

amnesty international

MEMORANDUM TO THE GOVERNMENTS OF HONG KONG AND THE UNITED KINGDOM REGARDING THE PROTECTION OF VIETNAMESE ASYLUM SEEKERS IN HONG KONG

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SUMMARY

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An Amnesty International delegation visited Hong Kong in November and December 1989 to examine certain aspects of the protection of the human rights of Vietnamese asylum seekers in Hong Kong, particularly the refugee determination procedure ("screening process"), and reports of the ill-treatment of asylum seekers held in detention centres. Following its delegates' findings, Amnesty International is making 23 recommendations to the Governments of Hong Kong and the United Kingdom, which are included in this memorandum.

The Amnesty International delegates found that in its present form the screening process has critical shortcomings and cannot be relied on to identify all those who are refugees. Within a few days of the delegates' return, Amnesty International publicly called on the Governments of Hong Kong and the United Kingdom to stop plans for the forcible repatriation of Vietnamese asylum seekers until the critical flaws in the screening process had been remedied. The authorities have not corrected these flaws but nevertheless Hong Kong and British officials have stated their intention to continue with the policy of forcible repatriation, first implemented in the pre-dawn hours of 12 December 1989, when 51 "screened out" Vietnamese asylum seekers were forcibly returned to Viet Nam.

In presenting this memorandum to the Governments of Hong Kong and the United Kingdom Amnesty International reiterates its urgent appeal to halt forcible repatriation -- until the shortcomings in the screening process are remedied, people at risk of becoming victims of human rights violations in Viet Nam face the risk of being sent back there against their will.

The recommendations in this memorandum call for essential improvements to the screening process. They call for thorough and impartial investigations into a continuing pattern of incidents where police and other officers have allegedly assaulted detained asylum seekers, and intimidated victims and witnesses. The recommendations call for steps to prevent the recurrence of such assaults. Amnesty International also draws attention to its concerns relating to conditions in detention centres, and to the fact that insofar as the Hong Kong authorities detain asylum seekers for its deterrent effects, this is unacceptable under international standards.

Most asylum seekers receive no individual legal advice or assistance prior to or during the crucial screening interview. The delegates received repeated allegations that some Immigration Officers exhibited unhelpful, and indeed obstructive, attitudes towards asylum seekers they are interviewing, and found that some appeared to have inadequate knowledge of refugee law and of the political and human rights situation in Viet Nam. In one extreme case an asylum seeker described how the interviewing officer had seemed unaware that Viet Nam had previously been divided into two separate countries. Another point is that some government interpreters at screening interviews are not fully competent for this task.

Asylum seekers whose applications for refugee status are refused can apply for a review of the decision, but there are fundamental flaws in the review procedure, too. The Refugee Status Review Boards meet in secret closed sessions, with neither asylum seekers, nor their representatives, nor UNHCR allowed to be present. The Review Boards give no reasons for their decisions.

"Legal monitors" from the Office of the United Nations High Commissioner for Refugees (UNHCR) monitor the screening interviews, but there are only six such monitors, and they can monitor only a very small proportion of the 400 screening interviews carried out each week. In any event, UNHCR monitoring of screening interviews cannot provide essential case-specific legal advice and assistance to individual asylum seekers. Moreover, even if more resources were available to UNHCR in Hong Kong, UNHCR's monitoring role cannot compensate for the critical defects of the current screening process in Hong Kong. It must be stressed that it is governments that are responsible for ensuring proper, fair and just refugee determination procedures, and until the screening process is changed, people risk being forcibly returned to become victims of human rights violations in Viet Nam.

In one case, a man was refused refugee status despite having apparently clear-cut grounds for recognition as a refugee. In May 1988 he had managed to leave Viet Nam, fleeing a five-year term of political imprisonment; previously he had spent some time studying in Czechoslovakia, where he had become active in Charter 77, was imprisoned for five months, then deported to Viet Nam. It was only through the emergency intervention of UNHCR that he has now been granted refugee status. If such a clear case can fail in the screening process, there is very serious concern about others who, more typically, will have a story less dramatic and less capable of proof, but who nonetheless may be at risk if returned to Viet Nam.

Viet Nam remains a country whose current human rights record is of concern to Amnesty International, despite the release in the last two years of thousands of prisoners from "re-education" camps where many had spent as long as 13 years in detention without charge or trial. Among the prisoners of conscience still held in prison are writers, journalists, teachers and clergy jailed by the authorities for non-violent dissent.

The Governments of the United Kingdom and Hong Kong have reached agreement with the Government of Viet Nam on terms for the return of "screened-out" asylum seekers to Viet Nam, under which the Vietnamese authorities have said they will not prosecute those returning for having left Viet Nam without official authorization. Nevertheless, Amnesty International is concerned that asylum seekers whose political, religious, literary or other activities are unacceptable to the government could face possible arrest or detention on return. Such persecution may take place not only at the level of central government, but at the hands of local officials who may be able to operate to a certain extent autonomously with regard to the local population. In such contexts, guarantees given by the

central government may not necessarily be honoured. Furthermore, while the Governments of the United Kingdom and Hong Kong have spoken of monitoring the safety of returnees, it seems unlikely that such monitoring can be effective.

Amnesty International is also concerned about inadequate remedial and disciplinary follow-up to proven cases of ill-treatment and to recent serious allegations of ill-treatment and assault by officers on detained asylum seekers.

Following an incident at Hei Ling Chau Detention Centre in July 1988 when some 100 asylum seekers were allegedly beaten and kicked by Correctional Services Department (CSD) personnel, an internal CSD inquiry, ostensibly substantiated by medical reports by government doctors, found there was no evidence whatsoever to support the allegations. However, a later independent inquiry found that unnecessary force had indeed been used by CSD officers on many asylum seekers, and further that the reports by government doctors failed to reflect adequately the injuries found, and did not give a reliable picture of the number of people who had signs of injury. It was also found that attempts had been made by CSD officers to suppress allegations of assault on the asylum seekers.

At three centres the delegates received allegations of ill-treatment of asylum seekers by police. Amnesty International believes that there is evidence indicating that in recent months there has been a continuing pattern of assaults on asylum seekers and subsequent intimidation of victims and witnesses in detention centres under police administration.

For example, at Shek Kong Detention Centre on the night of 23 - 24 July 1989, more than 100 asylum seekers appear to have been injured, many of them apparently as a result of indiscriminate kicking and use of batons by police, and one asylum seeker died. The victims included 27 women and two children aged under five years old. Medical examinations of alleged victims showed many injuries consistent with the allegations. Amnesty International is calling on the authorities to make public promptly a report of an independent and impartial investigation into this incident.

At other detention centres witnesses and alleged victims expressed fears that if they were to speak up about such abuses they faced possible retribution by the police, and risked unfavourable treatment in the screening process. One such victim, a young woman weighing only 38 kilos (84 pounds), described an incident in October 1989 when she lost consciousness after a police officer grabbed her by the hair, twisted her arm, kicked and punched her in the stomach and back, and hit her on the head with his baton; a doctor recorded injuries consistent with her account. Amnesty International is calling on the government to take steps immediately to assure and protect victims and witnesses in such circumstances.

In the early morning hours of 31 October 1989, personnel of the CSD Tactical Response Squad clad in riot gear forcibly removed some 48 "screened-out" asylum seekers from Chi Ma Wan Detention Centre to Phoenix House Detention Centre (most of those transferred in this operation were subsequently among those forcibly repatriated to Viet Nam on 12 December). Allegations made by the asylum seekers include: throats grabbed in a "stranglehold" and noses and mouths squeezed shut, and kicking and stamping on the back of a man dragged to the floor and beating with a baton on his back and stomach. Three asylum seekers said CSD officers had applied pressure to a point on their head near the ear, whereupon they had briefly lost consciousness. A CSD official confirmed that "pressure point control techniques" are part of CSD training but said it was impossible that they could render anyone unconscious.

There has been an internal CSD inquiry into this incident, but Amnesty International regards this as insufficient, particularly in light of the inadequate internal CSD inquiry into the incident at Hei Ling Chau 15 months previously, and the organization is calling for an impartial and independent inquiry.

At the recently-opened High Island Detention Centre Amnesty International's delegates were concerned about the 12 "punishment cells", apparently subdivided metal cargo containers, where asylum seekers may be locked up for disciplinary reasons for up to several days. The cells have no electricity, plumbing or furniture -- asylum seekers are expected to stand, sit or lie on the metal floor.

Amnesty International is concerned that one of the prime reasons which the Government of Hong Kong has cited to justify the detention of asylum seekers is to deter other asylum seekers from leaving Viet Nam for Hong Kong. According to international standards, deterrence is not a lawful reason for detaining asylum seekers; indeed, such a policy is wholly inconsistent with the carefully constructed international system for protection of refugees. Even though the government may argue that they do not intend to deter those who are "genuine" refugees, such detention is likely to increase the risk to individuals still in a country where they risk human rights violations, by discouraging them from leaving to seek asylum in a country where they believe they will be detained indefinitely on arrival.

While Amnesty International recognizes that the Hong Kong Government has faced severe practical and administrative demands as a result of the arrival of large numbers of Vietnamese asylum seekers, such pragmatic difficulties cannot justify a dilution of a government's obligation to observe the international standards which have been established to protect the human rights of vulnerable groups such as the Vietnamese asylum seekers.

Concerns raised in this memorandum were the subject of a letter from Amnesty International to the Governor of Hong Kong dated 6 December 1989; that letter and the government's reply of 28 December are attached as an appendix to this memorandum.

This summarizes a 54-page document, Memorandum to the Governments of Hong Kong and the United Kingdom regarding the Protection of Vietnamese Asylum Seekers in Hong Kong (ASA 19/01/90), issued by Amnesty International in January 1990. Anyone wanting further details or to take action on this issue should consult the full document.

**MEMORANDUM TO THE GOVERNMENTS OF HONG KONG AND THE UNITED KINGDOM
REGARDING THE PROTECTION OF VIETNAMESE ASYLUM SEEKERS IN HONG KONG**

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Amnesty International
International Secretariat
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London WC1X 8DJ
United Kingdom

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MEMORANDUM TO
THE GOVERNMENTS OF HONG KONG AND THE UNITED KINGDOM
REGARDING THE PROTECTION OF VIETNAMESE ASYLUM SEEKERS IN HONG KONG

1. Introduction

An Amnesty International delegation visited Hong Kong during the period 26 November to 2 December 1989. Their mission was to examine certain aspects of the protection of the human rights of Vietnamese asylum seekers in Hong Kong. In particular, their task was to collect information about the functioning of the "screening process": the refugee determination process used by the Hong Kong Government to determine which of those asylum seekers qualify for refugee status and are thereby protected from possible return to Viet Nam. They also looked into reports of the ill-treatment of asylum seekers held in detention centres, and in particular the procedures which had been followed by the Government of Hong Kong in investigating alleged incidents of such ill-treatment. Finally, the delegates examined the conditions in the detention centres they visited, to determine whether these conditions in themselves might constitute a concern for Amnesty International. Following its delegates' findings, Amnesty International is making 23 recommendations to the Governments of Hong Kong and the United Kingdom, which are included at relevant places in the text of this memorandum and also set out in §6.

In the period before, during and immediately after the visit by the delegation to Hong Kong, there were widespread reports that the Hong Kong Government was planning imminently to return to Viet Nam against their will a number of asylum seekers who had been "screened out" in the screening process. In light of these reports, Amnesty International sent a lengthy letter dated 6 December 1989 to Sir David Wilson, Governor of Hong Kong, setting out areas of concern to Amnesty International and the preliminary conclusions of its delegation (see Appendix). In particular, that letter set out Amnesty International's "strong view that no such involuntary returns should take place before adequate steps have been taken to remedy critical flaws in existing screening and appeal procedures, as they are currently practised." The letter also stated that Amnesty International's "concern at the prospect of the involuntary return of Vietnamese asylum seekers is further heightened by the fact that personnel of the Correctional Services Department (CSD) and the Hong Kong Police who are likely to play a key role in carrying out such a removal have themselves been implicated in serious cases of ill-treatment of Vietnamese asylum seekers." The letter was subsequently copied to British Prime Minister Margaret Thatcher.

The Government of Hong Kong replied in a letter of 28 December from Geoffrey Barnes, Secretary for Security (see Appendix). That letter defended the screening process, stating among other things that the Office of the United Nations High Commissioner for Refugees (UNHCR) has access to all asylum seekers and monitors the screening process and that the ultimate safeguard is that UNHCR may declare a person a refugee at any stage. On these points, Amnesty International stresses (as set out in detail in §3.2 of this memorandum) that the resources available to UNHCR in Hong Kong permit it to monitor only a very small fraction of cases. It is governments that are responsible for ensuring proper refugee determination procedures and protecting asylum seekers; UNHCR's role, while welcome, cannot compensate for the defects of the screening process in Hong Kong. Until the screening process is changed, people risk being forcibly returned to become victims of human rights violations in Viet Nam. With respect to the allegations of ill-treatment by GSD personnel and police, the Hong Kong Government's letter stated that the Governor had concluded that an independent inquiry into recent allegations of ill-treatment was not justified. Amnesty International's letter and the government's reply are included as an Appendix to this memorandum.

Some days after Amnesty International wrote to the Governor, in the pre-dawn hours of 12 December 1989, 51 "screened out" Vietnamese asylum seekers were forcibly removed from Phoenix House Detention Centre in Hong Kong and flown to Viet Nam. At the same time, Amnesty International made public its concerns and called for a halt to all plans for forced repatriation until necessary changes had been made and implemented in the screening process. Hong Kong and British officials have, however, stated their intention to continue implementing a policy of forced repatriation.

Amnesty International is now taking the opportunity of presenting this memorandum to the Governments of Hong Kong and the United Kingdom to reiterate its urgent appeal that no further forced repatriation of Vietnamese asylum seekers be allowed to take place until the critical flaws in the screening process detailed in this memorandum have been remedied.

Amnesty International sets out in this memorandum a number of specific recommendations which it feels must be implemented for the protection of the human rights of Vietnamese asylum seekers in Hong Kong. These relate not only to the screening process but also to the protection of asylum seekers in the face of evidence of a continuing pattern of assaults by police and other officers on asylum seekers in detention and the subsequent intimidation of victims and witnesses to such assaults. The memorandum also addresses and makes recommendations with respect to conditions of detention under which the asylum seekers are held. It draws attention, moreover, to the fact that insofar as the Hong Kong authorities detain asylum seekers for its deterrent effects, this is unacceptable under international standards.

The conclusions in this memorandum are based on information collected both during the visit by Amnesty International's delegates in November-December 1989, and during the course of the organization's continuous monitoring of the situation of Vietnamese asylum seekers in Hong Kong and the human rights situation in Viet Nam over the past years. With respect to the information collected during the visit, Amnesty International must acknowledge a debt of gratitude to the Hong Kong Government itself for its full assistance to the organization's delegates while they were in Hong Kong. The government facilitated visits by the delegates to all eight of the centres which they requested to visit: Sham Shui Po Detention Centre,

1. Introduction

San Yick Closed Centre, Whitehead Detention Centre, Phoenix House Detention Centre, Shek Kong Detention Centre, Chi Ma Wan Detention Centre, High Island Detention Centre and the Detention Centre located at the ferries moored alongside Stonecutters Island. At each of these facilities, in addition to meeting the officials in charge, delegates were given free access to move about and to speak with individual asylum seekers without a government representative being present. At Whitehead Detention Centre the delegation was permitted to view screening interviews being carried out by Immigration Officers.

The delegates had a series of meetings with Hong Kong officials from the Security Branch, the Immigration Department, the Refugee Status Review Boards, the Correctional Services Department (CSD), the Royal Hong Kong Police, the Complaints Against Police Office (CAPO), and the Legal Department. They also had the opportunity to meet staff members of the Office of the United Nations High Commissioner for Refugees (UNHCR), legal officers of the Agency for Volunteer Service (AVS), representatives of various non-governmental organizations working with asylum seekers, and local lawyers, including the Presidents of the Law Society and the Bar Association.

On the basis of the information collected and summarized in this memorandum, Amnesty International has made a number of recommendations which are set out together in the final section of the memorandum. Amnesty International is calling upon the Governments of Hong Kong and the United Kingdom to take all necessary steps to implement these recommendations in order to protect adequately the human rights of Vietnamese asylum seekers in Hong Kong.

2. Amnesty International's concerns for refugees

Amnesty International is a worldwide movement whose work is based on the Universal Declaration of Human Rights and other internationally recognized standards relating to the protection of human rights. It operates independently of any government, political grouping, ideology, economic interest or religious creed. Amnesty International's concerns relating to the Vietnamese asylum seekers in Hong Kong are based on fundamental principles which Amnesty International applies to its work on behalf of asylum seekers worldwide.

As the organization's delegates explained to government officials whom they met, Amnesty International concerns itself with specific aspects of the human rights of prisoners, focusing on three areas which are set out as its mandate in the organization's Statute:

- It seeks the release of men and women detained anywhere for their beliefs, colour, sex, ethnic origin, language or religion, provided they have not used or advocated violence. These are termed "prisoners of conscience".
- It advocates fair and early trials for all political prisoners and works on behalf of such persons detained without charge or without trial.
- It opposes the death penalty and torture or other cruel, inhuman or degrading treatment or punishment of all prisoners without reservation.

2. Amnesty International's concerns for refugees

Amnesty International's work for the protection of refugees derives directly from these prisoner-related concerns. The organization opposes the forcible return of any person to a country where he or she might reasonably be expected to be imprisoned as a prisoner of conscience, tortured or executed. To this end, Amnesty International provides information to governments and to concerned individuals and organizations regarding the risks faced by such persons if forcibly returned to the country in question. It also monitors governments' policy and procedures with respect to the protection of refugees to ensure that they are adequate to identify persons facing such risks and to protect them against forcible return.

Amnesty International has called upon the Governments of Hong Kong and the United Kingdom to stop the forcible repatriation of Vietnamese asylum seekers for the time being because it believes that the numerous inadequacies which it has identified in Hong Kong's screening process create a very real risk that some individuals "screened out" in this process may become the victims of human rights violations were they to be returned to Viet Nam (see §3.4).

The fact that asylum seekers in Hong Kong are held in detention by the Hong Kong authorities raises further issues of concern to Amnesty International. As noted above, the organization opposes the cruel, inhuman or degrading treatment or punishment of all detainees without reservation. It is therefore concerned at the information it obtained, and which is set out in this memorandum, indicating that there is a continuing pattern of assaults by police and other officers on asylum seekers in detention and that investigations into such incidents have been impeded by intimidation of the victims and witnesses (see §4).

The organization is further concerned that one of the prime reasons which the Government of Hong Kong has cited to justify the indefinite detention of asylum seekers is to deter other asylum seekers who might be considering leaving Viet Nam. Amnesty International opposes the detention of asylum seekers unless the government concerned can demonstrate lawful reasons for such detention in accordance with international standards. According to these international standards, deterrence is not a lawful reason for detaining asylum seekers. Moreover, such a policy of deterrence may increase the risk to individuals still in a country where they are in danger of human rights violations, by discouraging them from leaving that country to seek protection in a country where they believe they will be detained indefinitely on arrival (see §5.2).

Amnesty International recognizes that the Hong Kong Government has faced severe practical and administrative demands as a result of the arrival of large numbers of Vietnamese asylum seekers, particularly over the past year. It is further aware that much public sentiment in Hong Kong has been unsympathetic to the plight of the asylum seekers. Nonetheless, the organization believes that such pragmatic difficulties should never be used to justify a dilution of a government's obligation to observe the international standards which have been established to protect the human rights of vulnerable groups such as the Vietnamese asylum seekers.

3.1 The screening process: some basic background

3. The screening process in Hong Kong

3.1 Some basic background

Fundamental principles of international law relating to refugees are set out in the 1951 Convention relating to the Status of Refugees (the "Convention") and the 1967 Protocol relating to the Status of Refugees (the "Protocol"). Under these instruments, individuals qualify as refugees if they are unwilling to return to their country of nationality or habitual residence "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion."

Article 33 of the Convention sets out a crucial international legal standard relating to the protection of those who so qualify as refugees:

"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."

While not all countries are parties to the Convention or Protocol, this provision has become widely recognized as a norm of general international law which applies to all countries. In any event, while Hong Kong is a party to neither instrument, the Hong Kong Government has formally affirmed, with respect to asylum seekers arriving from Viet Nam in Hong Kong, "that the determination of refugee status will be in accordance with the 1951 Convention and 1967 Protocol relating to the status of refugees and UNHCR guidelines" and that "all refugees will be treated according to established international standards". It made this pledge in the "Statement of an Understanding reached between the Hong Kong Government and UNHCR concerning the Treatment of Asylum Seekers arriving from Vietnam in Hong Kong" which was concluded by UNHCR and the Government of Hong Kong on 20 September 1988 (the "Statement of Understanding").

