

GAO

Report to the Chairman, Subcommittee
on International Operations and Human
Rights, Committee on International
Relations, House of Representatives

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VIETNAMESE ASYLUM SEEKERS

Refugee Screening Procedures Under the Comprehensive Plan of Action





United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

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The Honorable Christopher H. Smith
Chairman, Subcommittee on International Operations
and Human Rights
Committee on International Relations
House of Representatives

Dear Mr. Chairman:

The United States has a continuing special interest in the protection and welfare of many Vietnamese and other ethnic groups in Southeast Asia (including former employees of the U.S. government and others closely associated with the U.S. presence in Vietnam before 1975),¹ and family members of persons in the United States. Accordingly, since 1975 the United States has resettled hundreds of thousands of asylum seekers from the region, including about 12,900 Indo-Chinese refugees under the Comprehensive Plan of Action (CPA).² The CPA was an arrangement, or nonbinding agreement, for achieving a durable solution to the continuing flow of asylum seekers in the Southeast Asia region, adopted by the governments represented in the International Conference on Indo-Chinese Refugees in Geneva on June 13-14, 1989.

In response to your request, we reviewed the implementation of the CPA. Specifically, we (1) determined whether the first-asylum countries of Hong Kong and Indonesia implemented CPA refugee status determination procedures in accordance with international standards and criteria,³ (2) developed information about alleged corruption in the program, and (3) ascertained whether asylum seekers returning to Vietnam had encountered persecution. We also identified U.S. and United Nations High Commissioner for Refugees (UNHCR) costs associated with implementing the CPA.

¹The United States withdrew its remaining military forces and civilian presence from Vietnam when the South Vietnamese government fell in April 1975.

²The United States has also resettled over 445,000 Vietnamese of special interest from inside Vietnam under the continuing Orderly Departure Program (ODP), established in 1979 to provide a safe, legal alternative means of leaving the country, other than clandestinely by boat. (The ODP program also serves to relieve the flow of asylum seekers into first-asylum countries.)

³Hong Kong is a British Dependent Territory. Refugee status determination procedures are often referred to as refugee screening procedures. Those given refugee status are referred to as screened in, and those denied refugee status are screened out.

Regarding the refugee screening process and corruption issues, the scope of our review was limited to Hong Kong and Indonesia,⁴ where we were provided access to documents contained in UNHCR case files. However, we were not permitted to review Hong Kong or Indonesian government files, nor did we interview individual asylum seekers in these countries. Moreover, as with most human endeavors such as this, actual refugee status decisions involved considerable judgment on the part of interviewing and reviewing officials in determining the merits and credibility of the applicants' claims, particularly when many asylum seekers lacked evidence and documentation to substantiate their claims. We do not believe the information in UNHCR's files was sufficient for us to make conclusive determinations on asylum seekers' refugee status; however, we believe it was sufficient to assess whether status determination decisions made by country and UNHCR officials appeared reasonable based on international refugee adjudication standards. We examined the Hong Kong and Indonesian screening processes within this context.

At the request of Congressmen Robert K. Dornan, Benjamin A. Gilman, and Thomas M. Davis, III, and Congresswoman Zoe Lofgren, we are currently examining other aspects of the CPA's implementation in Hong Kong and Indonesia, as well as in Malaysia and the Philippines. This work involves about 235 individual asylum seeker cases and focuses primarily on an analysis of whether the cases may be of special interest to the United States. Our emphasis is on cases involving family unity and victims of violence, which are not addressed directly in this report, and on some cases involving refugee status determination. However, the respective governments restricted our access to asylum seekers and documents belonging to the first-asylum countries. We will be reporting separately on this work.

Background

Between 1975 and 1989, over 2 million Indo-Chinese, many of them Vietnamese, left their countries of origin seeking asylum elsewhere in the region. Most were ultimately resettled in Western countries, including the United States and Canada. However, by the late 1980s an unabating outflow, large numbers of asylum seekers already in asylum camps, and continuing resettlement placed increasing burdens on neighboring countries and territories and Western countries, and the need for a durable solution to the problem became critical.

