injury was sustained, if at all. For the reasons already stated, may have chosen not to report for the treatment they may need.

⁵⁶ Ibid, p 662.

8.7 Psychological damage of such operations

8.7.1 One aspect of the operation that has received little recognition is the effect on the mental state of those involved - police, CSD and Vietnamese.

8.7.2 The long term traumatizing effect of violence in the confinement of detention centres was the subject of work by the NGO Community and Family Services International following the fire in the Sekkong camp on Chinese New Year 1992. Most of the children who experienced the fire revealed symptoms of post-traumatic stress, a recognised psychiatric disorder. A special programme was set up to assist 25 of the children who were particularly traumatized by the event.

8.7.3 The medically accepted description of the disorder is set out as follows:

309.89 Post-traumatic stress Disorder

The essential feature of this disorder is the development of characteristic symptoms following a psychologically distressing event that is outside the range of usual human experience (i.e., outside the range of such common experiences as simple bereavement, chronic illness, business losses, and marital conflict). The stressor producing this syndrome would be markedly distressing to almost anyone, and is usually experienced with intense fear, terror, and helplessness.⁵⁷

8.7.4 The "characteristic symptoms" can include

- (1) recurrent and distressing recollections
- (2) nightmares
- (3) intense distress at the exposure to events reminding the person of the traumatic event
- (4) psychological amnesia or "blocking out" of the event
- (5) marked diminished motivation and interest in normal activities

⁵⁷ Diagnostic and Statistical Manual of Mental Disorders (3rd Edition - Revised) - American Psychiatric Association

8.7.5 It is likely that confrontations such as May 20th will produce sufficient stress for children and adults to lead to the disorder, or symptoms characteristic of it. And whilst the condition does not discriminate in terms of age, ie. persons of all ages can suffer from it, it is recognised that the very young and the aged have greater difficulty in coping with trauma than persons in mid-life:

The body's coping mechanisms designed to deal with the emotional and physical impact of traumatic stimuli are not fully developed in children of tender years. The elderly are likely to have more rigid mechanisms and diminished capacity to develop flexible approaches to coping with the effects of trauma.⁵⁸

This brings into sharp focus the Government's responsibility for the indiscriminate treatment of people in these operations, regardless of age.

Many of the above symptoms which might give rise to a diagnosis of the disorder if they persist for a sufficiently lengthy period, are already seen in the detainees, because of the existing effect of their detention. This may be masking all but the most severe reactions. Community and Family Services International (CFSI) conducted a survey which led to a report in 1992, dealing with the effect on children of detention which included that finding that:

Both the results of the in-depth interviews and analysis of the data from the questionnaire survey indicate that the majority of children are depressed and anxious. Their response to the events and circumstances they have experienced is characterized by sadness, lack of energy and a disinterest in what is going on around them. They suffer from psychosomatic symptoms of anxiety and are restless and have problems concentrating. Memories of distressing events intrude upon their thoughts. They feel they do not have enough help or guidance and express a need for affection.⁵⁹

⁵⁸ Tortious Liability for Psychiatric Damage, Mullany and Handford, LBC 1994.

⁵⁹ Living in Detention: A Review of the Psychosocial Well-Being of Vietnamese Children in the Hong Kong Detention Centres. Report prepared by Margaret McCallin, International Catholic Child Bureau, Geneva, based on research performed by CFSI April to June 1992, para 3.1.

The same report expressed serious concerns about the involvement of the children in repatriation by force:

The review of the situation of the children and the subsequent recommendations take the "best interests of the child" as the principal consideration. It is suggested that the use of force in the repatriation of children could have very serious consequences for their well-being. The violence and fear that are likely to characterize such an event may do irreparable harm to children who are already "psychologically wounded"⁶⁰

⁶⁰ Ibid., para 4.5. Emphasis added.

PART NINE - LEGAL CONSIDERATIONS

9.1 The use of force of any kind presupposes the existence of a lawful and valid order which is being carried out.

9.1.1 In the case of the operation at Whitehead on 20th May 1995, this must have consisted of an order from the Director of Immigration pursuant to Section 13D of the Immigration Ordinance, under which all Vietnamese asylum-seekers in Hong Kong are detained. Subsection (5) of that Section provides that "any person detained under subsection (1) may, under the authority of the Director of Immigration, be transferred from that place and detained in any other place or places specified by the Director of Immigration."

9.1.2 If the transfer is considered necessary for the "order and good management" of the detention centre, the Director of Immigration must have first certified as such:

"(6) Notwithstanding subsection (5), a person detained under subsection (1) in a detention centre shall not be transferred from that detention centre to another detention centre on the ground that his transfer is necessary in the interests of order or good management in the first mentioned detention centre unless the Director of Immigration has-

- (a) certified that his transfer is so necessary; and
- (b) cause written notice to be served on the person informing him of the ground on which he is to be so transferred."

(Emphasis added)

None of those transferred received written notification of their impending transfer from Whitehead to High Island. It follows that either the transfer was not "necessary in the interests of order or good management" or that it was so necessary, and the Director is in breach of Section 13D(6). If this is so, then the transfer was not lawful, and whatever force was used by police or CSD officers was unlawful force.

9.2 Assuming there was a valid order in force at the time of the operation, the only provision in the Ordinance which refers to the involvement of officers of the Correctional Services Department SD or the police in the carrying out of the order is section 35(5):

"35(3) Without prejudice to any other Ordinance-

(a) any person detained by virtue of this Ordinance; and

...
may be taken in the custody of an immigration officer, immigration assistant, officer of the Correctional Services Department or police officer to and from any place where his attendance is required for any purpose of this Ordinance."

9.3 "Reasonable force" - guidelines for the police and CSD

9.3.1 The specific operational guidelines for the police and CSD in the conduct of such operations have been referred to above.⁶¹ In addition to these, and overriding them in the event of a conflict between the two, are more general provisions dealing with the conduct of police and CSD officers.

9.3.2 The Police General Orders state:

29-01 Use of Force

A police officer shall display self-discipline and exercise a high degree of restraint when dealing with the public and shall not resort to the use of force unless such action is strictly necessary and he is otherwise unable to effect his lawful purpose.

2. Police officers shall identify themselves as such and, when circumstances permit, a warning shall be given of the intention to use force, and of the nature and degree of force which it is intended to use. Persons shall be given every opportunity, wherever practicable, to obey police orders before force is used.

⁶¹ Paras 5.4 and 5.5.

3. The principle governing the use of force is that only the minimum force necessary to achieve the purpose may be used and once that purpose has been achieved, the use of such force shall cease. The force used must be reasonable in the circumstances.⁶²

9.3.3 The only specific reference to the use of force on the part of the CSD is contained in the Detention Centre Rules made under the Immigration Ordinance:

38. Use of force

(1) No officer in dealing with detainees shall use force unnecessarily and, when the application of force to a detainee is necessary, no more force than is necessary shall be used.

(2) No officer shall deliberately act in a manner calculated to provoke a detainee.⁶³

9.4 Public Order Ordinance

The Public Order Ordinance⁶⁴ was introduced to consolidate the law relating peaceful assembly. Its introduction, in 1967, coincided with the worst civilian riots Hong Kong had seen for many years.