The Statement of Understanding was concluded following a fundamental shift in Hong Kong's policy with respect to Vietnamese asylum seekers which occurred on 16 June 1988. Prior to that date all Vietnamese arriving in Hong Kong were automatically recognized as refugees. They were therefore protected from being sent back to Viet Nam. Further, since Hong Kong is regarded by the international community as a country of first asylum rather than a permanent place of asylum for Vietnamese refugees, they thereby qualified for resettlement in third countries.

From 16 June 1988 all Vietnamese asylum seekers arriving in Hong Kong have been subject to a refugee determination process, commonly called a "screening process". This process has been modified several times since it was established. In the Statement of Understanding with UNHCR, the Hong Kong Government confirmed "that appropriate humanitarian criteria for determining refugee status will be applied" and that these included the Government's "commitment to the establishment and operation of procedures for determination of refugee status which are in accordance with the UNHCR Handbook". The handbook referred to is the *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol* (the "UNHCR Handbook"), a 1979 publication of UNHCR.

3.1 The screening process: some basic background

Obviously, the existence of a fair and effective screening process is a prerequisite for compliance with international standards for the protection of refugees, and is crucial to Amnesty International's concerns with respect to Vietnamese asylum seekers in Hong Kong. It is essential that any such system must be capable of identifying all those individuals who would risk human rights violations if returned to Viet Nam and afford them the protection of refugee status. It was therefore a primary purpose of Amnesty International's delegates in Hong Kong to examine and evaluate the functioning of the screening process. Their conclusion, unfortunately, has been that the screening process is critically flawed and cannot be relied on to identify as refugees all those at risk of becoming victims of human rights violations if returned to Viet Nam.

● Amnesty International is, therefore, calling upon the Governments of Hong Kong and the United Kingdom to stop all further forcible return of Vietnamese asylum seekers to Viet Nam from Hong Kong until adequate steps have been taken to remedy the critical flaws in the existing screening process, and until asylum seekers whose applications for refugee status have been refused in the existing screening process have had their applications examined afresh in a fair and just screening process.

The sections which follow outline the current functioning of the screening process and then go on to set out in detail the particular problems with that process identified by the Amnesty International delegates who visited Hong Kong.

3.2 The screening process: an outline of its procedures

According to the Hong Kong Government, as soon as boats containing Vietnamese asylum seekers are intercepted in Hong Kong waters, those aboard are advised of current government policy to treat them as illegal immigrants unless they are determined, by a screening process, to be refugees. They are then informed that they are free to leave Hong Kong waters but that, if they do not and are later found under the screening process to be "economic migrants", they will be detained, without access to arrangements for resettlement outside Hong Kong, pending repatriation to Viet Nam. The policy of the Hong Kong Government is to provide material assistance to those who choose not to land in Hong Kong but to move on, including the supply of food, water, fuel and the repair of their boats.

The vast majority of arriving Vietnamese asylum seekers choose to land in Hong Kong, however, and, under the terms of Section 13D of the Hong Kong Immigration Ordinance, Cap. 115, are then liable to be detained under the authority of the Director of Immigration. That section provides that any Vietnamese asylum seeker may be detained "pending a decision to grant or refuse him permission to remain in Hong Kong as a refugee or, after a decision to refuse him permission to remain in Hong Kong, pending his removal from Hong Kong."

Arriving Vietnamese asylum seekers are usually taken first to an arrival reception centre and, after that, allocated a place in a detention centre. At the time of the Amnesty International delegation's visit, Vietnamese asylum seekers awaiting completion of the screening process were being detained at some 12 such centres. According to figures provided by the government, as of 27 November 1989 there were 37,881 asylum seekers who had not yet completed the screening process.

3.2 The screening process: outline of procedures

Given this large population of asylum seekers and the fact that approximately 400 initial screening interviews are conducted each week, many of those awaiting screening are likely to have to wait for one to two years in the detention centres for the process to begin. There seems to be some unpredictability as to the order in which people are screened, though the Amnesty International delegation was informed that, in theory, individuals should be processed according to their order of arrival. The most important variable seems to be the detention centre to which an individual is assigned, since the screening interviews are held in the centres. At the relatively new Shek Kong Detention Centre, for example, where more than 7,000 asylum seekers were being held, the Amnesty International delegates were told by the police camp commandant that screening was unlikely to begin for at least a year. At the Upper and Lower Chi Ma Wan Detention Centres screening had been suspended for several weeks at the time of the delegation's visit because of tensions there following the forcible transfer of 48 persons from Upper Chi Ma Wan Detention Centre to Phoenix House in the early morning hours of 31 October 1989 (see §4.3). On the other hand, at the Whitehead Detention Centre, facilities seemed to be available for up to 22 or 23 screening interviews at any given time, and facilities were available at Hei Ling Chau Detention Centre for 14 concurrent interviews. Such variations in the availability of facilities led to a degree of apparent arbitrariness in the order of those being screened. In November 1989, for example, those who had arrived on boats 60-70 of 1988 as well as on boat 635 of 1989 were being interviewed. (Boats arriving in Hong Kong from Viet Nam are numbered chronologically through the course of the year and the asylum seekers aboard receive an individual reference number which includes the boat number. For example, VRD 1/1/88 would indicate that a person was the first arrival on the first boat of 1988.)

(a) The screening interview

Once an individual is called up for the screening interview, the first stage is the collection of personal biographical data by an Immigration Assistant (Immigration Assistant is a rank and file level post below the various officer grades in the Immigration Department). The Immigration Assistant works with an interpreter and records information about the asylum seeker's personal details, parents and parents-in-law, children, brothers and sisters, and educational and employment background. These are items covered by pages 1 to 5 of an interview form which has been agreed by the Government of Hong Kong and UNHCR as part of the Statement of Understanding.

Some one to three days later, the screening interview itself takes place. The interview is conducted by an Immigration Officer. Immigration Officer is the second rank in the various officer grades in the Immigration Department and officials there explained to the Amnesty International delegation that generally an Immigration Officer would have spent some four to five years at the rank of Assistant Immigration Officer before rising to that second rank.

Immigration Officers are also the officers responsible for controlling entry at ports, dealing with illegal immigrants from the People's Republic of China and other countries, etc. According to immigration officials with whom the Amnesty International delegates spoke, doing a tour of duty as a screening process interviewer is generally considered an undesirable posting by Immigration Officers.

Immigration Officers wear full uniform while conducting the screening interviews. The points meant to be covered in the interview are set out in the interview form agreed with UNHCR and include: military service, general background of interviewee and members of family, involvement in political parties and resistance organizations, religious activities, deprivation of economic and social rights, prosecution record, motives for leaving the country and any other points not covered.

Immigration Officers conducting the interviews are assisted by an interpreter who translates questions and answers back and forth into Cantonese and Vietnamese; answers are meant to be recorded in English on the interview form. However, in practice the agreed procedure seems to be that this formal record is prepared one or more days later when the Immigration Officer returns to Immigration Department headquarters in the Central district of Hong Kong after a two or more day stint of interviewing in the detention centres. The Immigration Officer takes notes during the interview and later relies on these notes in preparing the final interview form. When the Amnesty International delegation observed the screening interview procedure at Whitehead Detention Centre, Immigration Officers were taking notes in English although it is not known whether this is universal practice or whether Immigration Officers who speak Cantonese more easily than English would make such notes in Cantonese. The delegation was also informed by lawyers involved in the review stage that some Immigration Officers, to avoid duplication of work, were attempting to take definitive notes at the time of the interview which were later attached to the interview form rather than being copied onto it.

It is obviously time-consuming to elicit information in this complex trilingual procedure. Invariably, when asked by the Amnesty International delegates, government officials in Hong Kong said that screening interviews lasted anywhere from half a day to two or three days. This information did not accord with other information collected by the delegation. At Whitehead Detention Centre, where they observed the process, they were told that between 19 and 23 interviews were simultaneously going on between 9am and 5pm on workdays, with a lunch break in the middle. An average of 300 interviews were conducted there weekly. This would seem to indicate that on average interviews lasted substantially less than half a day. This seems to accord with information collected from asylum seekers themselves in the eight detention centres visited by the delegation, many of whom stated that their screening interviews lasted between one and two hours. On the other hand, it is known that in complex cases interviews have lasted for more than a day.

At centres where interviewing is taking place, one or two Senior Immigration Officers are meant to be present to supervise the procedure. According to immigration officials with whom the Amnesty International delegation spoke, they are to "patrol" and to take any complaints. They are also available to answer questions if an Immigration Officer has doubts regarding any point. UNHCR also has six legal monitors and one of their duties is to observe screening interviews in progress. The Amnesty International delegation was told that one such monitor was always on duty at Whitehead Detention Centre, and sometimes two.

As already noted, after two days of interviewing, Immigration Officers return to their headquarters to write up their interview records. They complete the interview form and prepare a file on the case, and may attach documentation submitted by the asylum seeker. They then make a decision or a recommendation regarding the case.

3.2(a) The screening interview

According to senior immigration officials with whom the Amnesty International delegates spoke, there is a two-tier decision-making process. In "simple" cases, where the Immigration Officer takes a firm view that the asylum seeker has not put forward a legitimate claim, the Immigration Officer may make the decision to refuse refugee status. This decision must then be endorsed by a Senior Immigration Officer, who is meant to review the file. Senior Immigration Officers may request further information, raise questions and ultimately disagree with decisions, though in practice in "simple" cases they are said to do so very rarely.

In "difficult" cases, where an Immigration Officer feels that the asylum seeker may be putting forward a legitimate claim to refugee status under one of the categories set out in the Convention, the Immigration Officer cannot make a decision but only a recommendation. In such cases, the Senior Information Officer is meant to make the decision, which in turn must be scrutinized by the Chief Immigration Officer who may confirm or reverse it. According to the Chief Immigration Officer, with whom the delegation spoke, he has never intervened at this point to reverse a positive decision to recognize a refugee, although there have been cases where he has reversed a negative decision.

Immigration Officers are also responsible for identifying at the screening interview stage "family reunification" cases. These are individuals who have very close relatives already recognized as refugees and resettled or likely to be resettled elsewhere. Such individuals are "screened in" on this basis and need not make out a claim for themselves falling within the Convention definition of "refugee".

Asylum seekers are generally notified of the results of the screening interview some four to five weeks after it has taken place. The decision is in the form of a standard letter which does not set out reasons. While reasons were sometimes given during the first year of the screening process, officials in the Immigration Department explained that this practice had been abandoned because it became "cumbersome".

Individuals "screened in" as refugees at this stage are transferred virtually immediately from detention centres to "closed camps"; under the liberalized policy now applied to these centres refugees living in such centres are generally free to go out during the day to work, shop or visit.

(b) The review procedure

Those who are "screened out" receive, in addition to the decision itself, documentation setting out the basis in Hong Kong law on which the authorities detain "screened out" asylum seekers and their right to have a review of the decision to refuse refugee status. They are informed that they must fill in and return their Notice of Application for such review within 28 days.

On the day that an individual is "screened out", copies of the Immigration Officer's file on the case should go to the office of the Refugee Status Review Boards and to the Agency for Volunteer Service (AVS). The Refugee Status Review Boards are bodies set up by the Hong Kong Immigration (Amendment) Ordinance 1989, passed by the Hong Kong Legislative Council on 31 May 1989. They are meant to review decisions made by Immigration Officers in the first stage of the screening process. AVS is a body funded by UNHCR which employs appeals counsellors who are meant to advise and represent asylum seekers pursuing their right to apply for a review of a negative decision.

The Immigration (Refugee Status Review Boards) (Procedure) Regulations 1989, which were made by the Governor of Hong Kong in Council, make the following provision for legal representation of asylum seekers at this stage:

"6(2) The legal representative of the applicant shall be such legal practitioner (being a legal practitioner entitled to practise in Hong Kong) as the applicant may designate to the Chairman [of the Refugee Status Review Boards] and, if no such person is so designated, then the prescribed person shall be deemed to be the representative of the applicant for the purposes of these regulations."

The "prescribed person" is defined in the Regulations as "an appeals councillor [sic] engaged by the Agency for Volunteer Service."

In practice virtually no asylum seekers are represented by private Hong Kong legal practitioners, the few exceptions generally being those who have relatives in third countries financing their legal representation. The Chairman of the Refugee Status Review Boards explained to the Amnesty International delegation that he interpreted the regulations to mean that the AVS legal advisers were, therefore, by default legal representatives of all other appellants. In practice, however, their role is somewhat different.

Lawyers working with AVS explained that the 400 or so screening interviews by Immigration Officers each week translated into something like 180 new "case" files, with a "case" bringing together related family members sharing a common claim to refugee status. Each week these files would arrive at AVS and be distributed among the legal advisers. The number of AVS advisers has grown rapidly during 1989 (from two in March, to four in June, to eight in September, to ten in early November). When the Amnesty International delegation met AVS advisers in late November, there were 11 advisers and a 12th had just been appointed.

The advisers explained that each of them is assigned approximately 15 new files each week. Information included in the file at this stage normally includes the summary of the interview prepared by the Immigration Officer on the interview form, a written assessment of the case by the Immigration Officer and the Senior Immigration Officer's confirmation (except in "difficult" cases, where as already described the Senior Immigration Officer would decide and the Chief Immigration Officer would confirm). Any documentation submitted by the asylum seeker and treated as part of the record by the Immigration Officer should be in the file as well.

The AVS advisers explained that they then go to the detention centres where the individuals involved are held and attempt to see all of them. They go over information in the file with the individuals and, in some but not all cases, read out to them the report filed by the Immigration Officer on the interview form. They attempt to pursue further areas of questioning where the Immigration Officer seemed not to have probed sufficiently. They also explain the procedure, the necessity of filing an application for review within 28 days and the possibility of making written representations to the Refugee Status Review Boards, including the submission of supporting documentation.

3.2(b) The review procedure

Despite the recent rapid growth in the number of AVS advisers, however, the organization is still very severely understaffed in terms of being able to fulfill its apparent function under the regulations of representing all asylum seekers who are unable to retain their own legal representatives. In fact, AVS advisers are able to take up and make representations on behalf of only approximately 10 per cent of the review cases they see. Given the limitations on their resources, the advisers tend to take up those cases which are the very strongest or which include complex or "grey" areas.

With respect to those cases which AVS does not take up, the advisers tell the people concerned how they can make their own application for review, stressing the 28-day deadline and outlining the points which need to be covered in a letter to the Refugee Status Review Boards. Virtually everyone does pursue an application for review. While the 28-day deadline for submitting applications for review is strictly enforced, only a small number of cases have been excluded for failing to meet this time limit.

In the 10 per cent of the cases where AVS acts for the asylum seekers, the 28-day time limit of course also applies, adding to the pressures on the advisers. A concession has been made to them by the Refugee Status Review Boards, however. While the Notice of Application (for review) must be filed by them within the 28-day limit, they have now been assured that the Refugee Status Review Boards will not consider any cases until the 42nd day after the asylum seeker has received a notice of refusal and that the Refugee Status Review Boards will consider any written representations received by them from AVS up to the 35th day.

Provisions relating to the constitution and functioning of the Refugee Status Review Boards are set out in the Immigration (Amendment) Ordinance 1989 and in the Immigration (Refugee Status Review Boards) (Procedure) Regulations 1989. These instruments provide for appointment of a Chairman of the Refugee Status Review Boards (currently F.W. Blackwell, a former judge, whom the Amnesty International delegation met). They also provide for the appointment of a number of Deputy Chairmen, who are civil servants, and members of the Boards, who are lay members of the public. All appointments are by the Governor of Hong Kong.

Judge Blackwell informed the Amnesty International delegates that, as of 1 December 1989, there would be four lay members of the Boards. They would normally sit on four separate Refugee Status Review Boards, each chaired by one of the Deputy Chairmen or occasionally by the Chairman. Boards ordinarily sat and made decisions with only two persons, the member and the Chairman or Deputy Chairman, but occasionally three sat on a Board. Although Judge Blackwell told the delegates that a three-member board makes decisions by majority, Geoffrey Barnes, Secretary for Security, in his letter to Amnesty International of 28 December 1989, stated that the rules provide for a Board to find in favour of an asylum seeker if any one of its members considers that the review should be allowed (that is, that the decision to refuse refugee status made at the screening interview stage should be reversed).

The Boards sit in closed private sessions. Neither the asylum seeker, nor a legal representative, nor UNHCR is entitled to be present. While the Regulations permit a Board to require the presence of the asylum seeker or an Immigration Officer, in practice this does not happen. Decisions are made on the basis of the files submitted by Immigration Officers and any written submissions subsequently made by the asylum seeker and/or a legal

representative. Each Board ordinarily sits once a week and deals with a caseload of 30 or more cases. The remainder of the week is spent by Board members studying the files to be considered at the following Board session.

As already noted, in practice written representations are accepted up to 35 days after the asylum seeker has received the negative decision from the Immigration Officer. The cases are then generally heard by a Board sometime on or after the 42nd day following the negative decision, when they go onto a "warned list" which means they may be heard at any time.

A practice has developed with respect to cases on the "warned list" which is not provided for in either the Ordinance or the Regulations. On most Monday mornings, the Chairman of the Refugee Status Review Boards and one of his Deputy Chairmen and representatives of AVS and of UNHCR meet. At this time, the representatives from AVS and the UNHCR may make any special points which they wish to raise regarding any particular case on the "warned list". In practice, such points would relate to those cases actually taken up by AVS. The Chairman then relays the points made orally and subsequently in writing to the particular Board which will be dealing with the case.

The Chairman also informed Amnesty International's delegates that he has developed another extra-statutory procedure. He has encouraged the Boards to visit the detention centres occasionally and he said it was now the practice that once every one or two weeks a visit would be paid to a detention centre by one of the Boards. On such a visit, the Board might ask for information regarding up to five cases which were to be considered by that Board, or speak with the asylum seekers concerned, for purposes of clarifying points, assessing credibility, etc.

Once a decision has been made on a case by a Board, this decision is notified to the Director of Immigration who in turn is meant to notify that asylum seeker. At the time of the Amnesty International visit, a large backlog of negative decisions had in fact not been notified to the affected asylum seekers because of the authorities' concern about possible unrest in the detention centres, but Judge Blackwell told the Amnesty International delegates that he had protested to the Director of Immigration about this delay.

Under the Ordinance, the Refugee Status Review Boards are not required to give any reasons for their decisions and, in fact, do not. The Ordinance further provides that "a decision of a Board shall not be subject to review or appeal in any court", although this provision has not thus far been judicially challenged. Under Hong Kong law, therefore, a decision of a Board is meant to be final and unchallengeable. The asylum seeker who is unsuccessful at this review stage is meant to have no further recourse.

(c) Ad hoc review by UNHCR

Although the review by the Refugee Status Review Boards is formally the final stage in the Hong Kong screening process, in practice UNHCR has become so concerned at the failure of the process to identify refugees that UNHCR itself has begun to develop an ad hoc arrangement for reviewing a few of the cases which have gone unsuccessfully through that entire process. This ad hoc arrangement had only just begun to function at the time of the visit by the Amnesty International delegation.

AVS appeals advisers explained to the delegation that the ad hoc arrangement had evolved partly as a response to the fact that many - indeed the majority - of those cases which they took up and believed to be refugees falling within the Convention definition were failing to achieve success before the Refugee Status Review Boards. As already noted, AVS takes up and makes representations on behalf of only some 10 per cent of the 180 review cases arising weekly. Of these, AVS advisers estimated that some eight to ten cases fall clearly within the Convention definition of "refugee" while other cases taken up raise more complicated, less clear-cut issues. Of the eight to ten "clear" cases arising weekly, however, AVS advisers said that on average only "a couple" are recognized as refugees by the Refugee Status Review Boards.

The AVS legal advisers have developed a practice whereby they then take a second look at these strongest cases which have failed to achieve success in the screening process. Frequently, at this stage, they will decide on reflection to drop their interest in an additional "couple" of these cases. This is likely to leave, however, some four to five remaining cases where they are convinced that the individuals involved are indeed refugees with a well-founded fear of persecution if returned to Viet Nam.