⁴Other primary countries of first-asylum not included in this review were Thailand, Malaysia, and the Philippines.

In June 1989, 75 countries, including the United States, Great Britain, Association of Southeast Asian Nations (ASEAN) countries,⁵ and Vietnam adopted by declaration the CPA agreement to deal with the problem. The agreement's primary objectives were to deter clandestine departures, provide temporary refuge to all asylum seekers, establish procedures for determining their refugee status, resettle in third countries those found to be refugees, and repatriate those determined not to be refugees.

The agreement stipulated that refugee status determination screening was the responsibility of the national authorities of individual first-asylum countries, in accordance with the 1951 U.N. Convention relating to the Status of Refugees and its 1967 Protocol,⁶ bearing in mind the 1948 Universal Declaration of Human Rights, and taking into account the special situation of asylum seekers and the need to respect the family unit. Refugee status determination procedures were to be structured in accordance with international norms and were to employ internationally accepted refugee status determination criteria. International screening procedures include prescreening counseling for applicants, first-instance screening, and an appeal process for denied applicants.

Notwithstanding the responsibilities vested with the first-asylum countries under the CPA, the agreement placed a number of important responsibilities on UNHCR. The CPA's drafters envisioned the agreement's implementation as a dynamic process that would require continued coordination and possible adaptation to respond to changing situations. To ensure its effective implementation, the plan, among other things, established that

- UNHCR, with the financial support of the donor community, would be in charge of continuing liaison and coordination with concerned governments and intergovernmental and nongovernmental organizations to implement the agreement;
- UNHCR was to participate in the refugee status determination process in an observer and advisory capacity; and
- UNHCR would be responsible for (1) providing training to first-asylum country officials to help ensure fairness and consistency in the screening process; (2) coordinating the timely resettlement of those found to be

⁵Participating ASEAN countries included Brunei Darussalam, Indonesia, Malaysia, the Philippines, Singapore, and Thailand.

⁶Of the five first-asylum countries that adopted the CPA, only the Philippines was a signatory to the 1951 Convention or the 1967 Protocol, but it had not enacted comprehensive legislation to implement the Convention and Protocol.

refugees; and (3) administering a safe, dignified repatriation program for those found to be nonrefugees.⁷