Whilst much of the Ordinance deals with the conduct of persons in public places, the provisions dealing with unlawful assembly (section 18) and riots (Section 19) are no so limited, and apply it seems to all places, public and private. Section 18 provides that an assembly of persons (three or more) becomes unlawful when such persons "conduct themselves in a disorderly, intimidating, insulting or provocative manner intended or likely to cause any

⁶² Police General Orders, Chapter 29 "Use of Force and Firearms"

⁶³ Immigration (Vietnamese Migrants)(Detention Centres) Rules, 361 of 1989.

⁶⁴ Cap 245.

person reasonably to fear that the persons so assemble will commit a breach of the peace, or provoke other persons to commit a breach of the peace."

A "riot" within the meaning of Section 19 occurs when one of the assembled persons commits a breach of the peace. "Breach of the peace" is not defined.

Unlawful assembly and riotous assembly are made offences by the Ordinance. Section 45 provides that the police may use such force as may be necessary

- (a) to prevent the commission or continuance of any offence; and
- (b) to arrest any person committing or reasonably suspected of being about to commit or of having committed any offence under the Ordinance.

Section 46 cautions that "the degree of force which may be so used shall not be greater than is reasonably necessary".

Certain sections of the population of Whitehead on 20th May conducted themselves in a manner which could reasonably be described as disorderly, and amount to an unlawful assembly. However, there is a real question as to whether the assembled group in Section 1 were at all "disorderly, intimidating, insulting or provocative" or indeed anything else but peaceful, until the police began to take action to break the human barrier which had been formed.

- 9.5 Whether or not the force used in the removal of the occupants of Section 1 was reasonable depends to large part on the version of the events which is accepted as true and accurate. This goes to the heart of the need for a full and impartial inquiry to be set up into the events.

Requests for the Government to release the videotapes of the operation have been denied. This is the one piece of evidence which could confirm or

refute many of the allegations being made by the Vietnamese. The request from Legislative Counsellor Christine Loh met with the excuse that

- Litigation is likely to arise from the events of 20 May and, if so, the videos taken of the operation will be used as evidence. In the circumstances, they cannot be released.⁶⁵

The possibility, or even the probability, that these recent events may result in court proceedings is no legal bar to the release of evidence in the interim, to ensure the public of Hong Kong "knows perfectly well what happened."⁶⁶

Refugee Concern made a similar request for a copy of the videotapes, by letter directed to the Secretary for Security dated 26th June 1995 which met with the response from Mr Brian Bresnihan stating:

It is not the practice of the Administration to release materials which may be harmful or prejudicial to the enforcement of the law or the outcome of possible legal proceedings.

It is difficult to see how the release of the videotapes could possibly of harm to law enforcement, or prejudice the outcome of potential litigation. Of course, the Government may be implying that it wishes to keep the tapes "up its sleeve" for possible use in the defence of actions for damages.

⁶⁵ Annexure E letter D page 2.

⁶⁶ Para 1.3 above.

PART 10 - FINDINGS AND RECOMMENDATIONS**10.1 The Monitors**

This report is not intended to be an investigation into the role of the monitors in these operations. A number of comments have been made which could be said to be critical of the monitoring of the events of the 20th of May and the subsequent report. It is understood that the monitors are attempting to ensure the proper conduct of the police and CSD under difficult circumstances. They are acting without fee, in good faith, because they are concerned for the well-being of all persons involved in these operations.

The monitors' reports are prepared very soon after the operations, in order that the Hong Kong public can be reassured at the earliest opportunity that its security forces are acting with restraint in the carrying out of the orders of the Administration. It must be acknowledged that the Monitors' Report on the removal and transfer of Section 1 is in no way a comprehensive record, and nor does it pretend to be. Due to the limited number of monitors and the widespread events they were required to observe their statements had to be based in part upon hearsay reports from the commanders and personnel involved in the operation. What has resulted is a generalized account which at best gives a vague indication of what transpired, and at worst is seriously misleading.

The monitors' recommendations are disappointing. They are cursory, and concentrate on the means of improving the police methods of removal for future operations. They do not, for the most part, reflect a concern for the detainees themselves. For example, despite the concerns expressed by the two monitors on the use of extraordinary amounts of tear gas on 20th May, the only recommendation dealing with tear gas suggested that

- d) During the operation, water (not drinking water) should not be provided to the adjacent sections of the targeted sections as

this was used by the Vietnamese to weaken the effects of tear-gas.⁶⁷

It is apparent that despite the shortcomings of the Monitors' Report, it has and will be used by the Government to support its contention that no excessive force was used on 20th May. To this extent, it is used as a substitute for a proper inquiry into the events.

10.2 Findings

Our principal findings, set out below, reflect an assessment of the evidence referred to in the body of this report.

- 10.2.1 At no time prior to the commencement of the operation at 9.30am on May 20th were the occupants conducting themselves in a disorderly, intimidating, insulting or provocative manner. They were not an "unlawful assembly" within the Public Order Ordinance, nor were they a "riotous assembly" within the Ordinance.
- 10.2.2 The barricade which faced the police on their entry into Section 1 was comprised almost entirely of men. The women seen by the monitors were not at the front of the line of resistance. There is no evidence that women and children were used by the Vietnamese as "human shields". Official statements to the contrary made shortly after the operation are misleading, perhaps deliberately so. The Administration has largely withdrawn this allegation on being pressed by a member of the Legislative Council, Ms Christine Loh.
- 10.2.3 No "counselling" within the ordinary meaning of the word took place after the police entered Section 1. Whatever dialogue there was took

⁶⁷ Monitors' Report page 8. The emphasis is theirs.

place prior to 9.30am, in the form of a warning given to the Section leaders at approximately 9.00am, to the effect that if the people did not give themselves up, they would be forced to do so.

10.2.4 During the initial stages of the removal of those in Section 1, and in particular between 9.30am and 10.30am, the force used by the police and CSD officers exceeded the minimum force necessary to achieve that purpose, particularly having regard to the fact that those in Section 1 were unarmed. Contrary to Government statements there is substantial evidence, we find, that batons were used during the removal. The use of batons to incapacitate the detainees was not "reasonable force" and constituted assaults.

10.2.5 The use by the security forces of tear gas during the operation was excessive. It was used in an unlawful manner. Specifically

- (1) The firing of tear gas canisters at groups of detainees and individuals to prevent their "escape" into other sections is in direct contravention of the strict instructions on their use, and is highly dangerous. Death could result if this practice is allowed to continue.
- (2) There is credible testimony substantiating the use of tear gas in the confined spaces of huts for the purpose of clearing them of individuals, during the operation. This practice is very dangerous, and again could result in death or serious injury if it continues. We find that this practice indirectly resulted in the burns to the baby girl from section 3.
- (3) The use of tear gas in the confines of a detention centre with no means of escaping its effects is highly questionable and of dubious purpose.
- (4) The use of tear gas in the vicinity of children is abhorrent.

10.2.6 The operation on 20th May resulted in hundreds of injuries to police officers, CSD personnel and Vietnamese asylum-seekers. The injuries to the detainees extended beyond those in Section 1. The bulk of the injuries to the Vietnamese resulted from the unlawful practices referred to above.