AVS and UNHCR have reached an agreement whereby AVS advisers meet occasionally with a senior protection officer from UNHCR and act as advocates for these cases. If the UNHCR official accepts that the individuals involved are indeed refugees within the definition of the Convention, UNHCR "mandates in" these individuals. This means that they are recognized by UNHCR as refugees falling within its own mandate. UNHCR has sought and obtained the agreement of the Hong Kong Government that such "mandate refugees" will not be subject to involuntary repatriation and that UNHCR may seek resettlement opportunities for them in third countries.

While this ad hoc arrangement had only just begun to function at the time of the Amnesty International mission and fewer than 100 refugees had been "mandated in", UNHCR officials and others with whom the delegates spoke expressed concern that this procedure might begin to assume too key a role in the protection of refugees in Hong Kong. While the existence of such a "safety net" must be welcomed, they felt that it should not be permitted to mask the marked weaknesses in the existing screening process which allowed so many refugees to pass unrecognized through that process. This point was all the more important since only a tiny proportion of unsuccessful cases were given the benefit of this final review by UNHCR. It was also noted that the task of carrying out this final review is additionally difficult because AVS and UNHCR are not allowed to attend the sessions of the Refugee Status Review Boards, nor are they given any explanations of the reasons for negative decisions made by the Boards. Furthermore, the same strained and inadequate legal resources of UNHCR and AVS which were meant to service all stages of the screening process were now being expected to carry out the administration and functioning of this new arrangement.

3.3 The screening process: Amnesty International's concerns

The lengthy description of the existing screening process set out above illustrates two important, albeit somewhat contradictory, points. The first is that the Government of Hong Kong has devoted considerable resources in terms of time, money and personnel to the establishment of an elaborate framework for the screening process.

3.3 The screening process: Amnesty International's concerns

The second point, however, is a less positive one. Despite the resources put into it, the screening process in its present form is critically flawed and cannot be relied on to identify and protect all those who have a well-founded fear of persecution. Amnesty International has identified a number of areas where the procedures followed fall short of international standards relating to the protection of refugees. These are described below together with the positive steps which Amnesty International is calling upon the Governments of Hong Kong and the United Kingdom to take in order to remedy these shortcomings.

Many of these improvements will doubtless require a further investment of resources in the screening process. The Governments of Hong Kong and the United Kingdom have, however, already created the skeleton of a workable and effective screening process and would be shortsighted if they failed to pay the marginal costs of taking additional steps to make it one which meets the minimum requirements of international standards for a fair and just procedure. Such an investment would pay dividends not only for the refugees who would be at risk of human rights violations if returned to Viet Nam but also for the international reputation of the Governments of the United Kingdom and Hong Kong.

(a) Lack of legal advice and assistance to asylum seekers

One weakness which affects the screening process at both stages is the lack of legal advice and assistance available to those who are attempting to put forward their claim to be recognized as refugees. The Executive Committee of UNHCR, at its twenty-eighth session in October 1977, adopted by consensus certain basic standards relating to fair procedures for the determination of refugee status (set out in Conclusion 8(XXVIII) of the Executive Committee of UNHCR). These standards have in turn been set out in the UNHCR Handbook. As noted above, the Government of Hong Kong has pledged itself in the Statement of Understanding with UNHCR "to the establishment and operation of procedures for determination of refugee status which are in accordance with the UNHCR Handbook".

These basic standards include that:-

"(ii) The applicant should receive the necessary guidance as to the procedure to be followed.

"(iv) The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned. Applicants should also be given the opportunity, of which they should be duly informed, to contact a representative of UNHCR."

Under the present screening process operating in Hong Kong a Vietnamese asylum seeker is not likely to receive any individual professional advice or assistance whatever prior to or during the crucial screening interview carried out by an Immigration Officer. This is despite the fact that the asylum seeker is likely to have been held in a detention centre for a year or more before this interview takes place, with ample time for such consultation. Not even a written description of the procedure and how to prepare for it exists, so effectively asylum seekers must rely virtually completely on word of mouth descriptions from other asylum seekers as to what to expect.

3.3(a) Lack of legal advice and assistance

To the extent that any officials carry responsibility for providing legal advice and assistance to asylum seekers at this stage, this responsibility would rest with the six "legal monitors" employed by the UNHCR. The main responsibility of these six individuals, however - itself, an impossible one - is to monitor the approximately 400 screening interviews which take place each week. Government officials whom the Amnesty International delegation met maintained that some 20 per cent of screening interviews were monitored by UNHCR legal personnel. However, at the Whitehead Detention Centre, where the Amnesty International delegation itself observed the screening process, one, or at most two, UNHCR monitors were said to be on duty at a given time, although facilities were said to be available for up to 22 or 23 screening interviews to take place simultaneously.

Obviously the principle of UNHCR monitoring of screening interviews is to be welcomed. Amnesty International is concerned, however, that currently such monitoring does not provide an adequate safeguard because the limited resources available to UNHCR permit the monitoring of only a very small proportion of screening interviews. Moreover, even in the cases which are monitored, UNHCR monitors are reportedly sometimes required by officials conducting screening interviews to adopt a passive role and to refrain from active participation, such as seeking clarification of unclear points or asking follow-up questions which they consider to be pertinent. The Amnesty International delegation spoke to one asylum seeker who believed that the presence of a UNHCR monitor had even had a negative impact because of the attitude of the Immigration Officer involved, who had resented attempted UNHCR intervention and had reportedly taken it out in his attitude towards the asylum seeker.

In any event, the monitoring of screening interviews does not address the more fundamental issue of providing specific advice and assistance to individual asylum seekers regarding what to expect, how to prepare for an interview, what details of their own case may be relevant, what documentation might be useful to try to obtain, etc. The six UNHCR legal monitors attempt to play some role here. They organize occasional meetings with "hut leaders" in the detention centres where they describe the screening process. The hut leaders - who are elected representatives of the asylum seekers - are meant to pass on this information orally. Aside from the fact that such second- and third-hand passing down of crucial information is unreliable, it also fails to address the need to provide case-specific advice and assistance to individual asylum seekers, each of whom has a particular case with its own peculiarities which needs to be fully and adequately presented to the interviewing Immigration Officer. On this point, too, the same six monitors attempt to play some remedial role, providing advice to a few individuals during their lunch hours or other breaks during the day. Clearly, advice given under such circumstances can be given on only a random and ad hoc basis, and affords assistance to only a minuscule proportion of asylum seekers needing such advice. It should be noted, too, that these same six UNHCR legal monitors are also expected to participate occasionally in the Monday morning meetings with members of the Refugee Status Review Boards and in the newly evolving review by UNHCR of cases which may qualify as "mandate refugees" despite their failure to gain recognition in the screening process. Their resources are obviously stretched beyond any reasonable limits.

It should be noted also with respect to this first stage in the screening process that the situation is not all that much better even for those asylum seekers who have managed to obtain independent legal

3.3(a) Lack of legal advice and assistance

assistance with the financial help of relatives already resettled elsewhere. In the 19 December 1989 debate in the United Kingdom House of Commons on the situation of Vietnamese asylum seekers, for example, Paddy Ashdown MP quoted from a letter which he had received from a Hong Kong firm of solicitors acting for some such individuals:

"What we have found is that we are obtaining great difficulties to get access to the camps even to advise our clients as to how they should deal with questions at the initial [interview]. Indeed, the Immigration Department do not even advise us as to whether our clients have been interviewed or when they are likely to be next interviewed. They also prevent us from attending at the interviews and making representations. Although the UNHCR may be able to monitor the interviews, my firm or any of my representatives are not allowed to be present. It is my experience from seeing the results of the initial interviews that the Immigration Officers dismiss out of hand pleas by my clients that they have been subjected to persecution. Indeed, at one interview, my clients had documentation to show that they had been placed in a re-education camp but this was dismissed as being untrue."

The failure to provide legal advice and assistance to asylum seekers at this critical stage of the screening process necessarily has a strong negative impact on the screening process as a whole. The interview with the Immigration Officer represents the single moment in the entire process when the asylum seeker has the opportunity in person to set out the basis of his or her claim for refugee status. If it is not well done at this stage, the failure is hard to remedy at a later stage. A fuller elaboration at a later stage of a claim inadequately presented in the first interview is likely to be received with scepticism. The problem is compounded by the fact that, as described in greater detail below, Immigration Officers often appear to bring a negative attitude to these interviews and are unlikely to assist the asylum seeker in setting forth his or her claim fully.

Thus, while it is to be welcomed that AVS legal advisers attempt to see all asylum seekers who have been unsuccessful at the first interview stage, it is unfortunate that for most asylum seekers this is the very first time in the process that they are receiving legal advice and assistance. Furthermore, at this stage as well as at the initial stage, there are serious resource problems which prevent adequate representation being available to all asylum seekers. According to the AVS legal advisers whom the Amnesty International delegates met, the 12 AVS staff scheduled to be in place as of December 1989 would be able to see all of the 180 new cases (comprising nearly 400 individuals) arising each week. During the course of these meetings, AVS legal advisers review with the asylum seekers the files on their cases prepared by Immigration Officers, including notes of the screening interviews. They discuss the nature of the review procedure and the necessity of putting forward to the Refugee Status Review Boards any relevant information not yet on the record. They further attempt to probe and develop the specific cases of the individual asylum seekers.

Because of their own limited resources, however, the AVS legal advisers can actually take up and act on behalf of only some 10 per cent of the cases which they see. For these 10 per cent of the cases, the AVS advisers prepare their own written submissions for consideration by the Refugee Status Review Boards and, in some cases, raise points orally at the Monday morning sessions held with the Chairman of the Boards. They are not

3.3(a) Lack of legal advice and assistance

in a position, however, to take any further steps whatever with respect to the remaining 90 per cent of cases, despite the fact that under the terms of the Immigration (Refugee Status Review Boards) (Procedure) Regulations 1989, they are deemed to be the legal representatives of all Vietnamese asylum seekers going into the review procedure who have not privately retained a Hong Kong legal practitioner.

As has already been noted, even those asylum seekers who are being represented - whether by AVS or a private practitioner - have no right to be present themselves or to be represented by their lawyers at the actual hearing of the Refugee Status Review Boards where decisions are made.

This lack of legal advice and assistance to asylum seekers in advance of and at each stage in the screening process is one of the fundamental flaws in that process as it is currently operating. To a certain extent this weakness arises from the fact that the current procedures have been designed in a way that does not envisage the involvement of legal representatives at key stages, most importantly during the initial screening interview and during the deliberations of the Refugee Status Review Boards. Also of critical importance, however, is the very extreme lack of legal resources being devoted to representing the asylum seekers passing through the screening process and to ensuring that their claims are fully and properly presented.

As of December 1989, UNHCR was financing the posts of the six UNHCR legal monitors and the 12 AVS legal advisers, but given its own difficult financial situation, it would probably not be in a position to finance a large additional number of posts. Negotiations between UNHCR and the Hong Kong Law Society some time ago regarding the possibility of Hong Kong solicitors becoming involved in the representation of Vietnamese asylum seekers apparently broke down because of financial considerations. The Amnesty International delegation took the opportunity of its presence in Hong Kong to meet the Presidents of the Law Society and the Bar Association and local lawyers to encourage the involvement of local lawyers in this area, as happens in many other countries where there are influxes of asylum seekers. The President of the Bar Association informed the delegation that he had recently sent a circular to members encouraging their involvement in this area. In the absence of local lawyers willing to fulfill these needs, however, provision needs to be made for increased involvement of non-Hong Kong lawyers with appropriate expertise in the representation of asylum seekers and the protection of refugees.

● **Amnesty International is calling upon the Governments of Hong Kong and the United Kingdom to ensure that adequate legal advice and assistance is made available to asylum seekers at every stage in the screening process. Detailed information regarding the nature and conduct of that process, including a written description of the process in Vietnamese, should be provided to asylum seekers well before the time that they undergo screening interviews. Legal advisers should be assigned to asylum seekers well before the initial screening interview, and they should be accorded adequate time and facilities for communicating with their clients to prepare for that interview. Such legal advisers should be given the opportunity to advise and make representations on behalf of the asylum seekers throughout the screening process.**

● **Steps should be taken to ensure that sufficient legal resources are made available to achieve these ends. UNHCR, the Law Society and the Bar Association should be consulted in this regard and, to the extent that the**

needs cannot be met by local lawyers, steps should be taken to permit non-Hong Kong lawyers with expertise in refugee law to practise in Hong Kong for this purpose.

● Current procedures in the screening process should be amended to permit the legal representatives of asylum seekers to be present and make representations at both the screening interview by immigration officers and the deliberations of the Refugee Status Review Board.

(b) Concerns about the attitude and competence of Immigration Officers

In speaking to asylum seekers themselves about problems they faced in the screening process, Amnesty International's delegates found that the most frequently cited weakness was the attitude exhibited by Immigration Officers who conduct screening interviews and make a decision or recommendation on each case. The delegates received repeated allegations from asylum seekers in various detention centres - and from lawyers and interpreters who had witnessed screening interviews - that some Immigration Officers exhibited unhelpful, and indeed obstructive, attitudes towards those being interviewed. The delegates were further told that some Immigration Officers conducting screening interviews appeared to have inadequate knowledge of aspects of the political and human rights situation in Viet Nam which might be relevant to the determination of refugee status.

The heavy responsibility resting on interviewing authorities involved in refugee recognition interviews is set out in some detail in the UNHCR Handbook:

"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. Even such independent research may not, however, always be successful and there may also be statements that are not susceptible of proof. In such cases, if the applicant's account appears credible, he should, unless there are good reasons to the contrary, be given the benefit of the doubt.

"198. A person who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-à-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case.

"200. ... basic information is frequently given, in the first instance, by completing a standard questionnaire. Such basic information will normally not be sufficient to enable the examiner to reach a decision, and one or more personal interviews will be required. It will be necessary for the examiner to gain the confidence of the applicant in order to assist the latter in putting forward his case and in fully explaining his opinions and feelings...."

As already noted, asylum seekers going into a screening interview in Hong Kong have not been adequately advised regarding what is expected of

3.3(b) Attitude and competence of Immigration Officers

them. They enter the interview without a representative of their own and find themselves confronted by a uniformed Immigration Officer and a government interpreter. All too often it appears, as well, that they find themselves confronted with a negative attitude on the part of Immigration Officers who seem from the start inclined to assume that those they are interviewing are "economic migrants" rather than refugees.

According to those with whom the Amnesty International delegates spoke, this negative attitude was manifested by, for example, Immigration Officers cutting short potentially relevant responses or insisting on "yes-no" responses to questions where explanations were required, by failing to ask important follow-up questions, by failing to take full note of important elements in responses and by drawing unwarranted simplistic conclusions regarding the alleged economic motivations of asylum seekers.

One UNHCR lawyer with whom the Amnesty International delegates spoke cited the example of asylum seekers who had evaded the draft or deserted from military service. The lawyer stated that invariably when this information was elicited during interviews Immigration Officers failed to ask any follow-up questions regarding the motivation for refusing to carry out military service, despite the fact that on this point the interview form agreed with UNHCR specifies that the asylum seeker should be asked to "describe the circumstances, the reasons which motivated your act and its consequences for you and your family, if any". Instead, the Immigration Officer would draw the conclusion that the asylum seeker had left Viet Nam for reasons not qualifying him for refugee status.

Given that the average interview seems to last only about two hours and is carried out in a time-consuming trilingual format, it seems likely that a similar cursory approach is taken on all of the areas covered by the interview form. Legal personnel told the Amnesty International delegates that Immigration Officers rarely asked probing questions about why an individual was denied access to higher education, required to resettle in a New Economic Zone, deprived of a household registration booklet, etc. Concern was also expressed by UNHCR staff members that the key question - "Why did you leave Vietnam and why do you not wish to return?" - comes only at the very end of the interview format. Too often, the Immigration Officer is already giving indications at this point that he or she wishes to conclude the interview and the asylum seeker in turn feels that the answer to this question has been covered in the earlier part of the interview. In some cases, according to individuals who had witnessed many screening interviews, the Immigration Officer does not even ask the question but puts instead a leading question along the lines of "So, you left Viet Nam to seek a better economic life?"

Asylum seekers as well as legal personnel and interpreters involved in the screening process also informed Amnesty International's delegates that some Immigration Officers exhibited a very serious lack of background knowledge regarding the political and human rights situation in Viet Nam, which made it difficult for them to assess adequately claims for refugee status. In what was perhaps the most extreme example cited, an asylum seeker described how the Immigration Officer conducting his interview had seemed unaware that Viet Nam had previously been divided into two separate countries. The asylum seeker had been describing how his family had moved from North Vietnam to South Vietnam after 1954 and the Immigration Officer had assumed that this was simply a move between regions rather than between two countries with entirely different political systems.

3.3(b) Attitude and competence of Immigration Officers

In some cases, the files of which were shown to the Amnesty International delegation, Immigration Officers seemed to show little appreciation of the intrusive pressures which the Vietnamese authorities can impose on their citizens. In one such case, an asylum seeker was found by the Immigration Officer to have moved "voluntarily" to a New Economic Zone, despite the fact that the individual concerned would have had no prospect of continuing to support himself and his family if he had refused the Vietnamese Government's ultimatum to move. In another case, a Senior Immigration Officer commenting in a file referred to a period of forced labour by the asylum seeker as "casual work". In yet another case, a Catholic couple were subjected to mandatory "re-education" sessions following attendance at Mass on Catholic Holy Days. The Immigration Officer found that "the security forces only made use of these courses to persuade them, not forcibly stop them from practising their religion, and they could still worship their God fully."

In other cases, Immigration Officers showed a striking lack of familiarity with basic standards of international refugee law. In one such case, even a Senior Immigration Officer seemed to have a fundamentally flawed notion of what might constitute a "political opinion" or "persecution" as these terms should be understood by officials making determinations of refugee status on the basis of the 1951 Convention:

"Given that we believe that he had criticized the VN government in 1982 and that he was not allowed to study and had to return to his home village for re-education, this was in conformity with the government policy, which forbade independent criticism of the party and government, and it did not amount to his having a well-founded fear of being persecuted for reason of political opinion. Firstly, such criticism does not necessarily amount to holding political opinion. Secondly, there is no indication to show that he has a fear of persecution for holding such opinions."

In another case, an Immigration Officer found that the mandatory participation by asylum seekers in a forced work detail because they were the children of a former South Vietnamese serviceman did not constitute persecution of them as members of a particular social group since "The family was not singled out for this work and all other adult children of the ex-servicemen in the district had to do the same work."

To a certain extent such inadequate reasoning in their decision-making could be attributable to Immigration Officers' lack of familiarity with the relevant international standards which they are meant to be applying and with the human rights situation in Viet Nam. But it should be noted that UNHCR has conducted a couple of intensive training sessions for Immigration Officers involved in the screening process, the most recent being a four-day course in July-August 1989. A senior UNHCR protection official told the Amnesty International delegation that Immigration Officers proved to be good students and to have been well able to accurately assess refugee claims in the classroom context. It was further noted that, for a brief period after such a course, the rate of refugee recognition by Immigration Officers rose by a statistically significant amount. Shortly after, however, it fell to original levels.

The current level of refugee recognition by Immigration Officers gives serious cause for concern. This is not because there should be any particular percentage or absolute number of asylum seekers from Viet Nam being granted refugee status; obviously, the proportion recognized depends

3.3(b) Attitude and competence of Immigration Officers

on the background of the particular individuals going through the process at a given time. The concern arises, however, because a surprisingly small proportion of those eventually being recognized as refugees are being recognized at the first stage, the screening interview by Immigration Officers. Figures provided by the Immigration Department to the Amnesty International delegation on 27 November 1989 showed that only 227, or 3 per cent, of the 7,611 asylum seekers who had been interviewed by Immigration Officers as of that date had been found by them to fall within the Convention definition of "refugee". (An additional 383, or 3.7 per cent, had been granted "family reunification" status because of close relatives who were already resettled elsewhere.) At the same time, approximately 7.4 per cent of those who had failed to be recognized at the first stage and went on to the review stage had been recognized as refugees at this second stage. (This 7.4 per cent comprised 287 of the 3,881 applications for review on which decisions had been rendered as of that date.)

The fact that the rate of refugee recognition is nearly two and a half times higher at the review stage than at the screening interview stage is less a compliment to the review procedure than an indictment of the screening interview procedure as it is currently operating. It reverses the pyramidal structure one would expect to see in such a screening process, whereby the largest number of refugees would be expected to be recognized at the first stage of the process.