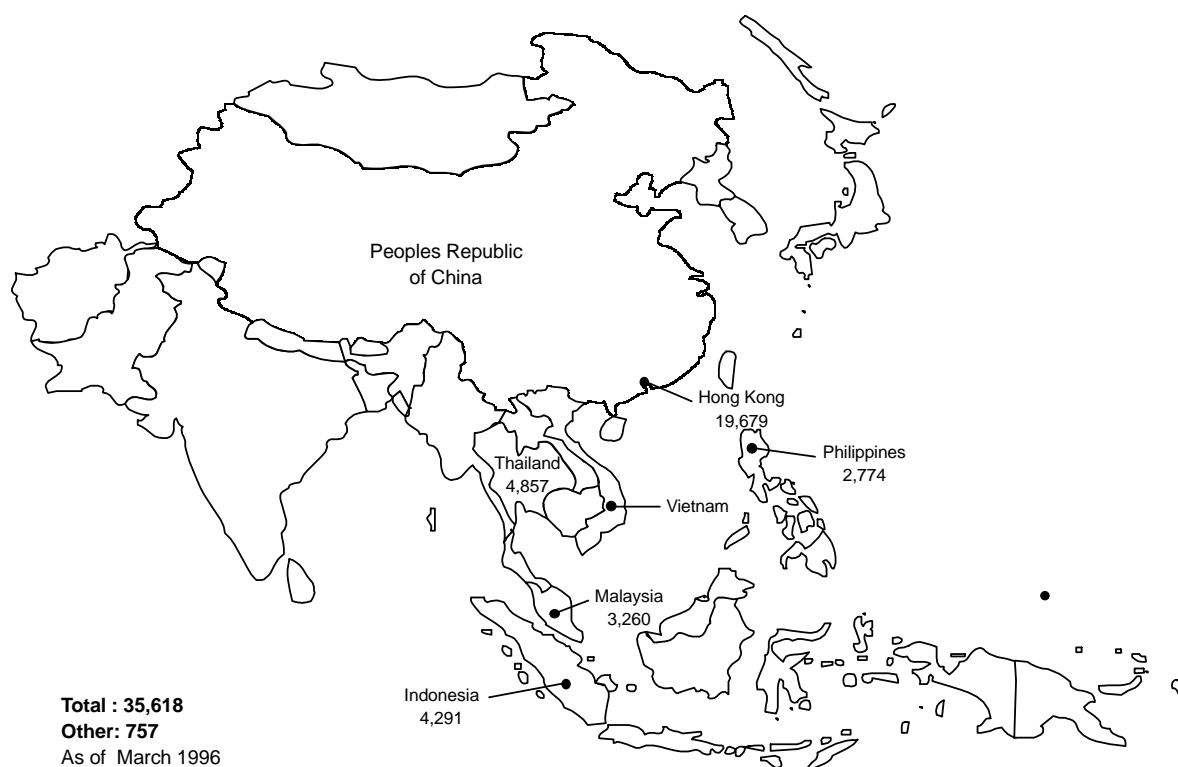
Appendix I discusses UNHCR's responsibilities under the CPA relative to its U.N. chartered authorities and responsibilities.

The Charter of the Office of High Commissioner authorizes UNHCR to make its own determinations about individuals' refugee status. This authority is commonly referred to as mandate authority. In what is essentially an additional procedure in the refugee status determination process, UNHCR has examined under mandate authority many asylum seekers that were denied refugee status by national authorities. Some first-asylum countries, such as Hong Kong, have recognized UNHCR's mandate authority; others have not.

Although not a requirement of the CPA, UNHCR has also carried out a returnee monitoring program designed to ensure that asylum seekers returning to Vietnam did so under conditions of safety and dignity and in conformance with Vietnamese and international law.

According to State Department statistics, over 120,000 Vietnamese were screened under the CPA. As of March 1996, about 33,200 had been screened and resettled in third countries. About 75,500 had returned to Vietnam. A total of 36,623 remained in asylum camps in the region as of March 1996. (See fig. 1.)

⁷As discussed later, UNHCR took a more active role than enumerated in the CPA agreement in Indonesia's screening process.

Figure 1: Vietnamese Asylum Seekers in Southeast Asia Camps

Source: Department of State.

In March 1996, the Steering Committee of CPA member countries announced the CPA's formal closure as of June 30, 1996. The Committee reaffirmed that the only viable option for Vietnamese determined to be nonrefugees was for them to return to Vietnam, either voluntarily or under a mandatory repatriation program. The Steering Committee directed UNHCR to, therefore, phase down its care and maintenance activities and staffing in the first-asylum countries as of that date. In the case of Hong Kong, mindful of the special circumstances prevailing in the territory and the large number of asylum seekers still in the camps, UNHCR was to make other appropriate arrangements to resolve the asylum seeker problem as soon as possible.⁸

The application of international and U.S. refugee screening criteria can differ somewhat and could result in different screening decisions. For example, under U.S. criteria an asylum seeker could be properly considered a refugee solely on the basis of past persecution,⁹ but under international criteria, this is only one of several elements to be considered. Other elements include whether (1) the past persecution was distant in time, (2) the individual was subsequently able to lead a normal life, and (3) it is reasonably likely that the individual will be persecuted on return to his or her country. Therefore, individuals considered refugees under U.S. criteria may not be refugees under international criteria. (See app. I for a more complete discussion of these differences.)