10.3 Recommendations

10.3.1 A Commission of Inquiry into the operation, to be chaired by a High Court Judge, should be set up immediately, to investigate and make findings with respect to *inter alia*

- (1) the cause(s) of the injuries to the police, CSD and Vietnamese;
- (2) the use by police and CSD officers of shields, batons and mace during the operation;
- (3) the manufacture and use by the Vietnamese of home made weapons and whether there was an appropriate search prior to the operation;
- (4) the use of tear gas in confined spaces;
- (5) the use of tear gas on children, and the aged;
- (6) the toxic effects, short and long term, of tear gas and mace;
- (7) the methods of counselling used by the Administration and the non-involvement of NGOs in this process.

10.3.2 Pending the outcome of the inquiry, all transfer and forced repatriation operations should cease. Should operations continue, the use of tear gas should cease. Its use in confined spaces such as detention centres where there are children should be permanently banned.

10.3.3 The videotapes of the operation should be released by the Government immediately.

- 10.3.4 Guidelines on the role of the monitors in such operations should be made public. The number of monitors for each operation should be increased to between 6 and 10. It should be a requirement that they view the police and CSD videotapes of the operations prior to the preparation of their reports. Each team of monitors should be allowed 2 weeks to report on the operation they are appointed to observe.

Conclusion

The camp transfer operations are inextricably linked with the Government's forced repatriation programme or ORP. These operations involve extraordinary cost, in personal and money terms, to the community and to Hong Kong's image as a peaceful and humane society. Solutions other than ORP must be explored, for the sake of all those involved, and especially the children.

ANNEXURE A

R C H K

Refugee Concern Hong Kong

Kowloon GPO Box 71510, Kowloon Hong Kong

Telephone 2783-8330

Fax 2780-7433

Mr. Christopher Patten
Governor
Government House
Hong Kong

21 May 1995

URGENT - BY HAND

Your Excellency

re: Legality of Gas Attacks on Children

Subjecting young children to the inhalation of toxic gas is, in our respectful submission, unacceptable behaviour for officials in a British territory. It may also be unlawful.

In the wake of the massive gas attack upon Whitehead Detention Centre on 19th May 1995, we call upon you to immediately appoint a Commission of Enquiry to enquire into the legality of the use of force by Royal Hong Kong Police and Correctional Services officers against children in detention centres.

As a group of lawyers studying the treatment of Vietnamese detainees in Hong Kong, we are concerned that the firing of so many tear gas canisters in confined spaces where it is known there are children lacks legal authority.

This would not be surprising since, in our view, this conduct constitutes a gross abuse of human rights. The children are already incarcerated within a confined area, have no freedom of choice over their movement and have no means of escaping from the effects of so much toxic gas.

In our respectful submission, in the absence of some specific legal sanction, knowingly placing young children in a situation where they inhale toxic fumes may constitute a crime under the Crimes (Torture) Ordinance and offences under the Offences Against the Person Ordinance and at common law may also have been committed.

It also appears to us to constitute a breach of Article 37 of the UN Convention on the Rights of the Child, which provides that no child shall be subjected to torture or other cruel, inhuman or degrading treatment. States parties are required to extend all possible protection to children, in particular those in vulnerable situations. Instead of protecting the children, they were exposed to the risk of injury, and have been injured. As you know, this Convention was extended to Hong Kong by Her Majesty's Government in September 1994.

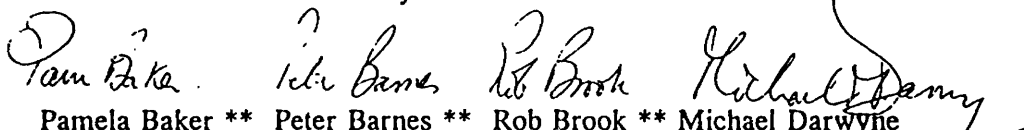
Furthermore it appears to be in direct contravention of the Detention Centre Rules made under the Immigration Ordinance, Cap. 115. Rule 38 provides that no officer in dealing with detainees shall use force unnecessarily, and, where the application of force to a detainee is necessary, "no more force than is necessary shall be used."

Public concern over the extent of state sanctioned violence, and the subjection of law enforcement officers to the risk of injury by parents acting in defence of their children, can not be left unattended. We call for an immediate judicial enquiry into the legal authority for the use of toxic gas by officials in confined spaces against innocent children. An Enquiry would serve an especially important function at this time, as it appears that greater use of violence is being contemplated against the Vietnamese detainees.

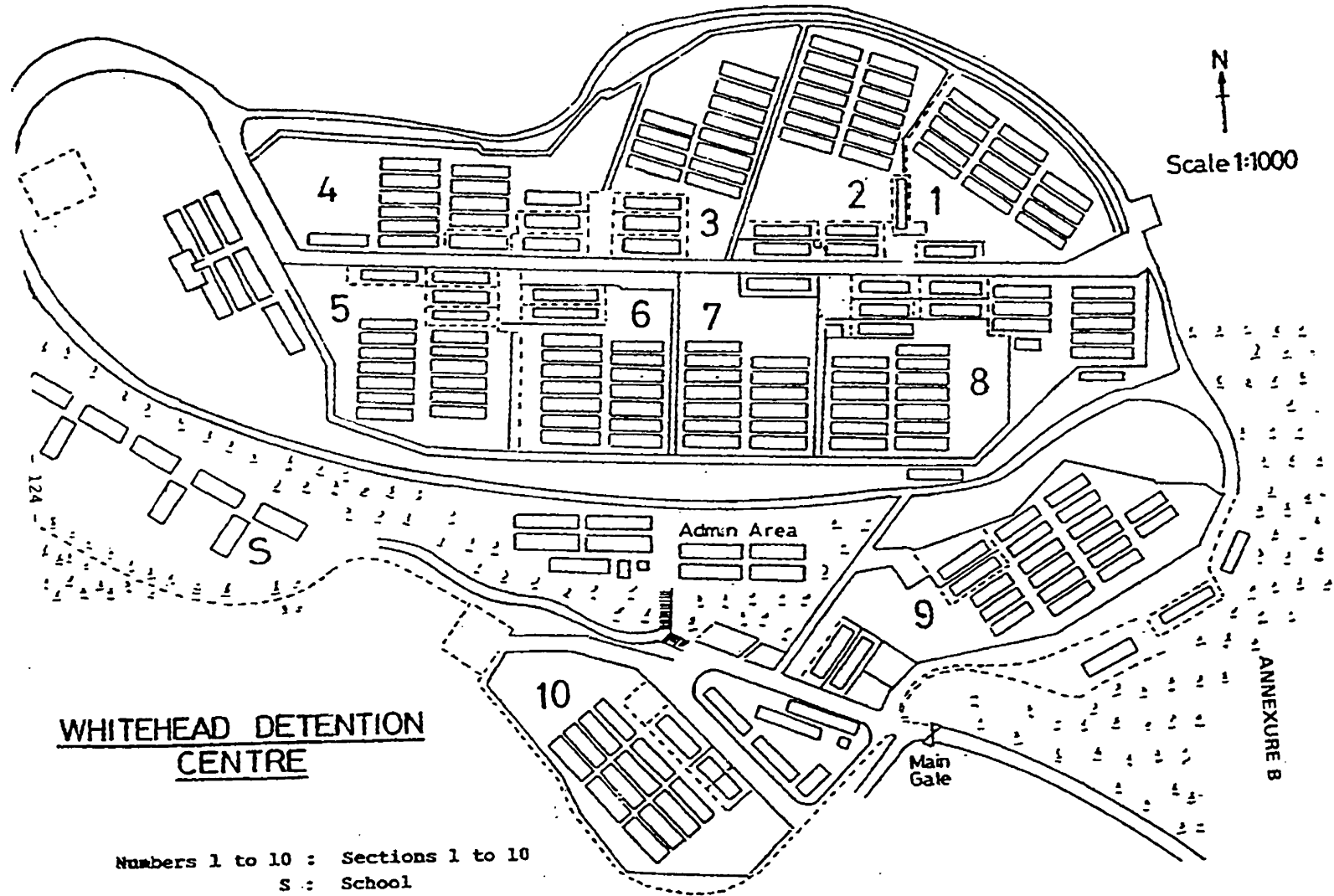
The precise Terms of Reference would, of course, be a matter for your Excellency, but we would like to suggest that it be designed to provide clear guidance to the authorities on what actions are permitted.

