

# HONG KONG

## @Arbitrary detention of Vietnamese asylum-seekers

### Introduction

At the end of the war in Viet Nam and the years following it, many Vietnamese people felt the need to flee the country for reasons of personal safety. Many had been associated in some way with the former South Vietnamese Government or with the American forces during the war and became victims of oppression by the new Communist government, which carried out large-scale detention without trial in "re-education camps" of military and civilian personnel associated with the former administration. Thousands fled the country to neighbouring countries, including many thousands who fled to Hong Kong.

1979 brought a new wave of departures from Viet Nam, mainly by individuals who were ethnic Chinese fleeing the country after the border war with China. Thousands of ethnic Chinese were being detained without trial in Viet Nam at that time. In the first seven months of 1979, approximately 66,000 asylum-seekers reached Hong Kong.

In the summer of 1979 a conference was held in Geneva<sup>1</sup> at which representatives from a number of countries met to discuss the situation of Vietnamese refugees. It was decided that countries in Southeast Asia, including Hong Kong, would offer first asylum, meaning the refugees would be admitted and allowed to remain until they were permanently resettled outside the region (primarily in the major immigration countries in the West).

In the initial years of the influx of asylum-seekers from Viet Nam, all Vietnamese arriving in Hong Kong, as elsewhere in the region, were automatically recognized as refugees in accordance with the policy of first asylum established at the 1979 Geneva Conference. The Vietnamese refugees were housed in "open centres" where they were free to move in and out of the camps during the day to work or for other purposes. After 1979, the numbers of arrivals had dropped dramatically (approximately 6,700 in 1980, approximately 8,400 in 1981) and, at first, the refugees were being resettled at a rate faster than that at which new Vietnamese refugees were arriving. However, in the early 1980s the rate of resettlement declined and, apparently, the Hong Kong Government began to worry that new arrivals would soon far exceed departures and the Territory would be left with a large number of refugees who could not be resettled elsewhere.

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<sup>1</sup> the Meeting on Refugees and Displaced Persons in South-East Asia convened at Geneva in July 1979 under the auspices of the United Nations (UN)

On 2 July 1982 the Hong Kong Government changed its policy and began detaining all Vietnamese refugees in closed detention centres. The government's stated purpose in introducing this policy was solely to discourage further arrivals from Viet Nam. The Secretary for Security said during the debate on the second reading of the amendment legislation:

"This move should make Hong Kong less attractive for refugees. When the message gets back to Vietnam, it should help to deter people from setting out .... It is urgent that word gets back to Vietnam at once that those who come will be greeted by closed camps."<sup>2</sup>

At the time the law was changed to give effect to the policy, the government did not cite any other reasons such as public security to justify the detention of all Vietnamese refugees. The legislation already provided for conditions of stay which could be imposed by an immigration officer including a prohibition on taking any employment, whether paid or unpaid, on establishing or joining any business, and on becoming a student at a school, university or other educational institution.

Then in June 1988, in response to a drastic increase in the number of asylum-seekers arriving from Viet Nam (according to government figures, 18,449 arrived in Hong Kong during 1988, compared with 3,395 the year before), the Hong Kong Government abandoned its policy of according refugee status to **all** Vietnamese asylum-seekers arriving in the Territory, in favour of a new policy dictating that they were to be considered "illegal immigrants" rather than refugees unless determined to be refugees under a specialized refugee determination procedure (the screening procedure). Those who were "screened out" in the determination procedure were to remain in detention centres, and those who were determined to be refugees within the terms of the 1951 Convention relating to the Status of Refugees were sent to separate "Departure Centres" where they were held while waiting for resettlement elsewhere.

In 1992, the provisions relating to the confinement of refugees (i.e. those "screened in") to "Departure Centres" were repealed, and the situation for these people reverted more or less to what it was before 1982 although there is a curfew in the "Departure Centre" from 7pm to 10am. Those awaiting a decision, however, and those who have been "screened out", are still detained in one of the five detention centres<sup>3</sup>. At the end of March 1994 approximately 26,000 Vietnamese remained in detention in Hong Kong; of these, almost all have been "screened out", with about 2,500 of these cases awaiting the results of their appeal to the Refugee Status Review Board; about 400 asylum-seekers were still awaiting a decision after having been interviewed at the first stage of the process.