Clearly, some of the factors already mentioned play a role in this phenomenon, such as the total lack of legal advice and assistance available to most asylum seekers during the first stage and Immigration Officers' lack of familiarity with the relevant international standards and conditions in Viet Nam. An important additional factor seems to be operating here, however, one which even Judge Blackwell, Chairman of the Refugee Status Review Boards, recognized, when asked by the Amnesty International delegation for his explanation:

"The Director's [Director of Immigration's] rate of screening is very low. Thank goodness we have the Board. ... [When we make a decision] we bear in mind the intimidation of the uniform, of an interpreter they haven't met, of a strange land. We also bear in mind that they are dealing with a man of a 'discipline service'. A man working on a fixed form and on a fixed handbook and a man who will be very very careful because of a very long rule not to exercise his discretion too widely because his livelihood depends on an exercise of discretion properly in the eyes of senior officers. This is my own view of the screening process."

Many people with whom the Amnesty International delegation spoke expressed the view that Hong Kong Immigration Officers, rather than giving asylum seekers the benefit of the doubt as required by the UNHCR Handbook, actually began from the premise that they were illegal immigrants, and that a purpose of the screening interview was to justify their exclusion. The existence of such an attitude, of course, cannot be proved. However, it should be noted that the present Immigration Department procedures do include an in-built impetus to rejection of a refugee claim. As described above, Immigration Department officials told the Amnesty International delegation that an Immigration Officer alone may make the final decision to refuse refugee recognition in "simple" cases where the Immigration Officer takes a firm view that the asylum seeker is not putting forward a legitimate claim to refugee status. While Senior Immigration Officers are said in theory to review these decisions, they are said in practice not to

3.3(b) Attitude and competence of Immigration Officers

interfere with them. On the other hand, the Immigration Officer cannot make an independent decision in one which he or she regards as a "difficult" case, that is one where he or she feels that the asylum seeker may be putting forward a legitimate claim. Such a case must be referred to a Senior Immigration Officer who makes the final decision which in turn is scrutinized by the Chief Immigration Officer. The end result of this two-tier system is that an Immigration Officer is less likely to have his or her decision-making attract the scrutiny of superior officers if he or she makes negative decisions.

At least some Immigration Officers would appear to follow this path of least resistance. One of the Amnesty International delegates, after observing a screening interview, questioned the Immigration Officer who had conducted the interview. The delegate was attempting to get some idea of the officer's background knowledge regarding Viet Nam and inquired on what basis the officer had "screened in" those cases he had heard which had been successful. Unabashed, the Immigration Officer, who had conducted some 200 screening interviews in the course of a year, replied that he had never "screened in" an asylum seeker. Such a record is not unusual according to those involved with the screening process with whom the Amnesty International delegation spoke.

- **Amnesty International is calling upon the Governments of Hong Kong and the United Kingdom to develop a qualified, well trained body of professionals to conduct screening interviews. Preferably this body should be independent of the Immigration Department, at least some of whose officers reportedly exhibit a bias towards excluding asylum seekers as illegal immigrants, rather than granting them the benefit of the doubt as required by the UNHCR Handbook.**

- **As a means of monitoring the performance of those conducting interviews, as well as to represent individual asylum seekers, legal representatives of asylum seekers should be permitted to attend the interviews. As a further protection, a written record of the interview should be prepared on the spot and read back to the asylum seeker who may sign it if agreed or require changes if it does not adequately reflect the information which the asylum seeker wishes to convey.**

- **Procedures for reviewing the performance and decisions of interviewers by their superiors should be identical with respect to both positive and negative decisions, so that there is no hidden impetus towards negative decisions. Those officials reviewing performance and decisions should ensure that standards set out in the UNHCR Handbook are met.**

- **The professionals conducting interviews should be in civilian dress to avoid intimidation of asylum seekers, and should be trained to allay the fears of those they are interviewing and to elicit full relevant information from them. They should also be fully trained in international legal standards relating to the protection of refugees and in relevant aspects of the political and human rights situation in Viet Nam, and such training should be on a continuing basis, with regular and frequent training sessions for each interviewing officer. Interviewing officers in the course of their work should make appropriate use of relevant background documentation, from non-governmental as well as governmental sources, about the political and human rights situation in Viet Nam, including information relating to the individual asylum seeker's region of origin and political, religious or ethnic background. A professionally-staffed documentation centre would be an effective way to help interviewing officers carry out this aspect of their work.**

3.3(c) Competence of interpreters

(c) Concerns about the competence of interpreters

Another point frequently raised by asylum seekers is the inadequacy of interpretation facilities provided at the screening interview. While the UNHCR Handbook provides that the asylum seeker "should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities", many asylum seekers maintained that there were serious communication problems during their interviews because of inadequate interpretation.

In order to pursue this point, the Amnesty International delegation spoke to past and present UNHCR interpreters who had sat in on screening interviews with UNHCR legal monitors. They, too, said that there were serious problems with the standard of interpretation provided by a number of the government interpreters; in particular they cited the fact that most such interpreters were ethnic Chinese who were born in Viet Nam but had lived in Hong Kong for many years. It was said that some government interpreters provide an adequate service, but some do not. It was noted, for example, that some government interpreters had adopted the Cantonese and English practice of placing adjectives before the noun when speaking Vietnamese, where the order is usually the reverse, causing confusion for asylum seekers, particularly those who were unsophisticated and had not been exposed to foreign languages and usage. A UNHCR interpreter referred to one extreme instance where a government interpreter had asked a 13-year-old boy "When will your father give birth to the baby?", when the information sought was the boy's birthday.

Because of their long absence from Viet Nam, some interpreters are also said to be unfamiliar with changes in the use of the language which may be particularly relevant in the context of asylum applications. It was pointed out, for example, that one Vietnamese word, *Bộ Đới*, is a Chinese borrowing and tends to be used generically by Cantonese-speaking Vietnamese in Hong Kong to refer to army personnel. In Viet Nam itself before 1975, however, *Bộ Đới* was used to refer to North Vietnamese army personnel; a different term, *Quân Đới*, was used to apply to the South Vietnamese army. One UNHCR interpreter had been present when a former South Vietnamese soldier had appeared insulted and had denied any involvement when asked if he had been *Bộ Đới*. Another interpreter referred to an interview in which the child of a former South Vietnamese soldier had responded negatively when asked if his father had been *Bộ Đới*. Obviously, in these cases, it was possible to correct the misunderstanding because of the presence of a second interpreter, but this protective backup is available in only a small fraction of cases.

Apparently one problem in obtaining a sufficient number of Cantonese-Vietnamese interpreters speaking adequate contemporary colloquial Vietnamese has been the imposition of restrictions by the Hong Kong Government on the use of non-Hong Kong labour for the provision of these interpretation services.

● Amnesty International is calling upon the Governments of Hong Kong and the United Kingdom to take all necessary steps to develop a body of interpreters capable of providing an effective service to asylum seekers undergoing screening interviews. A recruitment policy should be instituted which ensures that all those retained for this purpose speak both Cantonese and Vietnamese to a contemporary colloquial standard suitable to facilitate full and clear exchange of information during the screening interview. Insofar as it is necessary to achieve this aim, any relevant restrictions on the use of non-Hong Kong labour should be waived.

(d) Shortcomings in the review procedure

A substantially larger proportion of asylum seekers are accorded refugee status in the review procedure of the Refugee Status Review Boards than in the initial screening interviews by Immigration Officers. This procedure, too, however, has a number of fundamental flaws which make it probable that some refugees may not be recognized as such and accorded the protection to which they are entitled under international standards.

To a certain extent, some of these shortcomings derive from weaknesses already noted in the earlier stages of the screening process. For example, to the extent that the record of the initial screening interview is inadequate because of the failure of an Immigration Officer to elicit or record the asylum seeker's fully articulated claim, a Refugee Status Review Board is necessarily going to be disadvantaged in reviewing that claim. A badly prepared interview record can be extremely detrimental if it seems inconsistent with new representations made by or on behalf of the asylum seeker at the review stage, since it will tend to call into question the credibility of the asylum seeker.

Such problems will be exacerbated by the fact that the asylum seeker is only likely to get legal advice and assistance with respect to asserting a claim for refugee status immediately before the case is considered by a Refugee Status Review Board. Even then, the UNHCR-funded AVS legal advisers who are meant by regulation to represent all unrepresented asylum seekers are able to make representations on behalf of only about 10 per cent of cases (and even in those cases only in writing or at the Monday morning meetings with the Chairman of the Refugee Status Review Boards, since they are not allowed to attend the sessions of the Boards). It would afford much more effective protection and enable the process to function more efficiently if every asylum seeker were to be given such advice and assistance at the earliest stages of the screening process: he or she could act consistently on this advice throughout the process, and the legal adviser could act more efficiently and effectively if he or she had acquired familiarity with the case in its initial stages.

The review procedure itself contains inherent flaws which increase the difficulty of overcoming those weaknesses arising earlier in the process. One problem is that the Refugee Status Review Boards meet in secret closed sessions, with neither asylum seekers nor their representatives allowed to be present. This makes it all the more difficult for misconceptions which have arisen earlier in the screening process to be clarified or for there to be a fair and unbiased assessment of an asylum seeker's credibility. Ambiguities, inconsistencies or comments detrimental to the asylum seeker's claim in the written record of the initial screening interview may have resulted from poor translation, the asylum seeker's nervousness in the presence of authority or shortcomings in the Immigration Officer's competence and conduct of the interview. The Refugee Status Review Boards therefore do not make an independent face-to-face assessment of the asylum seeker's demeanour and credibility and do not address questions to the asylum seeker which may clarify the merits of the case. While Amnesty International welcomes the recent innovation of occasional visits by Board members to detention centres to speak with some asylum seekers, this procedure currently affects only a very small proportion of cases. Those who do not have the opportunity to state their case in person are left at a distinct disadvantage.

3.3(d) Shortcomings in the review procedure

Another point of serious concern is that the Refugee Status Review Boards give no reasons for their negative decisions. This prevents open scrutiny of the standards being applied by the Boards, and, further, it prevents the development of an instructive body of case law which, it may be hoped, would enhance the knowledgeability and effectiveness of Immigration Officers and others involved in the screening process. Also, it leaves asylum seekers in a position of not knowing why their claims were finally rejected, and with no way of knowing whether the rejection may have been based on a simple misunderstanding or error.

● **Amnesty International is calling upon the Governments of Hong Kong and the United Kingdom to amend the current review procedure. In particular, sessions of the Refugee Status Review Boards should be open to asylum seekers and their legal representatives for purposes of making representations, and to UNHCR. All decisions of the Boards should be in writing and, in every case, whether the decision is positive or negative, should set out in full the reasons for the decision.**

3.4 Identifying the risks asylum seekers may face if returned to Viet Nam

Amnesty International is concerned that all of the critical procedural shortcomings in the screening process outlined above combine to create a situation where refugees at risk of becoming victims of human rights violations in Viet Nam face the possibility of being returned there.

Viet Nam remains a country whose current human rights record is of concern to Amnesty International, despite the release in the last two years of thousands of prisoners from "re-education" camps where many had spent as long as 13 years in detention without charge or trial. Among the prisoners of conscience still held in prison are writers, journalists, teachers and clergy jailed by the authorities for non-violent dissent. Many are held in administrative detention without charge or trial; others have been sentenced to long periods of imprisonment for "counter-revolutionary activities". There are no reliable estimates of the current number of such prisoners.

In recent years the Vietnamese media have reported incidents of ill-treatment and torture of people held in police custody. Information from both the Vietnamese media and from former prisoners suggests that legal safeguards against torture and ill-treatment are not fully operational and that these abuses still occur. Government officials have acknowledged to Amnesty International that these abuses occur, but said they are isolated incidents and in violation of Vietnamese laws. The death penalty is in force and death sentences are occasionally reported in the press, although no executions were publicly announced in 1989.

Asylum seekers who could face possible arrest or detention on return are those who were formerly "re-education" detainees, including people who served in the administration of the former South Vietnamese Government, and individuals whose religious, literary or other activities are unacceptable to the government.

The Governments of the United Kingdom and Hong Kong have reached agreement with the Government of Viet Nam on terms for the return of "screened-out" asylum seekers to Viet Nam. The details of this, however, have not been made public. Under this agreement, the Vietnamese

3.4 Risks asylum seekers may face if returned to Viet Nam

authorities have said that they will not prosecute those returning for having left Viet Nam without official authorization - which is itself a crime under Vietnamese law. Nevertheless, Amnesty International is concerned that those individuals who have a history of imprisonment and other restrictions on their liberty because of their political, religious or ethnic background may be at risk of similar treatment in the future if returned against their will. Close relatives of such people may themselves also be at risk. In particular, it must be taken into consideration that such persecution may take place not only at the level of central government but at the hands of local, relatively low-level, officials who may be able to operate arbitrarily and to a certain extent autonomously with regard to the local population. In such contexts, guarantees of safe return made at the central government level may not necessarily be honoured. Furthermore, while the Governments of the United Kingdom and Hong Kong have spoken of monitoring the safety of returnees, it seems unlikely that such monitoring can be effective, particularly if, as contemplated, tens of thousands of Vietnamese are eventually returned to their home country and dispersed throughout it.

3.5 The need for an individual assessment of each case

For the reasons set out above, Amnesty International is calling upon the Governments of Hong Kong and the United Kingdom to stop all further forcible return of Vietnamese asylum seekers to Viet Nam from Hong Kong until adequate steps have been taken to remedy the critical flaws in the screening process. In making this call, Amnesty International is not suggesting that all such asylum seekers fall within the Convention definition of "refugee" or that some particular proportion of them do. The number of refugees in any particular influx of asylum seekers is likely to vary according to factors such as their regional origin and political, religious and ethnic background. But the essential point is that some of the asylum seekers currently in Hong Kong are refugees and it is the international legal obligation of the Governments of Hong Kong and the United Kingdom to identify and protect them.

The Amnesty International delegation was concerned to receive allegations from sources in Hong Kong that the Hong Kong Government and officials working in the screening process might be operating a formal or informal "quota" system, whereby a "target" was set for the maximum proportion of asylum seekers to be recognized as refugees. However, Amnesty International's delegates were provided with no evidence that such a quota system might in fact be operating at a formal or informal level. Nevertheless, it should be noted that any such exercise would be dangerous and unlawful, putting at risk those who are refugees.

Amnesty International has been concerned, however, that the Hong Kong Government and relevant officials have on some occasions appeared to place undue emphasis on quantifying in general terms the proportion of refugees among the asylum seekers. At the time that the screening procedure was first announced in June 1988, the Hong Kong Government publicly stated that it expected that over 90 per cent of the applicants would be denied refugee status. More recently, in the aftermath to the first forced repatriations on 12 December 1989, Judge Blackwell, Chairman of the Refugee Status Review Boards, appeared on British television stating that 85 per cent of the asylum seekers are economic migrants.

It is a meaningless and unhelpful exercise both for organizations such as Amnesty International and for government officials to give undue importance to attempting to quantify the percentage of refugees who might be present among the asylum seekers currently in Hong Kong. Instead the emphasis must be on identifying on a case-by-case basis those individuals who are refugees and affording them protection. The system operating in Hong Kong today cannot be relied on to achieve this.

Perhaps the single most striking example of a failure by the screening process which came to the Amnesty International delegation's attention was the case of a Vietnamese Protestant who lived in Czechoslovakia during the early 1980s. Through his Protestant denomination there he became active in Charter 77 activities in Prague, and in particular organized protests against the living conditions of Vietnamese workers in Czechoslovakia. He is also said to have helped fellow Vietnamese to leave Czechoslovakia and seek asylum in Western Europe. On 23 June 1986 he was arrested by Czechoslovak police for involvement in a strike action, imprisoned for five months and then deported to Viet Nam. Independent verification of his imprisonment and deportation has been obtained from several Charter 77 activists in Prague by telephone.

Upon return to Viet Nam he was imprisoned, ill-treated, released into house arrest, and eventually tried in March 1988 for "crimes against the state", for his political activities in Czechoslovakia. A five-year prison sentence was handed down but not immediately imposed because of his ill-health. On 26 May 1988 he managed to leave Viet Nam with his wife, arriving in Hong Kong a few days after the 16 June 1988 introduction of the screening process. In August 1988 his conviction in Viet Nam was upheld on appeal in absentia.

Despite what would appear to be absolutely clear-cut grounds for recognition as a refugee, this individual's case was rejected at both stages of the screening process in Hong Kong, and it was only through the intervention of UNHCR that he has now been granted "mandate refugee" status. If such a clear case can meet failure in the screening process, very serious concern indeed must be expressed with respect to the more typical refugee who will have a story which is less dramatic and less capable of proof, but who nonetheless may also be at risk if returned to the country from which he or she has fled. Nor is it sufficient to cite the fact that UNHCR managed to step in effectively in this case. As stressed repeatedly above, the resources of UNHCR are strained at every stage in the existing screening process and the organization simply does not have the capacity to review the vast majority of cases which are rejected in the screening process. Instead, the responsibility rests with the Government of Hong Kong to ensure that there is an effective screening process which does not require any such emergency interventions by UNHCR. The recommendations put forward by Amnesty International in this memorandum are intended to assist the government in implementing such an effective screening process.

4. The ill-treatment of asylum seekers in Hong Kong

Amnesty International has on several occasions in the past made public its concern with respect to allegations of ill-treatment of Vietnamese asylum seekers by personnel of the Correctional Services Department (CSD) and the Royal Hong Kong Police Force (the "Hong Kong Police").

4. Ill-treatment of asylum seekers in Hong Kong

The CSD and the Hong Kong Police share responsibility for management and the maintenance of security at the detention centres where asylum seekers are held and at other related centres for Vietnamese asylum seekers, including reception centres and the so-called "closed camps" where individuals recognized as refugees are held. Since the first influx of Vietnamese asylum seekers to Hong Kong in the later years of the 1970s, this role was mainly played by personnel of the CSD, but recently the Hong Kong Police have been designated to manage selected centres. The main reason cited for this is that Hong Kong's "brain drain" and the consequent difficulty in civil service recruitment have resulted in the CSD being unable to provide sufficient personnel to cover all of the centres.

As an organization with a mandate dealing with the protection of the human rights of prisoners, Amnesty International has been concerned at allegations it has received that asylum seekers being held in detention have been assaulted and subjected to other undue use of force by CSD staff and the Hong Kong Police. This concern is heightened by the stated intention of the Governments of Hong Kong and the United Kingdom to continue to forcibly repatriate those asylum seekers who are screened out and refuse to return voluntarily to Viet Nam: it is these same agencies, the CSD and the Hong Kong Police, who are likely to play a key role in carrying out any such forcible repatriation.

Amnesty International's delegates sought to collect information regarding the ill-treatment of asylum seekers and were concerned to note that there appears to have been inadequate and delayed investigative and remedial follow-up to proven cases of ill-treatment. They also collected information indicating that such abuses are continuing and that investigations into such incidents are hampered by intimidation of victims and witnesses.

4.1 The Hei Ling Chau inquiry

An important point of reference for Amnesty International in this area has been the report issued on 6 October 1988 by two Justices of the Peace who were appointed by the Governor of Hong Kong to carry out an independent inquiry into a July 1988 incident at Hei Ling Chau Detention Centre. This is the only such case thus far where the results of an independent and impartial inquiry have been made public.

The incident at Hei Ling Chau began on 18 July 1988 following a dispute between asylum seekers and CSD personnel regarding the distribution of food. CSD personnel eventually withdrew from the site of the dispute locking in the asylum seekers, some of whom then protested by shouting, lighting fires, damaging property, etc. The asylum seekers were left locked up in the hall overnight and, on the following morning, were instructed through a loud hailer to come out quietly with their hands clasped behind their necks, under threat of tear-gas grenades being used. The asylum seekers complied. It was alleged, however, that some 100 of them were beaten and kicked when made to pass through two lines of CSD personnel, or subsequently when identified as alleged ringleaders and made to assemble in a "Close Observation Unit".

4.1 Hei Ling Chau inquiry

An internal CSD inquiry was carried out to examine these allegations and found that there was no "evidence whatsoever to support the claims of the excessive use of force". This version of events was apparently substantiated by medical reports drawn up by government doctors following the incident.

The Governor of Hong Kong, however, appointed two highly-respected Justices of the Peace - one a former chairman of the Bar Association and the other a well-known medical practitioner - to carry out an independent inquiry. Their report found that unnecessary force - including blows by knees, feet, fists and batons - had been used by CSD officers on many asylum seekers who had not resisted any order. The report further found "that the 22 injury reports made out [by government doctors] on July 19 fail to reflect adequately the nature and extent of the injuries found and that they do not give a reliable picture of the number of persons who had signs of injury on that day". In one case, for example, the government medical officer's report failed to record that an asylum seeker had a bruised and swollen mouth even though in an identification photograph taken of the individual immediately before the examination "the swollen lip and broken skin are indeed very obvious". It was found that attempts had been made by CSD officers to suppress allegations of assault on the asylum seekers.