We call for an immediate halt to the use of toxic gas against children in confined spaces pending the outcome of such an Enquiry.

Yours faithfully



 Pamela Baker ** Peter Barnes ** Rob Brook ** Michael Darwyne



WHITEHEAD DETENTION CENTRE

Numbers 1 to 10 : Sections 1 to 10
 S : School

ANNEXURE C

List of Assaults - Whitehead Section 1 May 20, 1995

Sex	Age	Nature of assault
Female	4	Shield/face
Female	12	Shield/face
Male	16	CS canister/ribs
Male	19	CS canister/ribs
Male	20	Mace, baton/stomach
Male	21	Mace, baton/stomach
Male	21	Mace, baton/head, shoulder
Male	22	Mace, baton/stomach
Male	23	Mace, baton/head
Female	24	Baton/head
Male	24	Baton/head
Female	25	Baton/head, back
Male	25	Baton/chest & back
Male	25	Mace, baton/hand
Male	25	Baton/chest
Male	25	Baton/head & shoulder
Male	25	Baton/head
Male	26	Baton/head, shoulder
Male	26	Baton/head
Male	27	Baton/stomach
Female	28	Baton/hands
Male	28	Mace, shield/head
Male	28	CS canister/chest
Male	28	Mace, baton/hand
Male	28	Mace, baton/head
Male	28	Mace, baton/stomach
Male	29	Baton/head
Female	29	Mace, baton/hands
Male	30	Baton/head, arms
Male	30	Baton/shoulder
Male	30	Baton/chest
Male	30	Baton/head
Male	30	Baton/head
Male	30	Baton/ribs
Male	31	Mace, shield/chest
Male	31	Mace, Baton/head & shoulder
Male	31	Baton/chest & shoulder
Male	31	Baton/ribs
Male	31	Baton/neck
Male	32	Baton/ribs,back
Male	32	Baton/shoulder

Male	32	Baton/back
Male	32	Baton/head & chest
Male	32	Mace, baton/ribs
Male	33	Baton, mace
Male	33	Mace, baton/head
Female	34	Baton/head
Male	34	Baton/shoulder, arm
Male	35	Baton/shoulders, back
Female	35	Mace, baton/shoulder
Male	36	Baton/back, face
Male	36	Mace, baton
Male	36	Mace, shield/chest
Male	36	Mace, baton/shoulders, kicked
Female	36	Baton/head
Male	36	Mace, baton/back
Male	37	Baton/head & back
Male	38	Baton/shoulder, head
Male	38	Mace, baton/hand
Female	38	Shield/leg
Male	39	CS canister/stomach
Male	39	Baton/back
Male	39	Mace, beaten with baton
Male	39	Baton/leg
Female	39	Baton/head
Male	40	Baton/back
Male	40	Mace, baton/head
Male	40	CS canister/chest, back
Male	41	Baton/head
Male	41	Baton/hand
Male	41	Mace, baton
Male	42	Trampled/chest - police
Male	43	Baton/head, back & stomach
Male	48	Mace, baton/shoulders
Male	50	Mace, baton/head
Male	57	Mace, baton/chest
Male	60	Mace, baton/shoulders
Female	65	Baton/upper arm & kicked in ribs

Total 78

ANNEXURE D - PAGE 1



ANNEXURE D - PAGE 2



ANNEXURE D - PAGE 3



ANNEXURE E - LETTER A

OFFICE OF CHRISTINE LOH

LEGISLATIVE COUNCILLOR

25th May, 1995

Mr Peter Lal
Secretary for Security
Security Branch
6th Floor, Main Wing
Central Government Offices, HK

Dear Peter

Re : Section 1, Whitehead Raid 20 May 1995

Now that a few days have elapsed, perhaps we can look at the raid on 20 May more objectively. We have heard arguments from official sources, as well as from NGOs. I would appreciate your response on the following points:-

1. To have fired 3,250 rounds of tear gas was a tremendous amount of tear gas - can you now justify it? How many rounds of tear gas was prepared for the raid, and what portion did 3,250 rounds represented?
2. The effects of tear gas lingers for some time. I believe the adverse effect may be more severe on children. There were many children at the camp, did you consider the effect (both mental and physical) of such an amount of tear gas on them? I am aware of official reports that the detainees used women and children as "shields", how wide spread was this? Presumably, you have it on video, is that correct? I have also heard that tear gas was thrown into enclosed areas where there were women and children, is that correct? If it is right, how do you justify such action?
3. Article 37 of the UN Convention on the Rights of the Child provides that no child shall be subjected to torture or other cruel, inhuman, or degrading treatment. Would the 20 May raid, including the mental/physical health effects of 3,250 rounds of tear gas, be considered "cruel, inhuman" treatment? From my ordinary understanding of those words, it would seem so. It may be argued that the case could also be described as torture or degrading. What is the Administration's legal opinion on whether Article 37 has been breached? If yes, what steps would the Administration take? Further, what about also breaching the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment?

OFFICE OF CHRISTINE LOH
LEGISLATIVE COUNCILLOR

Mr Peter Lai
25th May, 1995
Page 2

4. It has also been said by NGOs that the Administration should have given perhaps another 2 weeks before decanting as that would have provided time for emotions to cool. Previous exercises were relatively troubled-free since sufficient time was given. Why was that procedure not adopted this time?
5. What was the total cost of the operation on 20 May?

Thank you.

Yours sincerely



Christine Loh
Legislative Councillor

CL/al

ANNEXURE E - LETTER B

布政司署
香港下亞厘畢道



GOVERNMENT SECRETARIAT

Lower Albert Road
Hong Kong

13 June 1995

Our Ref : SRD 501/13/C
Tel No : (852) 2810 2712
Fax No : (852) 2810 2261

The Hon Christine Loh,
Legislative Councilor,
Room 322, Central Government Offices,
West Wing,
11 Ice House Street,
Hong Kong.

Dear Christine,

Section 1, Whitehead Raid
20 May 1995

Thank you for your letter of 25 May.