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<sup>2</sup> debates of the Hong Kong Legislative Council, 30 June 1982, at 1022, 1024

<sup>3</sup> Kai Tak, Chimawan (upper and lower), High Island, Tai A Chau, and Whitehead

Amnesty International opposes the detention of asylum-seekers unless they have been charged with a recognizably criminal offence, or unless the authorities can demonstrate in each individual case that the detention is necessary, that it is on grounds prescribed by law, and that it is for one of the specified reasons which international standards recognize may be legitimate grounds for detaining asylum-seekers. Amnesty International calls for each asylum-seeker who is detained to be brought promptly before a judicial or similar authority whose status and tenure afford the strongest possible guarantees of competence, impartiality and independence, to determine whether his or her detention is lawful and in accordance with international standards.

While the majority of those Vietnamese currently detained in Hong Kong have been "screened out", and thus are in the government's view "illegal immigrants" and not refugees or asylum-seekers, Amnesty International continues to be concerned at the circumstances of their detention. While the organization does not generally address detention of people held in relation to their status as immigrants, it is concerned in this instance because all of the Vietnamese detained in Hong Kong were seeking asylum. Furthermore, many of those "screened out" continue to claim a fear of returning to Viet Nam and the United Nations High Commissioner for Refugees (UNHCR) has undertaken to review the cases of those "screened out"; currently around 900 of the cases "screened out" in both stages of the procedure are awaiting a decision from UNHCR. In this regard, it is important to note that since the screening procedures were established in 1988 Amnesty International has raised numerous concerns about their fairness. While significant improvements were made to the screening procedures in 1990, Amnesty International continues to be concerned that asylum-seekers are given inadequate legal advice prior to their first interview, and that they have no right to appear in person before the review body established to hear appeals against a negative decision. While Hong Kong is by no means the only country where asylum-seekers are detained, it should be pointed out that the detention policy in Hong Kong is particularly notorious. The numbers involved and the prolonged nature of the detention contribute to this notoriety, and as the rights of refugees and asylum-seekers are increasingly at risk in other parts of the world it is crucially important that particularly gross violations of their rights are addressed.

The Hong Kong authorities' policy of detaining Vietnamese asylum-seekers is in contravention of a number of international standards. The reasons for detaining Vietnamese asylum-seekers are not recognized as legitimate by international standards; the legislation makes no provision for the detention of the Vietnamese to be subject to judicial control, nor does it provide for a procedure whereby asylum-seekers can challenge the lawfulness of their detention. The only way to challenge the detention is through an application for judicial review which is not an effective remedy. The result is that thousands of Vietnamese asylum-seekers are arbitrarily detained in Hong Kong -- committed to detention by the order

of an immigration officer and held, in many cases for several years, in prison-like conditions.

## **1. Legal Framework**

Section 13D of the Hong Kong Immigration Ordinance, as amended, provides that:

"(1) As from 2 July 1982 any resident or former resident of Vietnam who

(a) arrives in Hong Kong not holding a travel document which bears an unexpired visa issued by or on behalf of the Director; and

(b) has not been granted an exemption under section 62(2)

may, whether or not he has requested permission to remain in Hong Kong, be detained under the authority of the Director in such detention centre as an immigration officer may specify pending a decision to grant or refuse him permission to remain in Hong Kong or, after a decision to refuse him such permission, pending his removal from Hong Kong, and any child of such a person, whether or not he was born in Hong Kong and whether or not he has requested permission to remain in Hong Kong, may also be so detained, unless that child holds a travel document with such a visa or has been granted an exemption under section 61(2)".

Section 13D(1A) provides that such detention:

"shall not be unlawful by reason of the period of the detention if that period is reasonable having regard to all the circumstances affecting that person's detention, including -

(a) in the case of a person being detained pending a decision under section 13A(1) to grant or refuse him permission to remain in Hong Kong as a refugee -

(i) the number of persons being detained pending a decision under section 13A(1) whether to grant or refuse them such permission; and

(ii) the manpower and financial resources allocated to carry out the work involved in making all such decisions"

and 13D(1B) states:

"The detention of a person under this section pending a decision under section 13A(1) to grant or refuse him permission to remain in Hong Kong as a refugee shall not be unlawful by reason that other persons (who may or may not have arrived in Hong Kong after the detainee) who were detained pending decisions under section 13A(1) to

grant or refuse them such permission were granted or refused such permission within periods shorter than the period of the person's detention".