At the time that the report of the independent inquiry was issued on 6 October 1988, the Governor of Hong Kong, Sir David Wilson, ordered the Commissioner of the Correctional Services Department and senior representatives of the Civil Service Branch and the Attorney-General's chambers to examine the findings to decide what disciplinary action should be taken against the personnel involved. Amnesty International's delegates tried unsuccessfully to obtain information regarding any disciplinary action taken against those responsible for the assaults or apparent cover-up. The delegates were particularly concerned to note that the senior official whom they met at the CSD responsible for refugee-related matters referred to Hei Ling Chau as "a chapter closed" and showed little knowledge of, or interest in, possible disciplinary or remedial follow-up.

The delegates also sought information regarding follow-up on the Hei Ling Chau incident from Michael Hanson, Refugee Coordinator in the Security Branch, who, on 1 December 1989, said that the matter had still not been resolved and was still in the hands of the relevant Civil Service body. He attempted unsuccessfully to arrange a meeting for the delegates with that body, which apparently did not wish to discuss a current case. However, in his letter of 28 December 1989 to Amnesty International, the Secretary for Security, Geoffrey Barnes, informed the organization that "disciplinary proceedings have been conducted and appropriate remedial action has been taken", but provided no further information (see Appendix).

Amnesty International remains concerned that more than 14 months after the publication of the report of the independent inquiry and more than 17 months after the incident itself, full details regarding steps taken to discipline those responsible for the ill-treatment of asylum seekers at Hei Ling Chau remain unavailable.

● **Amnesty International is calling upon the Governments of Hong Kong and the United Kingdom to ensure that, in cases where ill-treatment or other undue use of force is alleged to have been carried out against asylum seekers, prompt steps are taken to investigate the allegations impartially**

and effectively, to discipline those found responsible for abuses, to bring criminal charges in appropriate cases, and to take steps to ensure that such abuses do not recur. Penalties imposed on those who commit such abuses should be publicized as a deterrent to others. In this connection, full details should be made publicly available regarding all remedial and disciplinary steps taken by the relevant officials in follow-up to the report of the independent inquiry into the Hei Ling Chau incident.

● As further illustrated by the Hei Ling Chau incident, it is essential that such serious allegations of ill-treatment of asylum seekers should be the subject of an impartial inquiry by a body which is independent of the agency under investigation, and the results of the inquiry should be made public.

4.2 Allegations of ill-treatment at detention centres administered by the Hong Kong Police

Amnesty International's delegates visited three detention centres which are administered by the Hong Kong Police rather than by CSD personnel: Shek Kong Detention Centre; the Detention Centre accommodated in five former Star Ferries moored alongside Stonecutters Island (a centre which has since closed); and High Island Detention Centre, the newest such centre opened only on 31 October 1989.

The delegates were concerned that, at each of these detention centres, they received allegations of ill-treatment of asylum seekers by the Hong Kong Police. Based on information they collected during these visits and from other sources, Amnesty International believes the evidence indicates that in recent months there has been a continuing pattern of assaults on asylum seekers and subsequent intimidation of victims and witnesses in detention centres under police administration. Allegations of such ill-treatment seemed to be much more pervasive at detention centres run by the Hong Kong Police than at those administered by the CSD.

Set out below is a summary of allegations received by the Amnesty International delegation relating to the undue use of force by Hong Kong Police in the three police-run detention centres which it visited.

In recent months, spokespersons for the Hong Kong Police have given substantial publicity to security problems in the detention centres, for example involving regional in-fighting among groups of asylum seekers, or gang-type groupings which have armed themselves with home-made weapons. Amnesty International's delegation itself received information about such problems both from the Hong Kong Police and from asylum seekers, and they were also shown such home-made weapons reportedly confiscated from asylum seekers.

There is no denying the existence of violent elements among the asylum seekers in Hong Kong, as in any community, and such problems are of course exacerbated in the crowded and tense conditions of the detention centres. At the same time, however, these violent elements represent a very small minority, whose actions are repugnant to the vast majority of the Vietnamese who wish to live with peace and dignity in difficult circumstances. The leaders of the communities of Vietnamese asylum seekers in the detention centres told the Amnesty International delegation that they would, if anything, welcome more effective and targeted policing

4.2 Allegations of ill-treatment at centres administered by the Police

directed at controlling these violent elements. It should be noted that, in each case described below, the allegations relate to assaults alleged to have been made against individuals who themselves were in no way involved in the use of force or violence against either the police or fellow asylum seekers.

(a) Events of 23 - 24 July 1989 at Shek Kong Detention Centre

In terms of scale, the most serious allegations of abuses by the Hong Kong Police relate to events at the Shek Kong Detention Centre on the night of 23 - 24 July 1989. In that incident, more than one hundred asylum seekers appear to have been injured, many of them apparently as a result of indiscriminate kicking and use of batons by police during a midnight search of their tents following an incident at the perimeter of the camp. One asylum seeker - a 59-year-old man who had apparently been ordered out of his tent and had lined up in front of it as requested - died following a kick by a police officer. Amnesty International's delegates individually interviewed some 20 people who testified that they had been victims of assaults in that incident and they examined more than one hundred independently-prepared medical reports. On the basis of the information they gathered, Amnesty International believes that the incident represents a very serious case of ill-treatment by the Hong Kong Police.

Asylum seekers at Shek Kong Detention Centre are accommodated in tents on the site of a former airstrip. At the time of the incident, it had been open for only about a month and housed just over 7,000 asylum seekers. Distribution of basic relief items was reportedly still not functioning effectively at the time of the incident and, on that day, some recognized refugees from "closed centres" had come to Shek Kong to pass provisions to friends and relatives. They gathered at one place just outside the perimeter fence and are said to have thrown provisions over what was then a relatively low fence (since replaced). There are also allegations that attempts were made to cut holes in the fence. At some point the police intervened; they are reported to have used their batons and some asylum seekers, in turn, are said to have thrown rocks at police officers.

Some time later - at about midnight, according to most sources - a large detachment of officers from the Police Tactical Unit was called in to assist the officers on duty in the camp and they are said to have commenced a tent-by-tent search. They are said to have called people out of tents and, if people did not move quickly enough, to have beaten them with batons and kicked them. The asylum seekers were made to line up in front of their tents in crouching position and there are many allegations that men and boys in particular continued to be the objects of police assaults by baton and kicking at this point. The pattern of assaults seemed to be indiscriminate and in no way targeted at individuals who had been involved in the earlier incident.

The more than one hundred casualties among the asylum seekers included 27 women and two children aged under five years old. Medical examinations of 107 alleged victims carried out by doctors from *Médecins Sans Frontières* showed many injuries consistent with blows from batons and kicking. The man who died after being kicked by a police officer reportedly had two broken ribs and a ruptured spleen.

Among those alleged victims whom the Amnesty International delegation interviewed were particularly vulnerable individuals. Set out below are summaries of testimonies obtained from (i) a partially paralysed young man; (ii) a woman who was in her ninth month of pregnancy at the time; and (iii) a woman who maintains that she was injured while trying to protect her three-year-old child.

- (i) 26-year-old male: "I am 26 years of age. I was in Hut C7 (Section 1) on the night in July when the police came. I have damage from an injection I had some time ago and therefore am paralysed from the waist down on my left side. On the night in question, I was in the hut so I didn't know what was happening. I heard people saying that the police and the boat people were involved in a fight. It was far away from where I was, however. I was scared and stayed inside the hut and then the people were shouting to one another that the police were coming. So everyone went inside the huts and there was literally no one outside. There are three rows of tents in Section 1 - A, B, and C - and the police were walking back and forth between the rows. They were calling people to line up outside in front of the tents and people were obeying the order. Police were walking around and if they felt like beating someone they did. They were basically coming down the road and hitting people to get them outside and beating people who were lined up outside. The Police came down to C8. The people were already outside and were afraid to look at the police. They squatted down on the ground and had their faces in their hands. I was outside already and was sitting on the ground lining up as ordered. I was afraid the police might beat me for holding my crutches so I threw them into a bush. The police came down to us. One of them took the staff from the tent and hit me on the right side with it. Three to four days later we were allowed to go and see a doctor. I felt better so I didn't bother people. I did not make any police complaint."
- (ii) 28-year-old female: "I was in my ninth month of pregnancy at the time. I live in Section 4 and I didn't know anything about the earlier incident with the police. Our entire hut had gone to bed. All of a sudden, the police came and knocked on the tent using their batons and said 'Get out and line up'. My husband went out first with our child and I went out a little later and so we were separated by three or four people as we were squatting in a line on the ground. The police were coming by and looking into our faces. One of them started to pull my hair from the back. I tried to push him away and he scratched my neck. After that, he pulled my hair again and scratched my neck. He was holding a baton and I thought he was about to hit me in the stomach. I put my hand in front of me to protect myself and he struck my elbow with his baton. He also hit me near the knees. He then swore at me in Cantonese and walked away. I do not know why he hit me. The police were hitting others as well. One person from our tent was taken to the back of the tent and beaten and he got a broken arm. There was a delegate here a month ago asking about whether we wanted to complain. The people in our tent were thinking about the future so they were not willing to complain. The Chinese woman

4.2(a) Events of 23 - 24 July 1989 at Shek Kong

delegate told me it was not worthwhile to complain if there were no witnesses. I was examined by a doctor on the day it happened and by a western doctor a few days later." [The medical report prepared by *Médecins Sans Frontières* showed injuries to her left elbow and left knee consistent with her allegations.]

- (iii) 35-year-old female (with three-year-old daughter): "On that night, I was in my tent in Section 1 and all the people were sleeping. Then the police were searching the tent and said that everyone had to go outside. I was getting my baby to go out and, as I did this, I was kicked by the police on the shoulder. After I got off the bed and was trying to hold the baby, the police turned the bed upside down. The baby fell out and the bed-board fell on the baby's leg. When I saw what happened, I reached out to help the baby and the police hit me with a baton on the right arm and kicked me on the left hand side. The police then told everybody to go out of the tent and sit down with hands on the neck. Every man, they kicked and hit with the batons. Every woman was hit with hands. They told the women with babies to put them up on their arms. The police stopped the beating when they did so. Even an old man was beaten by the police. One of the persons became unconscious because of the beating. The police went to the next tent to get some water, and poured it over the man who was unconscious. When everything was over we all helped each other to get back to the tents. It all took about 15 to 20 minutes. The police went through every tent in the same way and it all happened around 11pm onwards and started when we were all sleeping." [The medical reports prepared by *Médecins Sans Frontières* showed a bruise on the left upper arm of this woman, with the imprint of the sole of a boot clearly delineated by dirt markings on the corresponding sleeve of her shirt, and showed grazing to the right foot of her three-year-old daughter consistent with her having been hit by the edge of a bed-board.]

Shortly after this incident, the Governor of Hong Kong ordered that the Complaints Against Police Office (CAPO) undertake an investigation into it, and that the death of the asylum seeker be the subject of a separate criminal investigation by the Criminal Investigations Department of the Hong Kong Police.

CAPO is an agency within the structure of the Hong Kong Police organization and is not, therefore, a wholly independent body. However, it consists of a handpicked group of officers, who operate separately from other parts of the Hong Kong Police both geographically and administratively. CAPO's procedures and investigation results are monitored and eventually acted upon by the Police Complaints Committee, a separate independent entity which is composed of respected Hong Kong citizens. Amnesty International's delegates met a senior Hong Kong Police official with responsibility for CAPO and found him to be knowledgeable and responsive with respect to the issues which are of concern to Amnesty International relating to the protection of asylum seekers.

Amnesty International is not yet, however, in a position to evaluate the thoroughness and effectiveness of the investigation carried out by CAPO into the incident in Shek Kong, because, as of 5 January 1990, more than five months after the incident, no report has been made public of the results of and recommendations arising from that investigation. The Hong Kong Police official whom the Amnesty International delegation met attributed this delay at least partly to the fact that a separate criminal investigation is continuing into the death of the 59-year-old man who died after being kicked by a police officer during the incident. He said that this criminal investigation might be continuing until at least February 1990 when an inquest into the death may take place if criminal charges have not been brought by that time.

Amnesty International is concerned about this considerable delay in making public the results of the CAPO investigation. It believes that a public airing of the issues arising and the implementation of appropriate remedial measures are essential for the immediate protection of asylum seekers who remain vulnerable to similar abuses. If the separate criminal investigation requires more time in order to be completed thoroughly, the particular events relating to the death could be treated separately from the CAPO investigation and not included in the report of that investigation, so as not to prejudice any potential criminal prosecution relating to the death.

● **Amnesty International is calling upon the Governments of Hong Kong and the United Kingdom to ensure that a full, impartial and independent report relating to the alleged abuses carried out by the Hong Kong Police at Shek Kong Detention Centre on the night of 23 - 24 July 1989 is made public urgently, so that appropriate disciplinary, remedial and preventive actions may be taken.**

(b) Allegations of ill-treatment at Stonecutters Island and High Island Detention Centres

The need to make public promptly a report of an independent and impartial investigation into the Shek Kong incident takes on increased urgency because Amnesty International's delegates collected information about more recent alleged abuses by the Hong Kong Police at other detention centres under their administration - the ferries at Stonecutters Island and High Island Detention Centre. In both these centres the delegates interviewed witnesses as well as alleged victims who expressed fears that if they were to speak up about such abuses they faced possible retribution by the Hong Kong Police, and a risk of unfavourable treatment in the screening process. Steps should be taken immediately to assure and protect victims and witnesses in such circumstances.

At the Stonecutters Island Detention Centre, which until its closure in December 1989 comprised five old Star Ferries moored next to the island, the delegates collected information about the alleged assault of a 22-year-old woman. The woman has a nursing certificate from Viet Nam and, though an asylum seeker herself, was working with the staff of *Médecins Sans Frontières* to provide medical assistance to her fellow asylum seekers. She is 1.53 metres (5 feet) in height and weighs 38 kilos (84 pounds). She states that on 12 October 1989 she was beaten and kicked by a police officer while she was retrieving a black plastic rubbish bag for protection

against the rain during the course of a typhoon-related evacuation of the ferries. The Amnesty International delegation spoke to her and she provided the following description of events:

"My husband and I were assigned to stay on the first ferry by the land [the "Man Foon"] on the upper deck. We lived there but it was so cold and there was water dripping. I knew people who lived on the second ferry out into the harbour [the "Man Kam"] on the lower deck. My husband and I went down to sleep. Since my husband and I were not on that ferry officially, we were left behind when the people from that ferry were evacuated. So we went back to the first ferry to await our evacuation. It was raining very hard. I discovered that I had left behind on the other ferry the waterproof plastic which I had which could provide some shelter against the rain. It was a black plastic rubbish bag. I crossed back to the second ferry to get that. As I was going a police officer came up to me speaking Cantonese, then took my hair, grabbed it from the back. When I tried to pull myself away he took and twisted my arm and used his baton to hit me in the arm. When I freed myself, he started to kick and punch me in the area of my stomach and back. You can still see a shoe mark on my body. As the policeman dropped back to near the first ferry, a second policeman came and said something and I assumed that he was telling the first policeman to stop. Then the first policeman deliberately took his baton and hit me on the head. He hit me on the left temple where you can still see a mark. I fell down and passed out. A nurse and a western man came to help me. A doctor [from *Médecins Sans Frontières*] eventually took care of me although he didn't witness the incident. I had been bleeding so hard that a friend put her hand upon my head to stop it. I covered the floor with my blood."

The delegation questioned the police officer responsible for security at the Detention Centre (who is from the Hong Kong Harbour Police) about the incident. He stated that while the officer involved had been stopping the woman, he had been assaulted by someone and "went to fend off the chap and hit the woman accidentally." He said that while his officer had drawn his baton on this occasion, only one unintentional blow had hit the woman.

The delegation also had the opportunity to speak to the doctor who had examined and treated the woman shortly after the incident and to examine his report prepared at the time. Among the injuries recorded in that report were:

- a 2 cm laceration on the head bleeding considerably with surrounding swelling;
- a red raised nearly rectangular mark on her right arm, 6 cm by 1½ cm;
- a red raised lesion on the left upper lumbar region, just below her ribs, 10 cm by 2½ cm, rectangular;
- on the left mid lumbar region two red raised horizontal parallel lines 2½ cm apart, one 4 cm long and ½ mm wide, the second 4½ cm long and ½ mm wide;
- on the left deltoid region a red raised rectangular lesion, 4½ cm by 2 cm.

4.2(b) Allegations of ill-treatment at Stonecutters Island and High Island

The doctor's conclusion was that the injuries noted were "consistent with five blows with a smooth stick or similar object to the head (1), right arm (1), left arm (1), and left lumbar region (2)."

The Amnesty International delegation learned that the victim of the alleged assault had filed a complaint with CAPO, but as a result was concerned about her own security at Stonecutters Island and was seeking to be transferred to another centre. (The visit of the Amnesty International delegation was more than six weeks after the incident.) The delegation was told that there had apparently been witnesses to the incident among the asylum seekers but that they had refused to come forward when CAPO investigators came to the ferries. In an attempt to determine the reasons for this, the Amnesty International delegation spoke to persons on the "Man Foon" and met several who had witnessed the event and gave versions of events consistent with that put forward by the victim. One of them, a young woman, explained the failure of witnesses to come forward:

"A number of us on this boat saw what happened but everyone was afraid to give information to the police investigation. We are very afraid, you could say that our fear is 'ten out of ten'. Ever since the incident the police have looked at our faces very closely. You can see the hatred there. We are afraid because we think the police would take it out on us if we were to cooperate with the investigation. We are also afraid that it may affect our chances in the screening process."

The Amnesty International delegation raised with the CAPO official whom they met their concern that witnesses with potentially important information relating to this incident had not given interviews to investigators and explained the reasons which some of the witnesses had given for failing to cooperate with the investigators. The official agreed to take steps to canvass again potential witnesses on the "Man Foon" and, in particular, to attempt to allay their concerns that they might suffer repercussions as a result of their cooperation with the investigation. It is not known what, if any, steps have been taken in this regard.

At the time of the visit by the Amnesty International delegation to High Island Detention Centre, that centre had only been open for one month. Even so, the delegates received from the asylum seekers held there a number of allegations of beatings administered by the Hong Kong Police. Those making such allegations seemed, if anything, even more intimidated than those at Stonecutters Island by the possibility of sanctions being taken against them if they pursued official complaints. Indeed, in some cases individuals seemed fearful of being seen speaking to Amnesty International's delegates.

The delegates were informed of one case where friends of the alleged victim had encouraged him to come forward and speak to the delegates. He had been afraid to do so, however, and remained in his hut during the Amnesty International visit to avoid any accusation that he had complained to them. Witnesses, however, described an incident three weeks previously when he had allegedly been assaulted by police. It was at about 8pm and he was assisting in the distribution of food to fellow asylum seekers. The actual distribution had just ended, however, and he was in the process of disposing of leftover rice when he was approached by a child who wanted more to eat. He stopped what he was doing and gave an additional helping to the child, whereupon it is alleged that a police officer drew his baton and hit him on the head and kicked him. A lot of people saw what was happening

and moved towards the pair. The police present then forced people to retire to their huts while the man allegedly continued to be assaulted. Later that night, witnesses claimed that the police entered the huts and told asylum seekers that they were not to talk about this incident.

A young man at the detention centre recounted another incident: a few days before the interview with Amnesty International's delegates he had returned from the toilet a minute late for roll call. He maintains that a female police officer then pushed him twice in the chest with a torch (flashlight) and then called him out of doors where three other police officers punched him in the chest. He says that he was then taken to the confinement (punishment) area of the detention centre where some 20 police officers were present. While there, he alleges that he was punched repeatedly in the chest. He further alleges that he was forced to strip off his clothes and had two buckets of water thrown over him, after which he was made to apologize before having his clothes returned to him. After further beating, he says, he was allowed to return to his hut but told that if he was late again he would have ten buckets of water thrown on him and more beating.

While Amnesty International was not able to verify these allegations, it is concerned that similar allegations were received from a number of other people at High Island Detention Centre. It is also concerned that those making such allegations seemed frightened to pursue official complaints through CAPO and, indeed, to talk to Amnesty International's delegates.