Notice of the proposed transfer to High Island was given to the 1,700 Vietnamese in Section 1 of Whitehead on 12 May. They were told that if they came forward voluntarily, they would be moved immediately. By close of play on 17 May, only 200 had done so. On 18 May, the Vietnamese were told of the planned operation on the 20th and were again asked to come forward voluntarily; only two families responded.

In April, we transferred 1,100 Vietnamese from Section 8 of Whitehead to High Island without incident. The same procedures were used. The transfer was announced on 3 April and by early in the morning of 5 April, all 1,100 had been moved peacefully. Our experiences on 20 May were quite different.

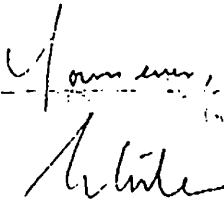
Police and Correctional Services Department officers entered Whitehead at 9:30 a.m. on 20 May. From the outset, they faced well-planned and violent resistance. The Vietnamese hurled down rocks, home-made spears, other hand objects and boiling water from the roof-tops. They also broke down the internal security fences between all four sections on the north side of the

camp including those between Sections 1 and 2. When a police officer was wounded with a spear, tear smoke was used. This contained the situation for a time and about 900 Vietnamese were eventually moved out of Section 1 to the vacant Section 7 on the south side of the camp. However, this movement led to widespread hostilities; the Vietnamese in Section 5 broke into Section 6 and threatened the security fence of the adjoining Section 7. Simultaneously, there were attempts to breach the camp perimeter fence. More police were deployed; during this time, the Vietnamese continued to rain down rocks and assorted missiles. Order was not restored in the camp until about 10:00 p.m..

The level of violence used against the disciplined services was unprecedented and the Vietnamese responsible were, for the most part, from Sections 2 - 6 and thus not even involved in the transfer exercise. Tear smoke was used in considerable quantities to bring the riot-like situation under control; it was the minimum use of force in the circumstances. The alternative would have involved the use of batons which would have resulted in many more injuries. 180 Police and CSD officers were treated for injuries on 20 May. 27 Vietnamese were treated including a baby girl who was hospitalised with burns from hot water.

Reasonable force may be used in effecting Government policies if resistance is encountered. This is what happened in Whitehead on 20 May. There have been no breaches of either of the international conventions referred to in your letter. I might add that in the face of the violence exercised by the Vietnamese, the disciplined services acted with courage and bravery. Their restraint was commented on by the independent monitors who observed the operation.

With regard to the costs of operations of this kind, it is as well to bear in mind that the largest cost element is the salaries of those involved which have to be met from the public purse in any case.


(Peter Lai)
Secretary for Security

ANNEXURE E - LETTER C

OFFICE OF CHRISTINE LOH
LEGISLATIVE COUNCILLOR

16th June, 1995

Mr Peter Lal
 Secretary for Security
 Security Branch
 6th Floor
 Main Wing
 Central Government Offices
 Hong Kong

Dear Peter

Thank you for your letter dated 13th June 1995, responding to my letter of enquiry dated 25th May, 1995 concerning the firing of 3,250 rounds of tear gas into Section I of the Whitehead Detention Centre on 20th May, 1995.

Unfortunately, you have failed to answer many of the questions raised in my letter. Some of those which were not answered were :-

1. How many rounds of tear gas were prepared for the raid and what portion did 3,250 rounds represent?
2. (i) Did you consider the effect (both mental and physical) of such an amount of tear gas on the children.
 (ii) How wide-spread was the use of children as "shields"?
 (iii) Is the use of children ^{as} shields on video?
 (iv) Was tear gas thrown or fired into enclosed areas where there were women and children? If so, how is that justified?
3. What was the total cost of the operation? Apart ~~from~~^{from} salaries, what are the other costs?

Your letter of 13th June also raises a number of additional questions. Perhaps you can be so kind as to answer these as well on your next attempt to respond :-

- (a) At what time on 18th May were the people in Section I told of the move on the 20th? By what means was this communicated to the Section?
- (b) You say that "for the most part" the violence against the police and CSD emanated from Sections other than Section I. What, if any violence was used by those who were being moved?

OFFICE OF CHRISTINE LOH
LEGISLATIVE COUNCILLOR

Mr Peter Lal
16th June, 1995
Page 2

- (c) Was tear gas fired at those who were fleeing Section 1? If so, for what intent? What kind of CS munition was used?
- (d) Were batons used at any stage of the operation against any of those being moved? If so, where and at what stage of the operation?
- (e) At what time was the use of tear gas ordered to commence? By whom? At what time was the first tear gas cannister fired/grenade thrown? Was this against Section 1 or some other section, and if so which other section?
- (f) Is it known how the baby girl was injured?
- (g) How many Vietnamese have been treated for injuries to date arising out of the Section 1 operation?
- (h) Did any of the Vietnamese complain of being assaulted by police or CSD officers?

I am sorry to belabour these points. I am personally concerned that perhaps "compassion fatigue" has made most people less conscious of what has been, and is, and might be done to the detainees. I see it as my responsibility to do what I can to ask questions of you who is responsible for execution of government policy. In this context, you say "reasonable force many (sic) be used in effecting Government policies if resistance is encountered". Does the fact that the deployment of so much force (and consumption of so much tear gas) not suggest to those responsible for formulating this policy that the policy itself might be wrong? Surely, in this day and age, there are better ways of persuading civilians to co-operate in a transfer exercise. Could you respond to this please? Are there no way, to seek a transfer through dialogue?

Before taking this line of question further, I would like to see the videos of the May 20 operation myself. I would then be in a better position to determine whether my concerns should be pursued or whether the entire incident can be encapsulated in the statement that "reasonable force many (sic) be used in effecting Government policies if resistance is encountered." Please could you suggest a convenient day on which I could view the videos?

Yours sincerely



Christine Loh
Legislative Councillor

ANNEXURE E - LETTER D

布政司署
香港下亞厘畢道



GOVERNMENT SECRETARIAT

Lower Albert Road
Hong Kong

Our ref.: L/M 1/95 to SRD 901/9/C
Your ref.:

11 July 1995.

The Hon Christine Loh,
Legislative Councillor,
Room 322, Central Government Offices,
West Wing,
11 Ice House Street,
HONG KONG.

Dear Christine,

Thank you for your letter of 16 June to which I am replying in Peter Lai's absence on leave.

Insofar as Vietnamese migrants are concerned, the Government is implementing an internationally agreed policy; those in our camps who have been determined to be non-refugees (and that includes almost the whole population) must return to Vietnam. Resistance to their return is regrettable and also constitutes the background against which we are working to bring this long-standing problem to a close. However, there is no question of "compassion fatigue" on our side. We shall continue to seek the cooperation of the migrants in a humanitarian way, but the community here rightly expects us to resolve, as soon as possible, a problem which has bedevilled Hong Kong for twenty years.

In the transfer of the Section 1 population to High Island, we applied exactly the same notice procedures as were adopted for the peaceful transfer of the Section 8 population in April. We did engage the Vietnamese in dialogue, but, they decided to resort to violence. To bring a riot-like situation under control, we used tear-smoke, which, in the circumstances, constituted the minimum use of force. The alternative strategy would have been to resort to physical contact with the armed and violent Vietnamese, which would have led to more serious injuries on both sides.