According to documents submitted by various government officials in court, the way this legislation operates in practice is as follows. When a boat believed to be carrying Vietnamese enters Hong Kong waters it is intercepted by the marine police who stop and search the boat. If they establish that those on board are Vietnamese nationals without permission to enter Hong Kong (i.e. not in possession of valid travel documents and an unexpired visa), the marine police inform them of Hong Kong's policy of detaining Vietnamese asylum-seekers, of the screening procedures they will be required to go through to establish whether they are refugees, and that if they are "screened out" they will be detained pending repatriation to Viet Nam. The Vietnamese are then given a choice of whether to be detained or to continue their journey. If they choose not to continue their journey, the marine police contact the Duty Officer of Immigration and ask for a decision on whether to order detention. The Assistant Director of the Immigration Department issues an oral authorization to detain, and this is subsequently confirmed in writing. The Vietnamese are then taken to the first detention centre (usually the Green Island Reception Centre) where, usually within 24 hours, they are interviewed by immigration officers to obtain personal particulars and a detention authorization form is prepared in respect of each individual. After some days or weeks (periods vary depending on the number of arrivals), they are transferred to one of the detention centres. As far as Amnesty International is aware, at no time during this initial period are the asylum-seekers advised of a right to legal advice and assistance to challenge the detention order.

## **2. Breaches of international law**

The above legislation is in a number of respects contrary to international standards, including treaty obligations of the United Kingdom (Hong Kong is a dependent territory of the UK, which has expressly extended the provisions of the ICCPR to Hong Kong). It violates the prohibition on arbitrary detention contained in Article 9 of the Universal Declaration of Human Rights<sup>4</sup>, and in Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR)<sup>5</sup>.

Furthermore, it violates Article 9(4) of the ICCPR<sup>6</sup>, because it does not provide an opportunity for those detained to take proceedings before a court without delay to determine the lawfulness of the detention and to be released if that detention is unlawful. Similarly, it is inconsistent with Principles 4<sup>7</sup> and 11<sup>8</sup> of the United Nations (UN) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles), in that the initial decision to detain and the continuation of the detention is not subject to the control of "a judicial or other authority" as defined in the Body of Principles.

In addition, the failure to inform asylum-seekers of a right to legal counsel when they are detained and difficulties faced by asylum-seekers in having access to such assistance

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<sup>4</sup> No one shall be subjected to arbitrary arrest, detention or exile.

<sup>5</sup> Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

<sup>6</sup> Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. (Principle 32 of the UN Body of Principles is also relevant in this regard)

<sup>7</sup> Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority.

<sup>8</sup> 1. A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.

2. A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor.

3. A judicial or other authority shall be empowered to review as appropriate the continuance of detention.

(discussed below) infringes the right to legal advice contained in Principles 17<sup>9</sup> and 18<sup>10</sup> and further hampers the opportunity for Vietnamese asylum-seekers to effectively challenge the lawfulness of their detention.

## **2.1 Arbitrary detention**

It has long been accepted that "arbitrary detention" is not restricted to detention which violates national laws – the Committee appointed by the UN Commission on Human Rights to study the question of arbitrary detention, in its revised 1964 report, stated that an arrest or detention is arbitrary if it is "under the provisions of a law the purpose of which is incompatible with respect for the right to liberty and security of person"<sup>11</sup>. Similarly the UN Working Group on arbitrary detention has determined in its Deliberation No. 2 that detention may be arbitrary "as a result of laws which may be in contradiction with international standards"<sup>12</sup>. That the detention of Vietnamese asylum-seekers conforms to the Hong Kong Immigration Ordinance does not therefore mean that their detention cannot be considered arbitrary.

The administrative detention for an indefinite period of "any resident or former resident of Viet Nam" who arrives in Hong Kong not in possession of valid documentation is not based on any risk the asylum-seekers are said to pose to the Hong Kong community as a whole but, as mentioned above, is imposed on them as a means of deterring others from following the same route. This is not a valid reason for detention. It does not form part of the grounds on which detention may be resorted to in the case of asylum-seekers as set out in Conclusion 44 of the Executive Committee of the Programme of UNHCR, adopted at its 37th Session in 1986. In that decision, the Executive Committee expressed its

"... deep concern that large numbers of refugees and asylum-seekers in different areas of the world are currently the subject of detention or similar restrictive measures by reason of their illegal entry or presence in search of asylum, pending resolution of their situation."