Results in Brief

The CPA agreement stipulated that the first-asylum countries' refugee screening procedures be carried out in accordance with established international screening criteria and procedures, including prescreening counseling for applicants, first-instance screening, and an appeals process for denied applicants. Our examination in Hong Kong and Indonesia indicated that both programs met the CPA's basic structural requirements for refugee adjudication criteria and screening procedures. Both countries agreed to follow international criteria recognized in the 1951 U.N. Convention relating to the Status of Refugees and its 1967 Protocol, and

⁸As of June 30, 1996, first-asylum camps in Malaysia were closed and all remaining asylum seekers in the camp were repatriated to Vietnam; the CPA and UNHCR's involvement in the camps in the Philippines were terminated; and Indonesia and Thailand extended their involvement with the CPA for 90 days.

⁹While under U.S. law a person who was actually persecuted in the past on account of race, religion, nationality, membership in a particular social group, or political opinion may qualify as a refugee, an Immigration and Naturalization Service (INS) officer may, at his or her discretion, deny refugee status if conditions in the person's country have changed to such an extent that the alien's fear of persecution is no longer well-founded. (INS Basic Law Manual; Matter of Chen, Int. Dec. No. 3104 BIA 1989.)

both countries' procedures met minimal procedural requirements endorsed by the Executive Committee of UNHCR.

On the basis of our review of Hong Kong's screening process, notwithstanding acknowledged errors during its implementation, we believe the process contained sufficient checks and balances to provide reasonable assurances that asylum seekers' cases could be heard and errors could be identified and corrected. We received no allegations of corruption in the program in Hong Kong.

The Hong Kong Immigration Department was responsible for first-instance screening, and an independent Refugee Status Review Board was established to hear denied applicants' appeals. Depending upon the circumstances of their cases, those denied refugee status at appeal had further opportunity to have their cases reviewed in the Hong Kong courts. All asylum seekers denied refugee status had their cases examined by UNHCR for mandate refugee review. All asylum seekers had legal counsel available to them—through UNHCR, privately retained attorneys, and possibly the Hong Kong Legal Aid Department. (Hong Kong's screening process is discussed in more detail in app. II.)

Hong Kong government and UNHCR officials acknowledged errors, such as misinterpretations of language, questionable interviewing practices and techniques, and inadequate assessments of applicants' claims, during the screening process—particularly early in the process.¹⁰ However, the officials told us they had worked to correct the errors and that the process had improved over time.

In a limited test of Hong Kong's screening procedures and the quality of the screening decisions, we relied on UNHCR case files to examine the decisions reached in 10 selected cases.¹¹ (Hong Kong authorities denied us access to their case files.) On the basis of documentation contained in UNHCR's case files, we believe the Hong Kong government and UNHCR officials' decisions appeared to be reasonable in 9 of the 10 cases we examined. In the 10th case, we identified information that we believe should have been factored into the decision. UNHCR agreed and subsequently granted the individual mandate refugee status. A UNHCR

¹⁰Refugee screening in Hong Kong actually began in June 1988, a year before the inception of screening under the CPA. Hong Kong modified its process somewhat to conform to CPA requirements.

¹¹Five of the cases were referred to us by Boat People S.O.S., a Vietnamese asylum seekers advocacy group. We selected the remaining five randomly from a list of cases referred to UNHCR by another nongovernmental organization.

official in Hong Kong attributed the initial (negative) screening decision to human judgment by the reviewing officials.

In Indonesia, we believe the large majority of asylum seekers with strong claims for refugee status were screened in—due in part to UNHCR’s heavy involvement in the screening process.¹² In fact, there is evidence that an undetermined number of nonmeritorious cases were also screened in by the Indonesian authorities. UNHCR recommended that these cases be screened out but did not challenge the authorities’ decisions. Corruption in the Indonesia process likely contributed to undeserving cases’ gaining refugee status; however, it is unlikely that strong cases were denied refugee status due to unmet corruption demands.