/Litigation

Litigation is likely to arise from the events of 20 May and, if so, the videos taken of the operation will be used as evidence. In the circumstances, they cannot be released.

The answers to your questions are as follows -

1. The Police used the bulk of the tear smoke. As a result of the unexpected level of resistance, they had to bring in additional supplies during the course of the operation.
- 2(i) We are, at all times, concerned about the welfare of the Vietnamese population in our camps, including the children. The effects of tear smoke on any crowd are considered before the order is given for its use, but we must consider the consequences of not using tear smoke. On this particular occasion, the Commander rightly concluded that the use of tear smoke was the minimum use of force in the circumstances.
- 2(ii) Women and children were involved in the initial organized resistance which confronted the disciplined services on entry into Section 1. Apart from that, children were not used as "shields".
- 2(iii) No.
- 2(iv) If by enclosed areas, you mean, huts, the answer is, no. Tear smoke was used to stop the rioting and to prevent the Vietnamese from using spears and other dangerous missiles against the disciplined services.
3. These costs are not available.
- 3(a) There was an error in our previous letter which has already been brought to the attention of your office. The population in Section 1 were advised at 11:35 a.m. on 19 May that they would be removed to High Island at 9:30 a.m. the following day, if they had not volunteered to go by then. This advice was conveyed to them over the PA system as well through the hall representatives.
- 3(b) At 7:00 a.m. on the morning of 20 May, CSD Community Liaison Officers went into Section 1 and again sought to persuade the Vietnamese to transfer voluntarily. At 8:30 a.m., an announcement was made over the PA system urging them to pack their belongings and come forward. There was no response to these initiatives.

/When

When the disciplined services moved into Section 1 at 9:35 a.m., the CSD officers were in front of the Police, who acted in a supporting role. Inside Section 1, a large group of Vietnamese (about 1,000) were lined up in a semi-circle holding wooden bed boards as home-made shields. Some of them were also loosely tied together. Behind this wall of bed boards was another group of Vietnamese and behind them were grouped women and children with prepared buckets of water. Some of the Vietnamese in Section 1 were armed with rocks and spears; on the roof tops of the adjacent Section 2, a large number of Vietnamese were similarly armed.

Almost as soon as the disciplined services entered the section, and before any CS smoke was fired, they came under a ferocious assault of stones, rocks and home-made spears from the Vietnamese on the roof tops of Section 2 and from some of those in Section 1. It was only after stones had been rained down on the disciplined services for about 20 minutes and officers were wounded that it became clear that CS smoke would be required to prevent serious injuries. The Vietnamese were clearly well prepared and had no intention of entering into any dialogue or discussion.

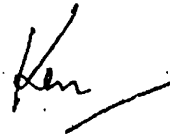
About 700 Vietnamese in Section 1 were eventually moved to the vacant Section 7, where the bulk of them declined to identify themselves. The remaining 500 in Section 1 found their way into the other sections of the camp. It is not possible to quantify the extent to which they participated in the rioting which continued until order was restored in the camp at about 10:00 p.m.

- 3(c) Tear smoke was fired in the direction of the Vietnamese fleeing from Section 1 to prevent their escape.
- 3(d) Batons, as part of the standard equipment, were carried by the disciplined services, but were not used at any stage during the operation to subdue or control the Vietnamese. However, two Vietnamese have claimed that they were hit by batons and their complaints are now under police investigation. Neither had serious injuries and they were treated in the clinics in Whitehead.
- 3(e) Tear smoke was first used at 9:55 a.m. after police officers had been injured. Tear smoke was initially directed towards those in Sections 1 and 2, who were then engaged in active resistance against the disciplined services.

13(f)

- 3(f) The baby girl was taken out for treatment at about 8:00 p.m. by an unidentified woman (not her mother) who reported to the Medical Officer that she had been injured by a smoke canister. This was recorded in the medical report. The baby, accompanied by her mother, was sent to the Prince of Wales Hospital for treatment at 8:20 p.m. The hospital later confirmed that the baby had been scalded with hot water. We do not know how this occurred.
- 3(g) A total of 79 Vietnamese have sought treatment arising out of the events of 20 May.
- 3(h) 57 Vietnamese have made complaints arising out of the events of 20 May, of whom 36 specifically complained of having been assaulted. All these complaints are under police investigation.

yours,



(K.J. Woodhouse, JP)
Acting Secretary for Security

A HUMANE END TO THE INDOCHINESE REFUGEE PROGRAM

This proposal represents an effort to bring the Comprehensive Plan of Action (CPA), and the Indochinese Refugee Program itself, to an appropriate and humane end without undue delay. Although this proposal can be seen as a purely American effort, implemented on a bilateral basis with Vietnam as a follow-on to the CPA, it is likely to encourage voluntary repatriation and surely would remove from the CPA equation a large number of those persons in the refugee camps in the region who are most likely to put up a determined resistance to a forcible return home. It would also provide a fitting solution for many of those who have suffered most, for those most likely to meet further problems upon their return home and for those whom the United States continues to have the greatest obligation to assist.

We believe that it is important to end this long standing program on a positive note. The program is inextricably linked to the United States experience in Vietnam. It has been by far the most important refugee program in American history. Of the nearly 2 million refugees admitted into the United States in the last twenty years, almost 1.2 million have come from Indochina. The United States has consistently taken the lead in this program and it has been a triumphant humanitarian adventure. It would be a tragedy to end it under a cloud of bitterness and pain. And, without a proposal of this nature, that clearly is how it will end! This was true before the recent passage of H.R. 1561 which included provisions on the CPA which gave the asylum seekers new hope, but it is doubly so now.

Following the March CPA Steering Committee Meeting in Geneva, camp conditions are worsening exponentially. Services are being radically cut; schools closed; tailoring and hair care closed; remittances stopped; family visitation halted; some mail services suspended; camp markets closed. As the camps become more and more prison like and the pressures increase, all of the self destructive acts of resistance which have already occurred over the last year will inevitably multiply. Yet, the logistics of the plan announced by the Steering Committee in March were simply not doable even before H.R. 1561 and the return of the boat people would almost surely have been prolonged through most of 1996. Now, without some new initiative, it is hard to predict when this program may be brought to an end or how that end may look.

This proposal will need significant high level support since it requires an adjustment of perspective in the U.S. bureaucracy; always difficult to achieve. However, it should not involve political or financial costs at all out of proportion to the

significant role the Indochinese refugee problem has played in United States refugee policy. Nor would it be inconsistent with the interests of our CPA partners or the UNHCR. The proposal would consist of the following elements:

I. An INS Interview In Vietnam

Persons returning, from the camps of Southeast Asia, would be given access to INS interviews in Vietnam. If granted refugee status, they would be provided expedited processing, possibly under the Orderly Departure Program (ODP), but quite possibly under an entirely separate arrangement. A major benefit of this proposal would be that certain categories of camp residents who feel very threatened by the idea of return to Vietnam would have a high degree of likelihood that they would be accepted by INS. For them to feel confidence in such a proposal, however, and for such a proposal to work, a Presidential Determination would be required to establish certain categories of persons who would be presumed to have suffered past persecution. These categories, such as former re-education camp prisoners, would also include those persons most likely to resist returning to Vietnam in the absence of such an offer. Their resistance, in turn, draws other camp residents into strikes, demonstrations and the like.