● It is essential that the alleged victims and witnesses of ill-treatment and other human rights abuses in detention centres be permitted to pursue official complaints in full confidence that they will not then be subjected to harassment and intimidation by the officials against whom they are pursuing a complaint. For example, such victims and key witnesses should promptly be offered the opportunity to transfer to another centre to avoid this possibility. Full information should be prominently publicized to inform asylum seekers about their right to pursue such complaints and steps which will be taken to protect them. Appropriate disciplinary action should be taken against officials who violate asylum seekers' rights in these areas.

● All necessary steps should be taken to ensure that a full independent inquiry is carried out into the alleged assault of an asylum seeker at Stonecutters Island Detention Centre on 12 October 1989, including a full canvassing of potential witnesses, and that a report of the inquiry be made public promptly, so that appropriate disciplinary and remedial actions may be taken.

● Appropriate steps should be taken so that asylum seekers detained at High Island are given the opportunity in a confidential and secure situation to register any complaints which they may have about abuses carried out by the Hong Kong Police. In this regard, CAPO should consider the possibility of organizing a special visit to High Island, under conditions which will permit such reception of complaints.

With regard to the indications that allegations of ill-treatment are much more pervasive at detention centres run by the Hong Kong Police than at those administered by the CSD, Amnesty International's delegates identified

4.2 Allegations of ill-treatment at centres administered by Police

two factors which they believed to be particularly relevant. The first is the negative attitude with which virtually all police personnel seem to accept their assignment to the task of administering and providing security at the detention centres. The delegates were informed by all the police officials with whom they spoke that the Hong Kong Police officers in the detention centres resented the fact that they were working there. They felt that they had not joined the Hong Kong Police to perform such a duty and they did not have the appropriate training for it. There was also some resentment expressed towards the Security Branch that this responsibility had been thrust upon them. The responses which the Amnesty International delegates received on these points were so open and so uniform that it seemed possible that the points being made were virtually a quasi-official policy of the Hong Kong Police who perhaps do indeed feel unhappy that they are being asked to step in to fill the staff shortages occasioned by the CSD's difficulties in recruitment. Such attitudes, of course, may also be a general reflection of the very negative popular attitude towards the Vietnamese in Hong Kong.

The second factor is closely related to the first. It appears that Hong Kong Police personnel doing tours of duty in the detention centres are not being provided with appropriate specialized training. When the Amnesty International delegates asked the Police Commandant of one camp about the training of his staff, he replied that there was no special training but "we've all been cell guards in our careers". The Commandant of another camp said that he was attempting on his own to devise a training program for his staff.

By contrast, the situation prevailing amongst CSD personnel with respect to both of these factors differs substantially from that of the Hong Kong Police, and gives an indication of what factors may be important in improving the situation in the camps run by the Police. The CSD has been responsible for looking after Vietnamese refugees and asylum seekers in various centres since the initial influxes in the latter half of the 1970s. While, as already noted in previous sections, Amnesty International has a number of concerns regarding specific incidents and behaviour involving CSD personnel in the detention centres, the organization also recognizes the commitment and trained professionalism exhibited by many such personnel.

A number of CSD personnel whom the Amnesty International delegation met seemed genuinely committed to the welfare of the asylum seekers in their charge and, it seemed, preferred work in detention centres for asylum seekers to work in correctional facilities. Moreover, some attention seemed to be paid to small but important details: CSD personnel in detention centres, for example, wear blazers and ties rather than quasi-military uniforms.

With regard to training, the Amnesty International delegation was given a schedule of a two-week CSD training program for refugee unit personnel. While it is obviously impossible to evaluate the effectiveness of such a program without seeing it in operation, Amnesty International's delegates were encouraged by the fact that the schedule included coverage of relevant Hong Kong law relating to asylum seekers, two sessions on the general treatment of detainees including the United Nations Standard Minimum Rules for the Treatment of Prisoners, provision for emergency situations such as attempted suicides and protests by asylum seekers, and psychological issues, as well as sessions on the more technical aspects of running a centre for asylum seekers.

4.2 Allegations of ill-treatment at centres administered by Police

● Amnesty International is calling upon the Governments of Hong Kong and the United Kingdom to take all necessary steps to ensure that officers of the Royal Hong Kong Police Force receive full and specialized training before being assigned to duty in detention centres and other centres for asylum seekers. Such training should include specific instruction on key areas covered in the equivalent CSD training course, and specifically should include instruction on the UN Standard Minimum Rules for the Treatment of Prisoners, and the UN Code of Conduct for Law Enforcement Officials (in particular the provisions regulating the use of force by law enforcement officials). Such training should have as one of its primary aims the development of commitment and professionalism on the part of police officers with respect to their assignment to such facilities.

4.3 Forcible removal from Chi Ma Wan to Phoenix House

A more recent incident involving allegations of the undue use of force by CSD personnel was the forced removal of some 48 "screened-out" asylum seekers from the Chi Ma Wan Detention Centre to the Phoenix House Detention Centre in the early morning hours of 31 October 1989. This incident takes on particular significance because most of those transferred in this operation were subsequently among those forcibly repatriated from Phoenix House to Viet Nam on 12 December 1989.

In order to collect information about the Chi Ma Wan incident, the Amnesty International delegates spoke to the CSD administrator at Chi Ma Wan and to senior CSD officials regarding the incident. The delegates interviewed a government doctor and nurse who had examined those being transferred before they were put on a boat at Chi Ma Wan (which is located on the outlying island of Lantau) to take them to the mainland for transfer to Phoenix House. They also interviewed an independent doctor from *Médecins Sans Frontières* who had examined five of those transferred who complained of injuries. Lastly they discussed the incident with UNHCR officials. UNHCR had publicly criticized the failure of the government to carry out an independent inquiry into the incident, citing the fact that the incident appeared to violate the government's commitment under its Statement of Understanding with UNHCR to treat "in a humane and dignified manner" those asylum seekers who had failed the screening process and faced return to Viet Nam.

Certain elements of what occurred appear to be clear. In the early morning hours of 31 October 1989 - at 6am or, according to some accounts by asylum seekers, earlier - a substantial number of members of the Tactical Response Squad of the CSD entered Upper Chi Ma Wan Detention Centre wearing full riot gear, including shields and helmets, and carrying tear-gas grenades. (The Tactical Response Squad is a unit within the CSD separate from those CSD officials with responsibility for the day-to-day management and security of detention centres. Members of the Tactical Response Squad receive special training in techniques for the control of violent people and self-defence.)

The exact number of CSD Tactical Response Squad personnel involved in the operation is unclear, although several witnesses estimated a total of about 100. In any event, they formed into two groups and went to two particular huts, Hut B4 and Hut C2, each of which accommodated approximately 40 asylum seekers. Electricity supplies to both of the huts had apparently been cut off before the start of the operation. At each of

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the huts, the GSD officers were to collect certain people for transfer to Phoenix House Detention Centre, which was being used as a counselling centre for those who had failed the screening process and were being "counselled" by social workers in an attempt to encourage them to agree to return to Viet Nam voluntarily. Asylum seekers themselves also believed - rightly, as it turned out - that Phoenix House was to be used to isolate the first group of asylum seekers who would be returned against their will to Viet Nam.

The GSD Tactical Response Squad officers apparently had a list of 28 persons to be removed from Hut C2 and 20 (or 21) persons to be removed from Hut B4. These were individuals who had failed to be recognized as refugees in the screening process. The officers also had the bunk numbers of these individuals and their photographs, which they apparently checked with the aid of torches (flashlights).

In Hut C2, the designated asylum seekers were apparently compliant when their names were read out by the officers and they were told to prepare for a transfer. Some of them later said they had been "dragged out" by two to four GSD officers per person, but no specific allegations of injury or ill-treatment appear to have been made by this group.

In Hut B4, however, the asylum seekers responded with more panic. When names were read and people were told to prepare for a transfer, some asylum seekers requested an explanation and in particular asked to see a UNHCR official so that their situation could be clarified. (UNHCR had in fact received no prior notice of the operation and would not normally have officials present at the camp at the very early morning hour at which this transfer was being carried out.) When officers insisted that the transfer should go ahead, a number of the asylum seekers in Hut B4 attempted to anchor themselves to their bunks with their hands or to huddle together in the corner.

The exact nature of the response by the GSD officers in order to move the people out is in dispute. Allegations made by the asylum seekers themselves include the following: throats grabbed in a "stranglehold" and noses and mouths squeezed shut; arms twisted in extremely painful contorted positions behind the back; kicking and stamping on the back of a man dragged to the floor and beating with a baton on his back and stomach; a 12-year-old child totally bundled into a blanket and carried away; and grabbing away the religious items of one Catholic man, tearing up his picture of the Virgin Mary and tossing away his rosary (which he says was later returned to him by a GSD administrator at the detention centre). Perhaps the most striking allegation was that made by three people interviewed separately by Amnesty International's delegates in three different locations (Phoenix House, Chi Ma Wan and a third centre) - two of whom had initially been removed from Hut B4, but were not in the end transferred to Phoenix House. Each of these three maintained that pressure had been applied by GSD officers to a point on their head near the ear and, as a result, the individual had "blackened out" or "been rendered unconscious" or "gone limp", regaining full consciousness only some moments later. Other asylum seekers told the delegates they had witnessed this.

4.3 Forcible removal from Chi Ma Wan to Phoenix House

It was reported that, once the occupants of the two huts were collected together, the men and older boys were handcuffed to one another with arms crossed and the end man handcuffed to a fence; when they were eventually put on to a boat, they were handcuffed to a pole in the boat. The handcuffs were said to have been released only upon arrival at Phoenix House.

Independent medical examinations of five of the individuals from Hut B4 were carried out three days after the incident and showed injuries consistent with the individuals being forcibly dragged away from the hut. In one case an injury consistent with the individual being kicked or hit in the back was noted.

The allegations that asylum seekers were rendered unconscious have been denied by all government representatives whom the Amnesty International delegation met, including the doctor and nurses who saw the asylum seekers at the administrative office of Chi Ma Wan immediately after removal from Hut B4. (In at least one case, the asylum seeker involved claimed to have been revived by someone dressed as a nurse.) However, when the Amnesty International delegation raised the question of the use of pressure points as a means of control with Francis Wong, Acting Assistant Commissioner of the CSD with responsibility for refugees, he confirmed that "pressure point control techniques" were in fact part of the training of CSD Tactical Response Squad personnel and had been used during the operation. He explained, however, that the aim of this technique was simply to cause pain, and it was used, for example, so that someone grabbing hold of something would let go. The technique involved the application of pressure to joints rather than to blood vessels: in particular, it could be used in joints of the hand or arm and, if used at all on the head, would be used behind the ear rather than anywhere near the neck (as had been suggested in some allegations relating to the Chi Ma Wan incident). He said it was impossible that the use of the pressure point control technique could render anyone unconscious.

The Governor of Hong Kong ordered the CSD to carry out an internal inquiry into the incident. The report of that inquiry stated that no evidence had been produced to substantiate claims that anything more than minimum and necessary force was used. The Governor has resisted all efforts - by UNHCR, Amnesty International and others - to press for an independent inquiry into the incident. However, Amnesty International continues to press for such an independent inquiry because, for a number of reasons, this is specifically the sort of incident and situation which should be subjected to the impartial scrutiny of independent authorities, rather than being investigated by the very agency which allegedly committed the abuses.

In the first place, it is essential to bear in mind the unfortunate record of the internal CSD inquiry into the Hei Ling Chau incident in July 1988. That inquiry had similarly found that there was "no evidence whatsoever to support the claims of the excessive use of force" - a finding which was subsequently contradicted categorically in the report of the two Justices of the Peace.

4.3 Forcible removal from Chi Ma Wan to Phoenix House

Secondly, it is important to consider the particular context in which these allegations have arisen. If indeed the United Kingdom and Hong Kong Governments resort to pressing ahead with their stated intention to repatriate involuntarily Vietnamese asylum seekers who have been unsuccessful in the screening process, it is absolutely essential that the officials charged with carrying out this difficult and sensitive task be subjected to the most careful supervision and control. High standards must be imposed from the very beginning of any such program and monitored carefully throughout to ensure that the physical well-being of those held in this vulnerable situation is protected and their rights under internationally recognized human rights standards guaranteed. It does not bode well for this process that the Government of Hong Kong has been unwilling to subject to the impartial scrutiny of an independent inquiry this first stage of forcible transfer in what turned out to be the first forcible repatriation to Viet Nam.

The events of the Chi Ma Wan transfer also take on special significance in that many of those who alleged that they were subjected to undue use of force during that transfer would almost certainly have been affected by these impressions when subsequently being forcibly returned to Viet Nam on 12 December 1989. One Vietnamese who was returned on that occasion is reported to have given the following impressions of the fears of those undergoing forcible repatriation: "People who didn't want to go, who tried to stay behind, were pointed at with those sticks and threatened to be beaten ... Getting to the plane, the children didn't have to walk at all, because there were at least two guards carrying each one of them to the plane ... [While the Hong Kong authorities did not become physically violent] people moved only because of fear." [reported in The Times (London) 18 December 1989]

Amnesty International is also concerned that the authorities did not implement a number of other important safeguards in connection with the preparation, execution and follow-up of the transfer from Chi Ma Wan to Phoenix House, which would have helped to ensure the well-being of the asylum seekers concerned. The organization is concerned, for example, that the transfer was carried out at dawn with no arrangements made for the presence of independent observers, who would be unlikely to be present at that early hour without special arrangements. In particular, given the role which the international community has given UNHCR in the protection of asylum seekers, Amnesty International believes that the authorities should have notified that organization before the transfer and arranged for the presence of UNHCR representatives to monitor the operation. This would have served as a protection not only for the asylum seekers, but indeed for CSD officers themselves who would then have had independent verification of what did and did not happen during the operation. In this context, it is important to note that asylum seekers who were accommodated in Hut B4 state that they actually asked to speak to a UNHCR representative at the time in order to have a clear and independent explanation of what was happening. Their reluctance to be transferred, they say, was partly motivated by the absence of any such explanation.

In addition, Amnesty International is concerned by information which it has received from UNHCR itself, indicating that UNHCR has been impeded in carrying out its own investigation into the incident. In particular, UNHCR representatives were not allowed to speak to individuals who had been moved to Phoenix House without the presence of a government interpreter to monitor the conversation. When UNHCR officials tried to obtain from the

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asylum seekers in Phoenix House written descriptions of what had happened, they were told that such written descriptions could not be given to them directly, but they must be sent "through the normal channels". For their part, asylum seekers in Phoenix House told Amnesty International's delegates that when they wrote out descriptions of what had happened and tried to send them out of the centre, in some instances they were pressured by CSD personnel to modify the contents.

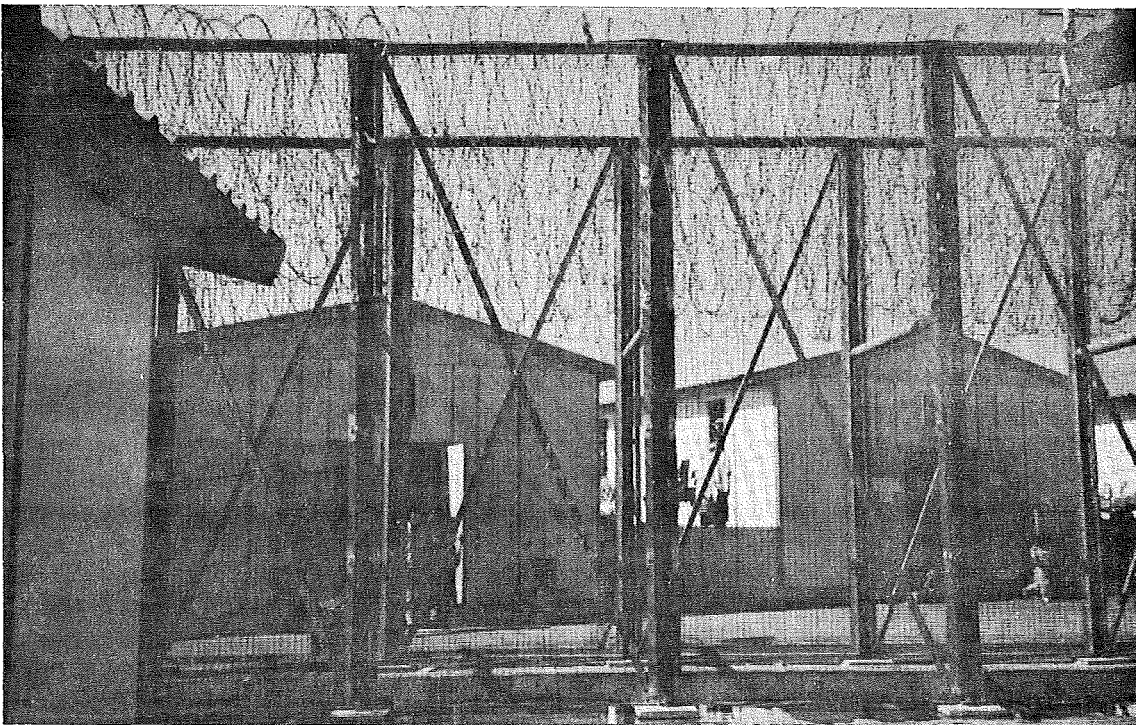
When Amnesty International's delegates raised with government officials their concern at the difficulties which UNHCR had encountered in having confidential meetings with the asylum seekers, they were given contradictory explanations by different officials. One official said there had been problems in the past with UNHCR interpreters "stirring up trouble" and, therefore, they needed to be monitored. Another official said that the problem was with a senior UNHCR expatriate staff member who, it was said, was circulating stories about imminent forcible repatriation. Apparently, however, no such complaints had been made to UNHCR itself when it was denied confidential access to the asylum seekers at Phoenix House, and it was given no opportunity to answer them. Furthermore, even if such complaints had any substance, this should not have affected whether UNHCR was permitted to collect uncensored written statements direct from the asylum seekers.

So far as Amnesty International is aware, neither UNHCR nor any other independent authority has been given access to videotapes which are reported to have been made by CSD personnel during the transfer operation. Asylum seekers with whom the Amnesty International delegates spoke said that camera operators were present and that much of the operation had apparently been taped, although they also said that the camera operators had been selective in what they filmed and had not, for example, filmed the most violent confrontations. Nonetheless, Amnesty International believes that UNHCR or any eventual independent inquiry should be given full access to these materials.

Amnesty International is further concerned by the information provided to its delegates by a senior CSD official that "pressure point control techniques", which constitute part of the training of the CSD Tactical Response Squad, were used during the removal of asylum seekers from Chi Ma Wan. The organization believes that, if this is in fact the case, the authorities should make public full details of the nature of such techniques and formulate and make public clear regulations as to when, if at all, any such techniques are allowed to be used. In this connection, the organization notes that the relevant regulations - The Immigration (Vietnamese Boat People) (Detention Centres) Rules 1989, gazetted on 3 November 1989 - make no reference to pressure point control techniques, although they contain a substantive section on the prohibition of the use of mechanical restraints except under carefully defined circumstances. Amnesty International's delegates also asked to see a copy of the Standing Orders applicable to CSD personnel, but were informed that these were "restricted documents" which could not be released. It is not known what, if any, reference is made in the Standing Orders to pressure point control techniques. The report of the independent inquiry into the Hei Ling Chau incident, however, quoted a specific section of the Standing Orders on the use of batons: "The use of batons is an exceptional and extreme measure. It is an officer's last resort either to protect himself or other people from the likelihood or serious threat of injury or to enable him to meet a concerted threat to good order or security."

4.3 Forcible removal from Chi Ma Wan to Phoenix House

- Amnesty International is reiterating its appeal that the events surrounding the transfer of asylum seekers from Chi Ma Wan Detention Centre to Phoenix House Detention Centre be made the subject of an independent and impartial inquiry, and that the results of that inquiry should be made public.
- Advance notification of any further such transfers should be given to UNHCR, and UNHCR and/or another independent body should be given the opportunity to monitor such operations.
- In cases where allegations of ill-treatment are made by asylum seekers it is essential that UNHCR, as an organization mandated by the international community to ensure the protection of asylum seekers, be given the opportunity to obtain oral and written information from those making the allegations in complete confidentiality.
- Full details should be made public of any "pressure point control techniques" which CSD or other officials responsible for the security of asylum seekers are authorized to use. If in fact the use of such techniques is authorized, clear information about the nature of such techniques as are authorized, and regulations governing the circumstances and conditions under which they may be used, should be formulated and made public as a matter of urgency.