The Executive Committee further expressed the opinion that

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<sup>9</sup> A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.

<sup>10</sup> A detained or imprisoned person shall be entitled to communicate and consult with his legal counsel.

<sup>11</sup> Study on the Right of Everyone to be Free from Arbitrary Arrest, Detention or Exile (UN Document E/CN.4/826/Rev.1)

<sup>12</sup> (UN Doc. E/CN.4/1993/24, para. 13).

"[i]f necessary, detention may be resorted to only on grounds prescribed by law to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order."

None of these internationally-recognized reasons for the detention of asylum-seekers seems to apply in the case of Vietnamese detained in Hong Kong. Considerations of public order and national security have not required the detention of other Vietnamese – around 1,800 Vietnamese in Hong Kong who are recognized as refugees and are awaiting resettlement are allowed to move freely in and out of an open camp (although there is a nightly curfew) without, apparently, it being felt that they pose any serious threat. Prior to 1982, many tens of thousands of Vietnamese asylum-seekers were similarly permitted to circulate freely within Hong Kong. Moreover, a significant number (recent estimates suggest 39%) of those detained are children who would be unlikely to pose any security concerns. Any administrative and practical problems created by an influx of asylum-seekers can be dealt with by measures short of detention.

The use of detention for purposes of deterrence is clearly unacceptable under international standards. People enjoy an internationally recognized right to flee their countries and seek asylum elsewhere. Furthermore, Article 31 of the 1951 Convention expressly prohibits the imposition of penalties on refugees who enter or are present in a territory without authorization. Therefore, since the detention of the Vietnamese asylum-seekers is not based on reasons recognized as legitimate by international standards, it is arbitrary, and contrary to Article 9 of the Universal Declaration of Human Rights, and Article 9(1) of the ICCPR.

The indefinite duration of the detention is another factor which makes it arbitrary. Conclusion 44, quoted above, stressed the importance of "fair and expeditious procedures for determining refugee status or granting asylum in protecting refugees and asylum-seekers from unjustified or unduly prolonged detention". The Hong Kong legislation expressly includes "the manpower and financial resources allocated to carry out the work involved" as well as "the number of persons being detained pending decisions" as factors to be considered in any determination as to whether or not the period of detention is reasonable, so in effect ruling out any argument that other asylum-seekers have been detained while awaiting a decision for shorter periods. Amnesty International is concerned that this is evidence that the Hong Kong Government, far from seeking to protect Vietnamese asylum-seekers from unjustified or unduly prolonged detention, does not consider it a matter of priority – or even a relevant factor – that each individual should be detained for the shortest possible time. In ruling out any challenge to detention on these grounds, the government is in effect refusing



to make any commitment to limiting the length of detention, even to the extent of prioritizing the applications of those who have been awaiting a decision the longest.

## ***2.2 Lack of judicial control***

The strongest evidence that the detention is arbitrary lies in the fact that it is not subject to the effective control of a judicial or other authority, as set out in Principles 4 and 11 of the Body of Principles. That is to say, no judicial or other authority is involved in reviewing or controlling the initial decision to detain and there is no judicial or other authority empowered to review the continuance of detention. The decision to detain rests entirely with an immigration official acting under the authority of the Director of Immigration, and is in practice automatic.

The "authority of the Director" under which the detention is ordered does not constitute an "other authority" as referred to in Principles 4 and 11. The Body of Principles defines "a judicial or other authority" as "a judicial or other authority under the law whose status and tenure should afford the strongest possible guarantees of competence, impartiality and independence". In the case of the Hong Kong legislation, the detention "under the authority of the Director" (defined in the legislation as "the Director of Immigration, the Deputy Director of Immigration and any assistant director of immigration") clearly does not meet the requirements of impartiality and independence set out in the Body of Principles. The Director of Immigration and those employed under him or her are civil servants, whose role is to carry out the policies of the executive. Their position does not enjoy the kind of protection needed to guarantee judicial impartiality and independence, because they are not expected to exercise independent judgment, but simply to carry out the wishes of the government. By the very nature of their position, they cannot be regarded as a "judicial or other authority" in the terms of the Body of Principles.