INS interviews would be offered to persons fitting the categories presumed to have suffered past persecution. In addition, however, we believe that an important contribution can be made to a humane and orderly end to the CPA by offering an INS interview in Vietnam to any person returning from the refugee camps of Southeast Asia or Hong Kong who requests such an interview prior to their departure from the first asylum country. Those with fewer qualifications for refugee status, or not fitting into these categories should also be given the opportunity to request an interview but should be clearly warned that their chances of rejection by INS would be much higher. A more inclusive interview policy would also address the problem of persons, who do not fit the categories in the Presidential Determination, but who hold on in the camps in the hope that their category will eventually be mentioned for special treatment.

Interviews would not be mandatory but would be available if requested by the asylum seeker before his/her return to Vietnam. Interview dates could be scheduled in advance of return if the request is made in a timely manner. While significant additional U.S. personnel resources would be needed to implement this program, it would be a modest requirement in terms of the overall program and would be compensated by savings in other CPA costs; especially, the resulting care and maintenance costs if the program continues on for a longer time. To discourage undue delay, a deadline might be set, by which time a camp resident would be expected to have signed up for voluntary repatriation and indicated a desire for an INS interview upon their arrival in Vietnam. However, deadlines have a habit of passing unmet when the incentive is still needed and such a device might best be avoided until it appears that it is

really necessary.

Why Interview?

Even though cautioned about their prospects for success, considerable numbers of those not benefitting from presumptive categories may be expected to request interviews and even to move up the date of their return home for this purpose. Indeed, one of the practical advantages of an inclusive interview policy is that it can be expected to contribute significantly to the voluntary return program while, also, offering a real possibility of relief to at least some of the screened-out asylum seekers. A combination of the following factors will be influencing the returnees:

- Many believe their case to be unique and think that, given an opportunity to talk to INS, they would be accepted. With adequate warning about their chances, they should be allowed this opportunity.
- Some who are ready to go home, but cannot bring themselves to apply for voluntary repatriation, will accept an INS interview, in which they have little confidence of success, as a face saving solution, both with themselves and their families.
- Some will accept an interview and return home simply as a positive effort, and the only alternative open to them to doing nothing, in a situation increasingly described to them as hopeless.

It is, of course, understood that not everyone will accept such an offer and the mistrust and paranoia among the asylum seekers is so great that initially there may be considerable hesitation even among those who fit the favored categories. However, it is near certain that some will try. When they do, if they are approved and processed expeditiously to the United States, this will become known and the likelihood that others in the favored categories will follow. This, in turn, both reduces the leadership in the camps to organizer resistance to return and creates a momentum which is likely to carry others along who do not fit the categories. It is true that Hong Kong, with its heavy concentration of northerners, is likely to benefit least from this proposal. But, even in Hong Kong over one quarter of the population is made up of southerners. And there are doubtless many northerners who will believe that they have a special case to make.

Apart from the positive effects of encouraging voluntary repatriation and bringing a peaceful end to this increasingly dangerous situation, there are additional justifications for such interviews in Vietnam. There has been wide-spread criticism of the CPA refugee status adjudications by outside observers, including references to egregiously, wrongly decided cases. Without deciding the question of the validity of the screening process as a whole, it is certainly true that the national authorities in the host

countries in Southeast Asia approached the adjudication process from a different perspective than that commonly held in the United States. As political and trade ties have grown between the ASEAN states and Vietnam, there has been a natural tendency to look for, and find, favorable domestic political developments in Vietnam.

Unfortunately, those who have been screened out under this process, include many with U.S. ties who have spent years in the camps, living under extremely difficult conditions. They have left their homes and held out in the camps in the expectation that they would eventually be permitted to go to the United States; an expectation that was a reasonable one until the rules changed and it became clear that a far more restrictive standard was to be applied. From the U.S. perspective, there remains an obligation to assist those with whom the United States was closely involved. Therefore, it seems both practical and just to give those that request it one last look from the more sympathetic and generous perspective of an American adjudicator and to provide them an interview within that framework.

Fortunately, unlike the standard found in the 1951 Geneva Convention Relating to the Status of Refugees which was applied in the CPA screening process, the U.S. Refugee Act of 1980 is somewhat more flexible and accords refugee status to those outside of their native land on the sole basis of whether or not they have suffered past persecution without requiring that they demonstrate a well-founded fear of persecution in the future.

Under 8 USC 1101(a)(42) (Appendix A), a refugee is a person outside of his own country or his country of habitual residence who cannot return due to "persecution or a well founded fear of persecution". This has been interpreted to mean that "past persecution, without more, satisfies the requirement of 101(a)(42)(a), even independent of establishing a well-founded fear of future persecution". Desir v. Ilchert, 840 F. 2d 723 (9th cir. 1988). (Appendix B) This same point is also made clear in the INS Basic Law Manual, U.S. Law and INS Refugee Asylum Adjudications, November 1994 p.19. (Appendix C). The President is not required to apply the lesser standard in fashioning the refugee admissions program but certainly is permitted to do so. The United States agreed to the use of the standard found in the 1951 Geneva Convention for the CPA screening. However, there is nothing in the CPA to prevent the United States from implementing a separate bilateral agreement with Vietnam which applies the lesser standard once the applicant has returned to Vietnam. Indeed, the UNHCR has made it clear that it would consider such an arrangement entirely appropriate from the perspective of the CPA.

To apply a standard requiring past persecution only, the applicant would have to be seen as receiving refugee status prior to legally re-entering Vietnam. This might be done by a provisional grant of refugee status while the applicant was still in the first asylum country. Upon return to Vietnam, he/she could be interviewed by INS and his/her refugee status confirmed or revoked. Another,

perhaps simpler, solution would be to return the applicant to Vietnam in a transit status. The applicant would then be interviewed and adjudicated under 101(a)(42)(a) as not yet having entered Vietnam in a juridical sense.

The treatment of the returnees as transients has other advantages as well. The returnees would be kept separate from the general population. This makes their treatment easier to monitor and provides assurance that the Vietnamese government is meeting its commitments with respect to permitting speedy processing. From the Vietnamese perspective, it lessens contact with the general population and reduces the problems which they might have as a result of the lesser standard required of the returnees to qualify for resettlement as compared to ODP applicants. The returnees could be brought back in manageable tranche and processed promptly. Those rejected for refugee status could then be moved to the reintegration processing point for processing to return home. Those granted refugee status should probably be moved to a separate location for medical processing and sponsor assurances, either in Vietnam or elsewhere in the region.