The process in Indonesia provided for both first-instance screening and an appeals procedure involving Indonesian authorities and UNHCR legal consultants; however, few asylum seekers received individual legal assistance in preparing for screening or drafting appeals. According to UNHCR, its staff provided group prescreening counseling, and its legal consultants provided screened-out applicants counseling, mostly in group sessions, on their right of appeal and appeal procedures. However, no legal assistance was provided in drafting appeals. According to UNHCR, the Indonesian government did not allow nongovernmental organizations to participate in asylum seeker counseling, and asylum seekers did not have access to private attorneys or judicial review.

According to UNHCR, it concentrated its efforts in Indonesia on trying to ensure that those with well-founded refugee claims were screened in. It did this by performing an initial interview of all asylum seekers and making recommendations on their refugee status to Indonesian authorities. According to UNHCR, the Indonesian government accepted all but 22 of the more than 3,000 cases it recommended for refugee status.

Rumors of corruption in Indonesia’s screening process began at the inception of the screening process. Nongovernmental organizations, asylum seeker advocacy groups, some Members of Congress, and others have severely criticized the process, alleging widespread corruption and denial of refugee status to asylum seekers with well-founded claims due to their unwillingness or inability to accede to bribery demands or demands for sexual favors. For example, Boat People S.O.S. provided us a list of

¹²Seven cases were not screened in during screening but were later given mandate refugee status by UNHCR.

seven cases in Indonesia that it said were strong cases improperly screened out due to unmet corruption demands.

Reports, files, and documents provided to us by nongovernmental organizations, advocacy groups, former asylum seekers, UNHCR, and other knowledgeable sources indicated widespread corruption in the process. UNHCR officials in Jakarta and at the asylum camp in Galang, an asylum seeker spokesman in Galang, and other reliable sources at Galang also readily acknowledged corruption in the process.

We did not conduct an independent investigation of allegations of corruption provided us. UNHCR officials had no hard evidence with which to demonstrate corruption, how and with whom it took place, and how it affected the screening process. Indonesian authorities we spoke with denied the existence of corruption in the process. Therefore, we cannot definitively state that corruption occurred or that weak or well-founded cases were screened in or out due to corruption or failure to comply with corruption demands.

However, on the basis of documentation available to us, discussions with UNHCR officials in Geneva and Indonesia, and the results of a series of reviews of the process by UNHCR in 1995, it appeared that corruption in the process was likely and asylum seekers with weak cases participated in the corruption in order to gain otherwise unattainable refugee status. Moreover, we cannot rule out the possibility that bonafide (ultimately screened in) refugees were victimized by unscrupulous Indonesian officials and possibly by locally hired UNHCR legal consultants during the screening process. But, we did not identify well-founded cases that were screened out on the basis that they were unable to meet corruption demands. (In our examination of the seven cases referred to us by Boat People S.O.S., five appeared to be reasonable decisions. The decisions in the remaining two cases appeared questionable; however, UNHCR had reviewed the cases and accorded the claimants mandated refugee status as part of its 1995 review of the Indonesia process.)

UNHCR monitors in Vietnam have reported that they found no evidence of persecution of returned asylum seekers by Vietnamese authorities. Our review of 12 returnee cases referred to us by Boat People S.O.S. and Asia Watch as cases of persecution or special concern also revealed no evidence of persecution. We found that UNHCR had implemented a comprehensive monitoring program that provides reasonable assurance that returnees were not persecuted. Our discussions in Vietnam with

various knowledgeable officials from the United States, European Union, the British Embassy, and nongovernmental organizations with activities in Vietnam, and interviews with 22 returnees in the North and South reinforced the monitors' reports. Nevertheless, Vietnam remains an authoritarian communist government that does not tolerate political dissent, and returnees risk persecution should they become involved with political activities not approved by the government.