5. Detention of asylum seekers in Hong Kong

WHITEHEAD DETENTION CENTRE

A final area which Amnesty International's delegates investigated was the government's policy of detaining asylum seekers, and the conditions in

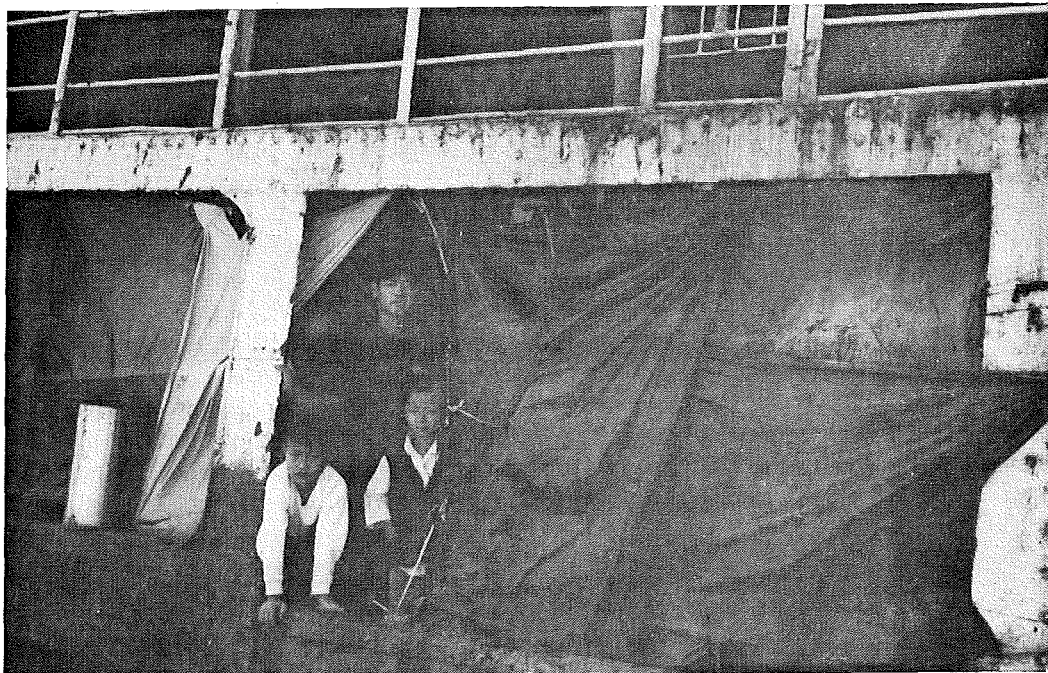
5. Detention of asylum seekers in Hong Kong

which asylum seekers were held at the time of their visit. In light of Amnesty International's limited mandate in this area, the delegates did not make a detailed evaluation of these conditions and indeed would not have had the necessary expertise in key areas such as nutrition and health care to carry out such a study. Nor were they in a position to evaluate conditions in which asylum seekers had been detained in the past, at the centres they visited or at other centres, which had been the focus of much public concern in previous months.

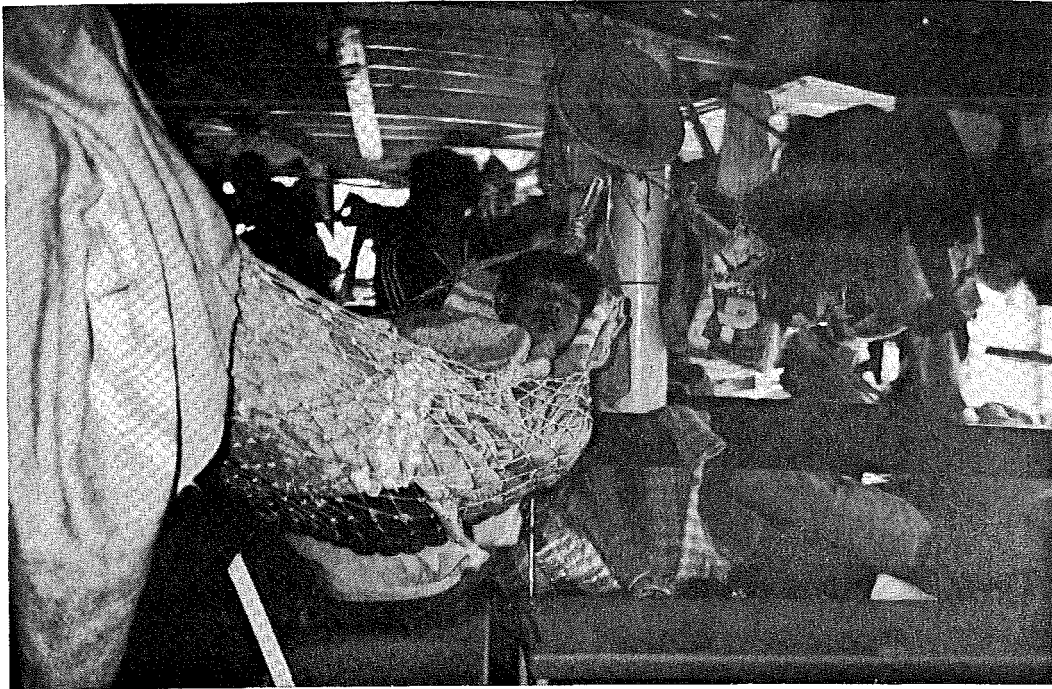
5.1 Conditions in detention centres visited

Instead, the delegates first of all considered whether the conditions overall in any of the detention centres which they visited were so poor as to constitute cruel, inhuman or degrading treatment of the detained asylum seekers. Based on their own impressions and information with which they were provided by people having greater expertise in the area, the delegates concluded that, overall, the conditions in most of the detention centres they visited generally did not amount to cruel, inhuman or degrading treatment or punishment, although there is clearly room for improvement at each centre.

One important exception to this conclusion, however, was the detention centre which had been set up as a temporary measure on the ferries at Stonecutters Island. Amnesty International has welcomed the news that this centre has now been closed. In that centre, some 2,000 people were divided among five ferries where they were required to sleep and live in extremely crowded conditions on the decks, very much exposed to the elements and in some cases in areas adjacent to wooden latrines. Conditions on the ferries appeared to be very unhygienic and likely to facilitate the spread of disease. The Amnesty International delegation concluded that the basic



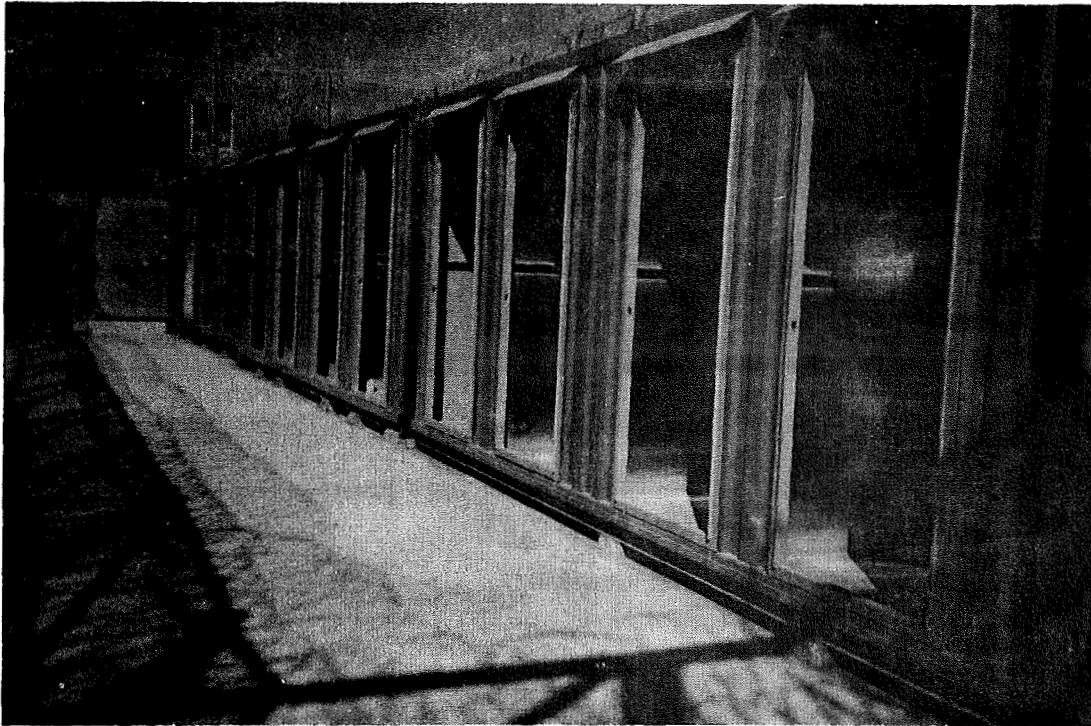
VIETNAMESE ASYLUM SEEKERS DETAINED ON FERRIES
MOORED OFF STONECUTTERS ISLAND



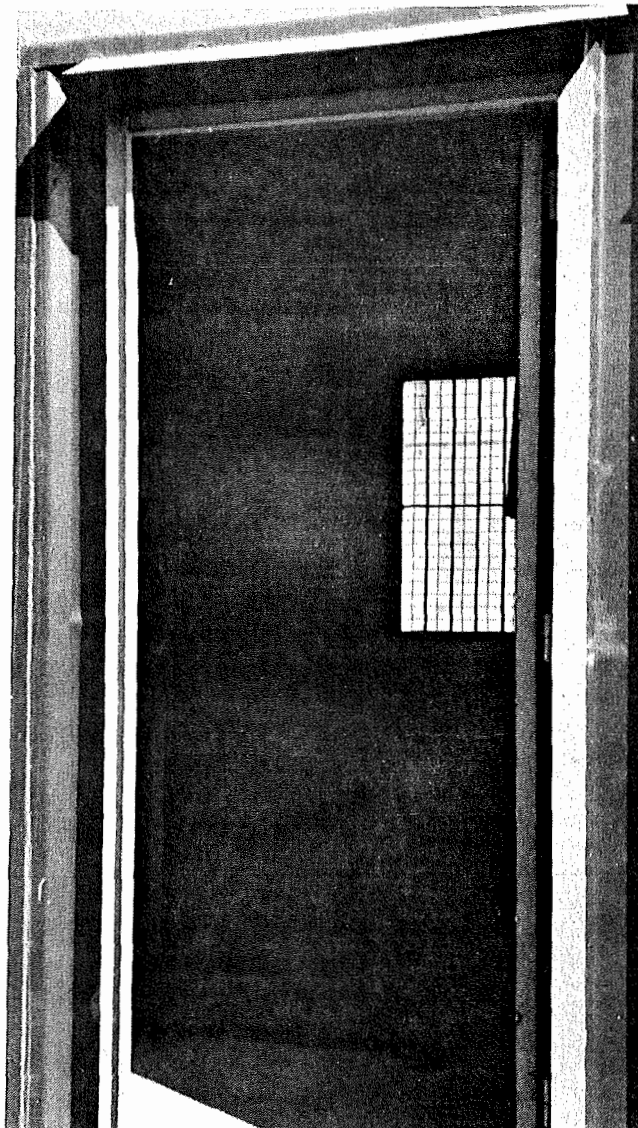
VIETNAMESE ASYLUM SEEKERS DETAINED ON FERRIES
MOORED OFF STONECUTTERS ISLAND

facilities afforded the asylum seekers at the Stonecutters Island Detention Centre fell so far short of the standards set out in the UN Standard Minimum Rules for the Treatment of Prisoners that in themselves they could constitute cruel, inhuman or degrading treatment.

A second detention centre where the conditions of detention attracted the particular concern of the delegation was High Island. This centre appeared to have a number of specific deficiencies which may have been partly due to the fact that it had been opened only one month before the delegates' visit. This was the only centre where asylum seekers consistently told Amnesty International's delegates that they and their children were hungry because of being given inadequate food. It was also the only centre where dozens of asylum seekers tried to get the delegation to post letters for them, since, they explained, they were allowed no opportunity to communicate by mail with friends and family either held elsewhere in Hong Kong or located abroad. The delegation was also concerned to observe the nature of the 12 "punishment cells" which have been created by subdividing three metal structures, apparently cargo containers. Asylum seekers may be locked into these cells for disciplinary reasons for up to several days (the maximum penalty is 28 days, though at the time of the visit this had not been imposed in practice). Up to three asylum seekers may be detained in any one cell. No furniture whatever is included in the cells: asylum seekers are expected to stand, sit or lie on the metal floor in conditions which are likely to be very hot in summer and uncomfortably cold in winter. No electricity or plumbing is available in the cells, the only artificial lighting being that which comes in through openings in the walls from lighting on the perimeter fence. Asylum seekers in these cells are provided with a blanket, a bowl, a mug and an overnight toilet bowl. They are allowed out for a short period each day to wash and go to the toilet.



"PUNISHMENT CELLS" AT HIGH ISLAND DETENTION CENTRE



INTERIOR OF A "PUNISHMENT CELL" AT
HIGH ISLAND DETENTION CENTRE

5.1 Conditions in detention centres visited

Amnesty International is concerned at the effect that these "punishment cells" may have on the physical and mental well-being of people held in them. Also, Amnesty International notes the standards set out in the UN Standard Minimum Rules for the Treatment of Prisoners concerning disciplinary measures. Specifically, no detained person should be punished except in accordance with the terms of regulations specifying what constitutes a disciplinary offence and the type and duration of punishment which may be inflicted; no detained person should be punished unless he or she has been informed of his or her alleged offence and been given a proper opportunity of presenting a defence; punishment by close confinement, such as in "punishment cells", should not be inflicted unless a medical officer has examined the detained person and certified that he or she is fit to sustain it, and the medical officer should visit daily people held in such confinement and advise the authorities if the punishment should be terminated on grounds of physical or mental health.

● **An independent review of conditions should be carried out at High Island to ensure that the conditions in the centre generally, and in the "punishment cells" in particular, do not constitute cruel, inhuman or degrading treatment, and that they conform to the standards set out in the UN Standard Minimum Rules for the Treatment of Prisoners. In addition, steps should be taken to ensure that all temporary or new centres set up to accommodate refugees and asylum seekers in Hong Kong conform to these standards from the outset.**

5.2 International standards and the detention of asylum seekers

A fundamental issue of concern to Amnesty International is whether or not the detention of asylum seekers in Hong Kong can be justified by international standards.

As already noted, Vietnamese asylum seekers arriving in Hong Kong prior to 1982 were not detained and the tens of thousands arriving up to that time could move freely out of their camps during the day to work, shop and visit. When the Amnesty International delegation asked an official at the Security Branch why the Immigration Ordinance was amended in 1982 to provide for the detention of all asylum seekers, he responded frankly that the motivation was "deterrence".

Deterrence is not a lawful reason for detaining asylum seekers, according to international standards. Indeed, such a policy is wholly inconsistent with the carefully constructed international system for protection of refugees. Such detention may increase the risk to individuals in danger of imprisonment as prisoners of conscience or of torture by discouraging them from seeking asylum. It may also have such a debilitating effect on people indefinitely detained that it causes them to abandon their claim for asylum and return to Viet Nam, even if this puts them at risk of human rights violations. Even though the government may argue that they do not intend to deter those who are "genuine" refugees, such detention is likely to increase the risk to individuals still in a country where they risk human rights violations, by discouraging them from leaving to seek asylum in a country where they believe they will be detained indefinitely on arrival.

5.2 International standards and detention of asylum seekers

International standards, particularly UNHCR Executive Committee Conclusion 44*, provide that detention of asylum seekers should normally be avoided in view of the hardship which it involves. It may be resorted to only if necessary (when there is no reasonable alternative) in certain limited circumstances, for example:

- 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;
- to protect national security or public order.

International standards also recognize that an asylum seeker may be detained if there is a demonstrated likelihood in the particular case of his or her absconding.

None of the internationally-recognized reasons for the detention of asylum seekers seems to apply in the case of Vietnamese detained in Hong Kong. The use of detention for purposes of "deterrence" is clearly unacceptable under international standards. Considerations of public order and national security have not required the detention of other Vietnamese - nearly 13,000 Vietnamese in Hong Kong who are recognized as refugees are allowed to move freely in and out of their camps 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. Indeed, these examples demonstrate that the special administrative and practical problems created by a large-scale influx of asylum seekers and refugees can be dealt with by measures short of detention.

It has not been demonstrated that individual Vietnamese asylum seekers are likely to abscond. Indeed, most Vietnamese do not wish to settle permanently in Hong Kong but to be recognized as refugees and resettle in third countries; if there is a refugee determination procedure which can be shown to be fair, they therefore have every incentive to wait for their case to be heard in that procedure. Moreover, it would be difficult for a Vietnamese to assimilate unnoticed in a predominantly Cantonese society within the severely restricted geographical limits of Hong Kong.

Even if the authorities were to maintain, on whatever grounds, that there is a justification for the detention of asylum seekers, international standards further provide that any detained person has the right to have the lawfulness of his or her detention reviewed by a judicial or similar authority (Principle 11(1) of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,

* Conclusion 44 (XXXVII) adopted by consensus in 1986 by the 41 governments then participating in the Executive Committee of UNHCR (including the United Kingdom)

adopted by consensus by the UN General Assembly in December 1988). No such review procedure is currently being followed with respect to the asylum seekers in Hong Kong.

Therefore, the practice of detaining asylum seekers in Hong Kong falls short of international standards in two respects: the government has failed to demonstrate a legitimate reason for detention of asylum seekers, and detainees have not been able to challenge the lawfulness of their detention before a judicial or similar authority.

● Hong Kong's policy of detaining people who are seeking asylum should be reviewed urgently with a view to determining whether it conforms to international legal standards. If, as seems to be the case, the primary motivation of the policy is to deter new arrivals of asylum seekers, the policy should be abolished immediately. To the extent that any policy of detention continues, provision should be made for all detained asylum seekers to have the lawfulness of such detention reviewed by a judicial or similar authority.

6. AMNESTY INTERNATIONAL'S RECOMMENDATIONS TO THE GOVERNMENTS OF HONG KONG AND THE UNITED KINGDOM

In light of Amnesty International's conclusions set out in this memorandum, the organization is calling upon the Governments of Hong Kong and the United Kingdom to implement the following recommendations as a matter of urgency for the protection of the human rights of Vietnamese asylum seekers in Hong Kong:

The screening process:

1. All further forcible return of Vietnamese asylum seekers to Viet Nam from Hong Kong should be stopped until adequate steps have been taken to remedy the critical flaws in the existing screening process, and until asylum seekers whose applications for refugee status have been refused in the existing screening process have had their applications examined afresh in a fair and just screening process.
2. Adequate legal advice and assistance should be made available to asylum seekers at every stage in the screening process. Detailed information regarding the nature and conduct of that process, including a written description of the process in Vietnamese, should be provided to asylum seekers well before the time that they undergo screening interviews. Legal advisers should be assigned to asylum seekers well before the initial screening interview, and they should be accorded adequate time and facilities for communicating with their clients to prepare for that interview. Such legal advisers should be given the opportunity to advise and make representations on behalf of the asylum seekers throughout the screening process.
3. Steps should be taken to ensure that sufficient legal resources are made available to achieve these ends. UNHCR, the Law Society and the Bar Association should be consulted in this regard and, to the extent that the needs cannot be met by local lawyers, steps should be taken to permit non-Hong Kong lawyers with expertise in refugee law to practise in Hong Kong for this purpose.
4. Current procedures in the screening process should be amended to permit the legal representatives of asylum seekers to be present and make representations at both the screening interview by immigration officers and the deliberations of the Refugee Status Review Board.
5. A qualified, well trained body of professionals should be developed to conduct screening interviews. Preferably this body should be independent of the Immigration Department, at least some of whose officers reportedly exhibit a bias towards excluding asylum seekers as illegal immigrants, rather than granting them the benefit of the doubt as required by the UNHCR Handbook.
6. As a means of monitoring the performance of those conducting interviews, as well as to represent individual asylum seekers, legal representatives of asylum seekers should be permitted to attend the interviews. As a further protection, a written record of the interview should be prepared on the spot and read back to the asylum seeker who may sign it if agreed or require changes if it does not adequately reflect the information which the asylum seeker wishes to convey.