Furthermore, once a Vietnamese asylum-seeker is ordered detained, there is no provision for him or her to challenge the legality of the detention before a court, and thus there is a lack of an effective remedy. Article 9(4) of the ICCPR requires that "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful". The immigration legislation does not provide for a mechanism whereby asylum-seekers can challenge the lawfulness of their detention before a court and obtain release if their detention is unlawful. According to the 1990 report of the UN Special Rapporteur on administrative detention to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, the non-existence of a remedy can result from "implicit exclusion":

"The non-existence of a remedy, particularly the right to appeal to the courts, results from exclusion by a specific legislative provision, implicit exclusion (no remedy provided for)

or suspension or delay, sometimes for several years, following the promulgation of a state of emergency<sup>13</sup>

In these terms, no effective remedy for the detention of Vietnamese asylum-seekers exists. The only possibility for asylum-seekers to challenge the lawfulness of their detention is for them to initiate long, drawn out and expensive judicial review proceedings, which are not as of right but require leave from the court to proceed; also, there is a time limit on applying for judicial review which would require that any challenge to the decision to detain be made within three months of that decision. Moreover, even if leave is granted, the scope of a potential remedy under a judicial review application is limited: the judge can only rule on whether the decision to detain was "unreasonable" having regard to all the circumstances. This does not include any consideration of the reasons for the detention. Furthermore, the legislation appears to rule out a challenge by means of judicial review on the grounds of the length of the detention, one of the principal grounds which might be the basis for a challenge. Finally, judicial review applications require the assistance of a lawyer, and, as noted below, there are a number of impediments for asylum-seekers to gain such assistance.

The non-existence of an effective remedy is borne out in practice. Do Giau, a Vietnamese asylum-seeker who had gone through the screening process and had been denied refugee status, challenged the validity of the screening procedure by judicial review in the Hong Kong High Court, and also raised questions on the validity of his detention. In response, the lawyer for the Crown requested a declaratory judgment that the detention of Vietnamese asylum-seekers is lawful. On 18 January 1991 Justice Mortimer declined the government's request, holding that the Court had no jurisdiction to hear such an application or make such a declaration. However, the judge did not follow up on the question of the validity of the detention.

In another case, on judicial review of the detention of two asylum-seekers, Tran Quoc-cuong and Khuc The-loc, the High Court judge said in his judgment, delivered on 8 May 1991, that the Director of Immigration was not required to exercise any discretion in ordering the detention of Vietnamese asylum-seekers, and that, having regard to the government's policy, it was clearly intended that all Vietnamese asylum-seekers should be detained immediately upon arrival in Hong Kong and, consequently, it was not possible to challenge such a decision. The judge added that the proceedings "were wholly unmeritorious and were tantamount to an abuse of the process"<sup>14</sup>. In dismissing the case as "wholly unmeritorious", the judge would seem to have been indicating that he did not consider that it was appropriate for him to review the continuance of the detention.

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<sup>13</sup> (E/CN.4/Sub.2/1990/29). Moreover, the UN Working Group on arbitrary detention has recently called for the strengthening of the institution of habeas corpus -- a remedy equivalent to that required in Article 9(4) of the ICCPR -- as a safeguard against arbitrary detention (see UN Doc. E/CN.4/1993/24, para. 41).

<sup>14</sup> *In re Tran Quoc Cuong and Khuc The Loc*, [1991] 2 HKLR, 312.

To satisfy international minimum standards, the legislation should provide for a prompt review before a judicial or other authority of decisions to detain. This review should be automatic. It is not sufficient to require the detained asylum-seekers to initiate the review process, because asylum-seekers often may not be fully aware of their rights or how to exercise them, or may hesitate to exercise their rights out of fear of challenging authority. For the Vietnamese asylum-seekers in Hong Kong, even the limited option of initiating a judicial review may not be available to challenge the lawfulness of detention because of difficulties in securing legal assistance (see below).