II. A Presidential Determination

A Presidential Determination should establish a TRACK II program for the expedited processing of asylum applicants and others returning to Vietnam from the camps of Southeast Asia. It should also redress one inequity in the in-country program for former political prisoners created by the withdrawal of the use of public interest parole for children of the former prisoners and establish a goal of winning Thai approval for the processing for resettlement of Hmong applicants who are already recognized as refugees. The Determination should make clear:

1. that refugee status and resettlement through the USRP would be provided to those who can demonstrate that they have either suffered past persecution or have a well founded fear of future persecution.
2. that categories of presumptive eligibility would be established by the Determination (similar to that issued by President Reagan with respect to Indochinese refugees in 1982) and that such categories would be based on past persecution. The Determination would establish a presumption of past persecution for the following groups:
 - Persons with one year or more of re-education camp confinement, or where a permanent disability was suffered during a lesser period of confinement.
 - Persons with five years or more employment with the U.S.

government or a U.S. company, NGO or other U.S. institution; less with special circumstances such as training in the United States.

- Persons with five years or more service with the civil or military service with the former South Vietnamese government; less for those trained in U.S., decorated by U.S., or involved with the U.S. Special Forces, intelligence activities or other special programs of the U.S. government.
 - Persons who were forced to relocate to a punitive New Economic Zone for five or more years. Persons with a total of eight or more years, during which they were either forced to relocate to a New Economic Zone or were denied a Ho Kau (family registration paper).
 - Persons who have close family members (spouses, parents, children and siblings), who have suffered three or more years of re-education or who died or suffered a permanent disability during a lesser period of confinement.
 - Persons confined for at least one year for political acts committed after April 1975, including imprisonment as a result of attempting to escape Vietnam or for avoiding military draft for reasons of political conscience.
 - Religious leaders, monks, priests ministers, nuns and other religious persons of the major religions of Vietnam, including the Hoa Hao and Cao Dai sects.
3. that INS interviews would be made available also for other applicants who do not fall within these categories but do request interviews. These applicants would be examined to determine whether their histories would sustain a finding of past persecution. If so, that fact would qualify the applicant for refugee status and resettlement.
4. that public interest parole (PIP) would be used for a limited number of returnees from the camps who do not fit the refugee definition including:
- a. Family Unification; persons returning from the camps.
 - children returning from the camps with their parent or parents who have been processed as refugees under this Determination.
 - other persons returning from the camps who have been living as a dependent member of a family whose principal applicant is processed as a

refugee under this determination.

- beneficiaries of approved non-current immigrant visa petitions in the first, second and third family preferences.

b. Family Unification; former political prisoners still in Vietnam.

- Unmarried children of former political prisoners who are processed out of Vietnam as a part of the ODP program will be provided with PIP as had been the case until recently.

c. Compelling humanitarian reasons for U.S. resettlement. In order to qualify for this category, the applicant must have either (A) at least one relative in the United States in his or her immediate blood line (parent, grandparent, child, grandchild, sister, brother, uncle, aunt), or (B) his or her closest living relative in the United States. In addition, the applicant must be able to establish a compelling humanitarian ground favoring resettlement. Such grounds would include:

- Suffering severe traumatic violence during escape from Vietnam.
- Need for medical treatment not available in Vietnam.
- Abandonment or brutalization of minor child by parents in Vietnam.
- Severe medical disability.
- Persons with no immediate family remaining in Vietnam who are unable to fend for themselves for reasons of age or disability.

5. that all persons returning from the camps who are the beneficiaries of current immigrant visa petitions will be included in the expedited processing under this Determination. In view of the uncertainty over whether the Vietnamese government will issue exit permits to those who have married overseas, it is especially important to include the spouses of permanent resident aliens and U.S. citizens in this group.
6. that the Secretary of State should work with the Royal Thai Government to seek agreement that all Hmong, now in Thailand who are qualified as refugees and eligible

for resettlement in the United States should be permitted to depart for such resettlement.

III Special Cases Special procedures should be established for a select number of cases not fitting into the above classes; which are screened and presented by the InterAction CPA Working Group as especially sensitive. These would not number over 100 cases.

IV Modalities and Problems

1. A Presidential Determination is a must for this proposal to go forward. Without it, the outcome of the operation of the system would be too uncertain for the NGOs to encourage camp residents to return home.

2. Obviously, such a plan can be implemented only with the agreement of the Vietnamese government. There are, however, powerful arguments leading to such cooperation:

- it would be likely to speed up the end of a program which the Vietnamese very much do not want to see continuing on over a long time frame.

- it would help greatly to avoid the spectacle of boat people maiming themselves, rioting and even committing suicide all over Southeast Asia (not a bad argument from the U.S. perspective either).

- it would largely remove the difficulty of reintegrating a significant number of persons whom the Vietnamese authorities distrust.

It is true that the Vietnamese government has, in the context of a much smaller program discussed with it by the Department of State (the "egregious cases Track II"), indicated a preference for a program that was not seen as special or separate from the ODP. The proposal presented here, by virtue of its size, would inevitably have to be dealt with as a separate program. In any case, the Vietnamese might very well wish it so since this would make it easier to control problems which might arise as a result of the differences in the standards applied in the two processing streams. The strongest consideration from the Vietnamese perspective is likely to be the desires of their CPA partners; especially the United States and the ASEAN countries.

3. Though they do not have a veto on U.S. actions in this respect the United States' partners in the CPA and the UNHCR should be given a reasonable ground for our proposal.

- at the March 16 Steering Committee Meeting in Geneva, we understand that it was made clear by the U.S. delegation that U.S. agreement to the Steering Committee Communique was without

prejudice to any arrangements which we might work out with the Vietnamese after the return of the camp residents to Vietnam.

- it is widely understood that this is a population for which the United States has special concerns.

- as noted, unlike international arrangements, U.S. law permits the granting of refugee status for past persecution only.

- the proposal offers one of the few ways out of the present impasse and will bring the CPA to a more expeditious and less troublesome close, with most people still returning to Vietnam.

4. It is estimated that 7,000 - 9,000 persons would be admitted as refugees under this proposal in FY 1995 and 1996. Very rapid action would have to be taken to implement this program in order that it be seen assisting in dealing with the current problem rather than as further delaying the ending of the CPA. INS personnel resources will have to be increased significantly and rapidly but, initially, will probably have to be diverted from the ODP program. The regular ODP program, however, should not be allowed to be disadvantaged by this proposal for any significant period of time, both because regular ODP applicants have been standing in line for a long time and because any significant delay would be seen as a serious negative aspect by the Vietnamese government. Refugee admission numbers for this group be partially accommodated within unused FY 1995 admission numbers if the program could get underway quickly. Probably, however, most would have to be met out of FY 1996 admissions which should be increased accordingly. The program is doable if the will is there.

5. There will be additional processing costs but, given the likely acceleration of the return of the camp population home as opposed to the lengthy and painful period which we now face, these might well be compensated to a considerable degree by savings in camp care and maintenance costs.

6. The question of comparability with persons with similar qualifications now within Vietnam could be raised.

- If still within his/her own country of nationality, the standard is a person "who is persecuted or who has a well-founded fear of persecution". 8 USC 1102 (a) (42) (B) (Appendix A).

- The asylum seekers in the camps have had the additional hardship of extremely and increasingly onerous and stressful living conditions for many years in the camps. They left behind and most lost their property and other material goods when they departed Vietnam.

- The implementation of this proposal both benefits those offered resettlement and contributes to an overall more acceptable ending to this long standing program.

7. It is estimated that 500 to 800 persons would benefit from the use of PIP under this proposal. These costs would be relatively small as a way to end this program on a humane note.

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