7. Procedures for reviewing the performance and decisions of interviewers by their superiors should be identical with respect to both positive and negative decisions, so that there is no hidden impetus towards negative decisions. Those officials reviewing performance and decisions should ensure that standards set out in the UNHCR Handbook are met.
8. The professionals conducting interviews should be in civilian dress to avoid intimidation of asylum seekers, and should be trained to allay the fears of those they are interviewing and to elicit full relevant information from them. They should also be fully trained in international legal standards relating to the protection of refugees and in relevant aspects of the political and human rights situation in Viet Nam, and such training should be on a continuing basis, with regular and frequent training sessions for each interviewing officer. Interviewing officers in the course of their work should make appropriate use of relevant background documentation, from non-governmental as well as governmental sources, about the political and human rights situation in Viet Nam, including information relating to the individual asylum seeker's region of origin and political, religious or ethnic background. A professionally-staffed documentation centre would be an effective way to help interviewing officers carry out this aspect of their work.
9. All necessary steps should be taken to develop a body of interpreters capable of providing an effective service to asylum seekers undergoing screening interviews. A recruitment policy should be instituted which ensures that all those retained for this purpose speak both Cantonese and Vietnamese to a contemporary colloquial standard suitable to facilitate full and clear exchange of information during the screening interview. Insofar as it is necessary to achieve this aim, any relevant restrictions on the use of non-Hong Kong labour should be waived.
10. The current review procedure should be amended. In particular, sessions of the Refugee Status Review Boards should be open to asylum seekers and their legal representatives for purposes of making representations, and to UNHCR. All decisions of the Boards should be in writing and, in every case, whether the decision is positive or negative, should set out in full the reasons for the decision.

The ill-treatment of asylum seekers:

11. In cases where ill-treatment or other undue use of force is alleged to have been carried out against asylum seekers, prompt steps should be taken to investigate the allegations impartially and effectively, to discipline those found responsible for abuses, to bring criminal charges in appropriate cases, and to take steps to ensure that such abuses do not recur. Penalties imposed on those who commit such abuses should be publicized as a deterrent to others. In this connection, full details should be made publicly available regarding all remedial and disciplinary steps taken by the relevant officials in follow-up to the report of the independent inquiry into the Hei Ling Chau incident.

12. As further illustrated by the Hei Ling Chau incident, it is essential that such serious allegations of ill-treatment of asylum seekers should be the subject of an impartial inquiry by a body which is independent of the agency under investigation, and the results of the inquiry should be made public.
13. A full, impartial and independent report relating to the alleged abuses carried out by the Hong Kong Police at Shek Kong Detention Centre on the night of 23 - 24 July 1989 should be made public urgently, so that appropriate disciplinary, remedial and preventive actions may be taken.
14. It is essential that the alleged victims and witnesses of ill-treatment and other human rights abuses in detention centres be permitted to pursue official complaints in full confidence that they will not then be subjected to harassment and intimidation by the officials against whom they are pursuing a complaint. For example, such victims and key witnesses should promptly be offered the opportunity to transfer to another centre to avoid this possibility. Full information should be prominently publicized to inform asylum seekers about their right to pursue such complaints and steps which will be taken to protect them. Appropriate disciplinary action should be taken against officials who violate asylum seekers' rights in these areas.
15. All necessary steps should be taken to ensure that a full independent inquiry is carried out into the alleged assault of an asylum seeker at Stonecutters Island Detention Centre on 12 October 1989, including a full canvassing of potential witnesses, and that a report of the inquiry be made public promptly, so that appropriate disciplinary and remedial actions may be taken.
16. Appropriate steps should be taken so that asylum seekers detained at High Island are given the opportunity in a confidential and secure situation to register any complaints which they may have about abuses carried out by the Hong Kong Police. In this regard, CAPO should consider the possibility of organizing a special visit to High Island, under conditions which will permit such reception of complaints.
17. All necessary steps should be taken to ensure that officers of the Royal Hong Kong Police Force receive full and specialized training before being assigned to duty in detention centres and other centres for asylum seekers. Such training should include specific instruction on key areas covered in the equivalent CSD training course, and specifically should include instruction on the UN Standard Minimum Rules for the Treatment of Prisoners, and the UN Code of Conduct for Law Enforcement Officials (in particular the provisions regulating the use of force by law enforcement officials). Such training should have as one of its primary aims the development of commitment and professionalism on the part of police officers with respect to their assignment to such facilities.
18. Amnesty International is reiterating its appeal that the events surrounding the transfer of asylum seekers from Chi Ma Wan Detention Centre to Phoenix House Detention Centre be made the subject of an independent and impartial inquiry, and that the results of that inquiry should be made public.

6. AMNESTY INTERNATIONAL'S RECOMMENDATIONS

19. Advance notification of any further such transfers should be given to UNHCR, and UNHCR and/or another independent body should be given the opportunity to monitor such operations.
20. In cases where allegations of ill-treatment are made by asylum seekers it is essential that UNHCR, as an organization mandated by the international community to ensure the protection of asylum seekers, be given the opportunity to obtain oral and written information from those making the allegations in complete confidentiality.
21. Full details should be made public of any "pressure point control techniques" which CSD or other officials responsible for the security of asylum seekers are authorized to use. If in fact the use of such techniques is authorized, clear information about the nature of such techniques as are authorized, and regulations governing the circumstances and conditions under which they may be used, should be formulated and made public as a matter of urgency.

Detention of asylum seekers:

22. An independent review of conditions should be carried out at High Island to ensure that the conditions in the centre generally, and in the "punishment cells" in particular, do not constitute cruel, inhuman or degrading treatment, and that they conform to the standards set out in the UN Standard Minimum Rules for the Treatment of Prisoners. In addition, steps should be taken to ensure that all temporary or new centres set up to accommodate refugees and asylum seekers in Hong Kong conform to these standards from the outset.
23. Hong Kong's policy of detaining people who are seeking asylum should be reviewed urgently with a view to determining whether it conforms to international legal standards. If, as seems to be the case, the primary motivation of the policy is to deter new arrivals of asylum seekers, the policy should be abolished immediately. To the extent that any policy of detention continues, provision should be made for all detained asylum seekers to have the lawfulness of such detention reviewed by a judicial or similar authority.

APPENDIX

**amnesty
international**

INTERNATIONAL SECRETARIAT,
1 Easton Street, London WC1X 8DJ,
United Kingdom.

TG ASA 19/89.11

Sir David Wilson
Governor
Office of the Governor
Government House
Victoria
Hong Kong

BY TELEFAX

6 December 1989

Dear Sir David

I am writing to express Amnesty International's warm appreciation for the full cooperation and assistance which your officials provided to our delegates during their recent visit to Hong Kong. Although they regretted that they were unable to meet you personally they felt that this cooperation helped them in obtaining an accurate and comprehensive picture of the current situation as it relates to Vietnamese asylum seekers in Hong Kong.

Our delegates are currently preparing a detailed account of their findings, and we hope to be able to present these to the Hong Kong Government within the next few weeks. However, in view of reports suggesting that some asylum seekers who have been screened out may be returned to Viet Nam against their will in the near future, we feel that we should immediately put on record to you our strong view that no such involuntary returns should take place before adequate steps have been taken to remedy critical flaws in existing screening and appeal procedures, as they are currently practised. Our concern at the prospect of the involuntary return of Vietnamese asylum seekers is further heightened by the fact that personnel of the Correctional Services Department and the Hong Kong Police who are likely to play a key role in carrying out such a removal have themselves been implicated in serious cases of ill-treatment of Vietnamese asylum seekers.

Our delegates' analysis of the deficiencies of the present situation in Hong Kong as it relates to Vietnamese asylum seekers focuses on the following key points:

1. Determination procedure:

- At the first stage of the procedure, applicants receive inadequate information about the procedure to be followed, with the result that they are not in all cases in a position to present the information most relevant to the determination of their refugee status. The fact that most asylum applicants receive no formal legal advice whatever, either before or during their screening interview with an immigration officer, compounds this problem. In the majority of cases, the immigration officer's record of this interview becomes the primary document setting

forth the asylum seeker's case which is considered at both stages of the determination procedure. Inadequate safeguards relating to the conduct of these interviews therefore increase the possibility that asylum seekers who may be at risk of human rights violations if returned to Viet Nam may be screened out.

In this regard, while we welcome the principle of monitoring by UNHCR, we are concerned that currently such monitoring does not provide an adequate safeguard because the limited resources available to UNHCR provide for monitoring only a very small proportion of screening interviews. Moreover, even in the cases which are monitored, we understand that UNHCR lawyers are sometimes required by those conducting screening interviews to adopt a passive role and to refrain from active participation in the process, such as clarifying unclear points or asking questions which they consider to be pertinent.

In many cases problems with interpretation are cited, resulting from the use of ethnic Chinese interpreters who have not lived in Viet Nam for a long period and do not speak colloquial Vietnamese. Furthermore, concern must be expressed that the record of the interview is not read back to the asylum seeker on the spot since any inaccuracies which are not corrected at this stage may later be cited against the asylum seeker as indicative of his or her lack of credibility. Our delegates also received indications that some of the immigration officers conducting the screening interviews appear to have inadequate knowledge about aspects of the political and human rights situation in Viet Nam which may be relevant to the determination of refugee status. The delegates further received repeated allegations from various sources that some immigration officers exhibited unhelpful, and indeed obstructive, attitudes towards those being interviewed, by, for example, cutting short potentially relevant responses, failing to take full note of responses and drawing unwarranted simplistic conclusions regarding the alleged economic motivations of asylum seekers. The fact that the rate of refugee recognition by immigration officers is less than half that of the Refugee Status Review Board seems indicative of fundamental problems inherent in this first stage of the screening procedure.

- The review procedure, too, has a number of flaws. The Refugee Status Review Board meets in closed session with neither the asylum seeker nor any representative of the asylum seeker present. While Amnesty International welcomes the recent innovation of occasional visits by Board members to detention centres to interview asylum seekers, this procedure currently only affects a very small proportion of cases. There is a serious inadequacy with respect to legal assistance. While lawyers funded by UNHCR attempt to see all those seeking review, they are able to make representations on behalf of only a few cases. The pressure on these strained legal resources is increased by the strict 28-day deadline for applying for review.

It is also of serious concern that the Board gives no reasons for its negative decisions. This not only prevents open scrutiny of the standards of the Board, but further prevents the development of an instructive body of case law which, it may be hoped, would enhance the knowledgeability and effectiveness of immigration officers and others involved in the screening process.

- In sum, relating to the review procedure as a whole, we feel there are simply not sufficient personnel advising and representing the asylum seekers to ensure that those with a genuine claim for refugee status are protected. This deficiency is compounded by numerous flaws in the initial screening interview procedure and in the procedure at the Refugee Status Review Board. We are therefore concerned that among such people who are screened out there may be some who would be at risk of human rights violations if returned to Viet Nam.

2. Ill-treatment of asylum seekers:

- We have in the past expressed to you our concerns regarding incidents of alleged ill-treatment of asylum seekers by Correctional Services Department Personnel and the Police. Because of the suggestion that one of the options being considered by the Hong Kong Government is forcible removal to Viet Nam of asylum seekers unsuccessful in the screening process, these concerns become all the more pressing. Our delegates have expressed concern that there appears to have been inadequate and delayed follow-up to proven cases of ill-treatment. They were further able to collect information indicating that such abuses are continuing and that investigations into such incidents are hampered by intimidation of victims and witnesses.
- An important point of reference for Amnesty International in this area has been the independent report prepared more than 14 months ago by two Justices of the Peace into a July 1988 incident at Hei Ling Chau Detention Centre where about one hundred Vietnamese asylum seekers were beaten and kicked by Correctional Services Department (CSD) staff. An internal CSD inquiry had indicated that there was no excessive use of force, and this version of events was apparently substantiated by medical reports drawn up by government doctors. The independent report, on the other hand, found that unnecessary force had been used by CSD officers on many asylum seekers who had not resisted any order, and further found "that the 22 injury reports made out [by government doctors] on July 19 fail to reflect adequately the nature and extent of the injuries found and that they do not give any reliable picture of the number of persons who had signs of injury on that day". Despite the fact that the findings were made over 14 months ago, it seems that no disciplinary action has yet been taken against those responsible for the assault or apparent cover-up, although the matter is still before the relevant Civil Service body. Our delegates expressed concern that a senior official at the Correctional Services Department with whom they spoke referred to Hei Ling Chau as "a chapter closed", and showed little knowledge of, or interest in, possible disciplinary or remedial follow-up.
- The forcible removal of rejected asylum seekers from Chi Ma Wan to Phoenix House by Correctional Services Department staff in the early morning of 31 October 1989 would seem to raise serious questions as to how the authorities may handle any problems which arise during the course of any attempt at compulsory repatriation. Five asylum seekers are reported to have been injured in this incident, and serious allegations have been made that members of the Correctional Services Department employed techniques which intentionally or effectively

rendered asylum seekers unconscious. We note that these latter allegations have been denied by officials involved, but in our view this incident should be the subject of an independent and impartial inquiry, not least in view of the findings of the Hei Ling Chau inquiry in relation to a cover-up by officials on that occasion.

- Our delegates also received information from a variety of sources which strongly suggests that there has been in recent months a continuing pattern of assaults on asylum seekers and subsequent intimidation of victims and witnesses, particularly in the camps under police administration.

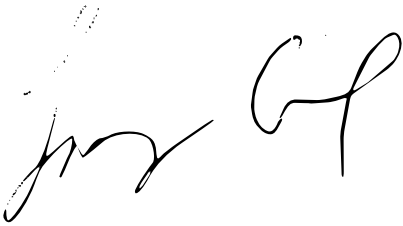
You are, of course, well aware of the events of 23 July 1989 in Sek Kong Detention Centre, when more than one hundred asylum seekers were injured, many of them apparently as a result of indiscriminate kicking and use of batons by police during a search of their tents following an incident at the perimeter of the camp. One asylum seeker, who had apparently been ordered out of his tent and was lined up in front of it as requested, died following a kick by a police officer. Our delegates individually interviewed some 20 people who testified that they had been victims of these assaults, including a partially-paralysed young man and a woman in her ninth month of pregnancy, and they examined more than one hundred medical reports. The delegates are convinced that this incident represents a very serious case of undue use of force by the police. While we recognize that the murder investigation in progress with respect to the death of the asylum seeker necessarily delays public reporting by the investigating authorities on that aspect of the case, we feel it is essential that a full and independent report relating to other abuses carried out on that night should be made public urgently, so that appropriate disciplinary and remedial actions may be taken.

This concern is all the more pressing because our delegates collected further information regarding specific police abuses at other detention centres under police administration - the ferries at Stonecutters Island and High Island. In both these locations the delegates interviewed witnesses as well as victims who expressed fears that if they were to speak up about such abuses they faced possible retribution by the police and the danger of unfavourable treatment in the screening process. Steps must be taken immediately to assure and protect victims and witnesses in such circumstances.

We recognize that the Hong Kong Government has been faced with severe practical and administrative demands as a result of the arrival of large numbers of Vietnamese asylum seekers, particularly over the past year, and that much public sentiment in Hong Kong has been unsympathetic to the plight of the asylum seekers. However, apart from the specific problems relating to the determination procedure and treatment of asylum seekers noted above, we are very concerned at indications that detention is being used, in contravention of international standards, as a measure to deter other asylum seekers from seeking protection in Hong Kong, and that this may have the effect of deterring those with a well-founded fear of persecution in Viet Nam.

We will of course be very interested to receive your comments on these points and in response to the more detailed report that we expect to send to you in the next weeks. In view of the public interest and concern in relation to the situation in Hong Kong, and the findings of our recent visit, we have decided that it is appropriate to put these concerns on the public record with minimal delay. Consequently, we plan to issue a public statement in this connection during the course of next week.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Larry Cox', written in a cursive style.

Larry Cox
Deputy Secretary General

布政司署
香港下亞厘畢道



GOVERNMENT SECRETARIAT
LOWER ALBERT ROAD
HONG KONG

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Mr Larry Cox
Deputy Secretary General
Amnesty International
1 Easton Street
London WC1X 8DJ
United Kingdom

Dear Mr Cox,

The Governor has asked me to thank you for your letter of 6 December 1989.

I should like to offer the following comments in response to specific points raised in your letter :-

Determination procedures

I fear that your delegates may have approached our determination procedure without fully appreciating that these procedures have been set in place to process a caseload that already comprises a Vietnamese population of some 40,000 people stranded in Hong Kong. The current status determination and review procedures were devised following general criticism (here and overseas) that the procedures were far too slow. Against this background, my specific comments on your observations in our screening procedures are as follows :

- (a) The UNHCR have access to all asylum seekers from the time of their arrival; they have ample opportunity to explain the procedure to them.
- (b) The adequacy of the UNHCR's resources in the screening process is something that Amnesty should take up with the UNHCR itself. It is our firm understanding with UNHCR that UNHCR lawyers are permitted to seek clarification on unclear points or ask questions during the interview. You may know that UNHCR are currently short of funds, because of the international community's reluctance to provide the level of financial support UNHCR have sought for their refugee programmes world wide.

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- (c) We have reluctantly concluded that it is not practicable to include provisions in our first stage procedure for the completed questionnaire to be read back to the interviewee and for him to be invited to change or add anything. To do so would lengthen the first stage procedure unacceptably, particularly given the size of our current (and increasing) caseload. In any event the asylum seeker has the opportunity to make any further points at the appeals stage.

We do not accept that the differing rates of recognition of refugee status by the immigration officers and Review Board are indicative of flaws in the first stage procedure. The percentage you quote is arrived at only by removing those screened in on family reunification grounds from the number of refugees identified at first instance. The differing rates of recognition may partly be explained by the Review Board having additional information or interpreting the UNHCR Guidelines more liberally. It is also the case that the procedures of the Review Board are (rightly) weighted in favour of the asylum seeker through the provision in the rules that the Board shall find in favour of the asylum seeker if anyone of its members considers that the review should be allowed.

- (d) The Review Board does not exercise a quasi-judicial, but an administrative function. Although neither the asylum seeker nor his representative are entitled to be present, nor is a representative of the Director of Immigration. If the Board wishes to question either the asylum seeker or an immigration officer the other is entitled to be present and to comment on the answers.

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In general, the facts as given by the asylum seeker are accepted by the Board and it is only if there are material inconsistencies in those facts that the Board will interview the asylum seeker. In the vast majority of cases, the Board is required only to determine whether on the given facts, the asylum seeker is entitled to refugee status.

- (e) The reason for a negative decision is invariably that, on the facts, the asylum seeker has not established that he has a well founded fear of persecution (i.e. in the terms of the 1951 UN Convention) if he returns to Vietnam. The Board does not act as a court or tribunal, but it does exercise the executive function previously vested in the Executive Council and which in the UK is, as you will know, exercised by the Secretary of State.
- (f) The ultimate safeguard is of course that the office of the UNHCR may exercise its mandate to declare a person a refugee in any case, whether before or after status determination procedures have been concluded. In such cases the Government invariably recognises the refugee status of the person concerned.

Alleged ill-treatment of asylum seekers

The UNHCR exercises its protection mandate for Vietnamese asylum seekers in Hong Kong and any allegations of ill-treatment are fully investigated and dealt with under well established procedures. Following an independent Reports by two Justice of Peaces made at the request of the Governor into an incident on Hei Ling Chau in 1988, disciplinary proceedings have been conducted and appropriate remedial action has been taken. Allegations regarding the manner in which a group of non-refugees was transferred from Chi Ma Wan to Phoenix House on 31 October 1989 have been fully investigated and no evidence has been produced to substantiate claims that anything more than minimum and necessary force was used on that occasion. The Governor has concluded that an independent enquiry is not justified.

You indicate in your letter that you have written before your delegates have produced their detailed report because of the possibility of a first group of non-refugees being returned to Vietnam under our mandatory repatriation programme. As you will know, a group of 51 non-refugees were returned to Vietnam on 12 December 1989. All had fully exhausted the status determination and review procedures and had been established to be non-refugees. The UNHCR were also satisfied that the group did not include any persons qualifying for refugee status.

The return of non-refugees to their country of origin is an integral part of the Comprehensive Plan of Action and is, as you will know, in line with well established international arrangements elsewhere. It is in our view more humane to return people to their homeland, with guarantees for their safety and financial assistance to help them to re-establish themselves, than to leave them in camps in Hong Kong indefinitely and with no real hope of finding a new home anywhere else.

I should stress in conclusion that Hong Kong has operated a policy of first asylum for Vietnamese boat people since 1975 : over 170,000 have arrived in our overcrowded territory. Since the implementation of our status determination procedures in June 1988, about 45,000 people have arrived. No one arriving before or since June 1988 has been pushed off or turned away, a record of which Hong Kong is proud and wishes to preserve. In order to do so, we must be able to apply normal international removal procedures in the cases of those who are non-refugees and to return them as swiftly and safely as possible to their own homes. Failure to do so will put in jeopardy the maintenance of asylum for bona fide refugees, a situation we would above all wish to avoid.

Yours sincerely

G T Barnes

(G T Barnes)
Secretary for Security