In one case where detention was successfully challenged in 1990 (In the matter of Pham Van Ngo and 110 others), the judge ruled that the detention was unlawful, as Section 13 of the Immigration Ordinance at the time allowed detention of asylum-seekers for refugee status determination procedure only, which did not apply in this case as the group did not want to enter Hong Kong in the first place. The judge ordered the release of the group<sup>15</sup>. Immediately on leaving the court building the group was rearrested for illegal entry into Hong Kong, and detained pending their removal from the territory. The government subsequently introduced the Immigration Amendment Bill of 1991, which resulted in an amendment to the Immigration Ordinance providing for the detention of a resident or former resident of Viet Nam "whether or not he has requested permission to remain in Hong Kong". This was described by the Secretary of Security as being

"to ensure that any Vietnamese person who arrives in Hong Kong without a visa and therefore requires permission to remain cannot avoid detention simply by refusing to co-operate with normal immigration examination requirements. This closes a potential loophole of which we have recently become aware."<sup>16</sup>

### **2.3 Access to lawyers**

All persons under any form of detention are entitled to be informed of their right to legal counsel at the time of detention, to be represented by counsel of their choice, and to communicate freely with counsel (Principle 13, 17 and 18 of the Body of Principles, Rule 93 of the UN Standard Minimum Rules for the Treatment of Prisoners). The Body of Principles provides that

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<sup>15</sup> In an action for damages for false imprisonment arising out of this case, the judge held that they could not claim for loss of liberty and awarded only a modest sum for injury to feelings.

<sup>16</sup> Secretary for Security's Speech to the Legislative Council on the Immigration (Amendment) Bill 1991 - 24 April 1991

"The right of a detained or imprisoned person to be visited by and to consult and communicate, without delay or censorship and in full confidentiality, with his legal counsel may not be suspended or restricted save in exceptional circumstances, to be specified in law or lawful regulations, when it is considered indispensable by a judicial or other authority in order to maintain security and good order." (Principle 18)

The UN Basic Principles on the Role of Lawyers states:

"Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status." (Principle 2)

As noted above, even the limited option of challenging the lawfulness of detention by means of judicial review is entirely dependent on the assistance of legal counsel. However, the detained Vietnamese asylum-seekers face restrictions on being able to communicate with legal counsel which appear to contradict some of the guarantees in these international standards. There were reports in early 1991 that a senior Legal Aid lawyer was banned from the detention centres by the Security Branch which manages the centres, because it was claimed she was a "disruptive influence". While the lawyer concerned was never given any written notice of the move to restrict her access to clients, voluntary agency workers and other lawyers reported notices on the boards at the entrance to detention centres stating that she must not be allowed to enter the centres. Apparently, she was allowed back into the detention centres after protests and complaints were made to the government.

Amnesty International has also received reports that access to legal advice is made difficult for asylum-seekers because of the refusal by the authorities to allow private practitioners ready access to the detention centres – meetings take place in "dead zones" to which asylum-seekers are denied access unless called, and therefore all meetings must be pre-arranged. Asylum-seekers do not have access to a telephone to contact lawyers to arrange legal visits; they must write a letter to a lawyer. Furthermore, two to four clear working days' notice (depending on the centre) of the visit by the lawyer is required and even then permission for the visit is often denied without full and adequate reasons being given for such a denial.<sup>17</sup>

In correspondence with private practitioners, the government has justified restrictions on access by pointing to the fact that on certain days (for example, on days when dignitaries may visit a detention centre, or on days in the Vietnamese calendar that might have significance for the asylum-seekers) the guards are too busy to monitor interviews lawyers

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<sup>17</sup> This information comes from Amnesty International's contacts with private practitioners in Hong Kong.

have with their clients. The Hong Kong authorities continue to insist that guards at the detention centres should be able to observe, though not hear, such interviews. There are also disturbing reports that asylum-seekers have been questioned by authorities in the detention centre about their meetings with lawyers. Lawyers working with UNHCR are not subject to such restrictions, but they do not deal with issues concerning the detention of asylum-seekers and would not be involved in bringing judicial review applications.

## **Conclusion**

While Amnesty International recognizes that governments are entitled to control access to their territory, any measures they take to do this must be consistent with international human rights standards.

The detention of Vietnamese asylum-seekers in Hong Kong is in practice automatic, is for an indefinite term, is not subject to the effective control of a judicial or similar authority, and allows no effective legal mechanism whereby detained asylum-seekers can challenge the lawfulness of their detention. It is in a number of respects contrary to international standards and, in Amnesty International's view, violates the prohibition on arbitrary detention set out in Article 9 of the Universal Declaration of Human Rights and Article 9 of the International Covenant on Civil and Political Rights.