UNHCR spent an estimated \$444 million on the CPA from 1989 through 1995,¹³ excluding unpaid obligations of \$139 million in Hong Kong. U.S. contributions to UNHCR for the CPA during the period were an estimated \$151 million. The United States also contributed about \$9 million to voluntary agencies in support of CPA activities.

Hong Kong's Procedures and Criteria Consistent With CPA Guidance

A total of 60,275 persons were screened under the CPA in Hong Kong. Table 1 shows the results of first-instance and appeals screening and the UNHCR mandate review.

Table 1: Hong Kong Refugee Status Determination Results (March 1989-December 1995)

	Allowed refugee status	Refugee status not approved	Percent approved
First-instance screening	6,974	53,301	11.6
Appeal ^a	2,821	46,078	5.8
UNHCR mandate	1,553	47,374	3.1
Total	11,348	48,927	18.8

^aSome screened out at first instance did not appeal their decisions.

Hong Kong government reports stated that refugee screening procedures were carried out under UNHCR guidelines in accordance with internationally accepted refugee status determination practices. According to Hong Kong Immigration Department officials, CPA screening was conducted in accordance with the UNHCR Handbook on Procedures and

¹³This figure excludes general program expenditures in Thailand. General program funds provide for UNHCR's in-country operations and include administrative expenses and care and maintenance costs for in-country refugee populations.

Criteria for Determining Refugee Status, and no additional criteria were developed.

Hong Kong Immigration Department officials stated that selection of interviewing officers was based on rank, experience, education, and language and writing skills. The selected interviewing officers were experienced naturalization officers, visa officers, and Hong Kong entry point supervisors in the Immigration Department.

UNHCR reports and interviews with UNHCR and government officials in Hong Kong indicate that UNHCR took an active role in training government officials involved in the screening process. The officers' training program included a 9-day seminar of lectures and workshops and an extensive list of readings, including articles and books on Vietnam and human rights topics.¹⁴ Immigration Department officials told us most of the interviewing officers were also sent to Vietnam for 7-day familiarization visits. We were told that an extensive library of materials on conditions in Vietnam was established for the officers' use. At the height of CPA screening there were approximately 220 interviewing officers.

According to UNHCR officers in Hong Kong, informal monthly staff meetings were held during the initial phases of the screening program at which Hong Kong's procedures were discussed and critiqued. We were told that if issues or points were raised that needed to be brought to the government's attention they were passed on to Immigration Department officials.

The UNHCR officials also said that in accordance with a 1988 agreement with the Hong Kong government, UNHCR monitored and advised the government on its refugee screening procedures and provided the government periodic formal assessments of its procedures. According to UNHCR officials, these assessments identified various problems and suggested improvements. Early problems with Hong Kong first-instance screening procedures that UNHCR brought to the government's attention included inadequate interpretation of applicants' statements during screening interviews, questionable interviewing practices and techniques by interviewing officers, and inadequate assessments of applicants' claims by interviewing officers. Hong Kong government officials with whom we met also acknowledged such problems with screening procedures. UNHCR officials told us the Hong Kong government was very responsive to the problems raised and endeavored to correct them. The Chairman of the

¹⁴Later extended to 2 weeks.

Refugee Status Review Board told us that the quality of interviewing officers' first-instance screening decisions varied widely initially but that the officers had good training and learned quickly.

To gain greater insights into Hong Kong's screening procedures, and as a limited test of them, we examined 10 selected cases in which asylum seekers had been screened out by the Hong Kong authorities and denied mandate by UNHCR. Five of the cases were provided to us by Boat People S.O.S.; we selected the other five at random from a list of cases another advocacy group had requested that UNHCR reexamine.

Among the first five cases, one had been accepted by the United States on family reunification grounds and was awaiting resettlement.¹⁵ Another had been offered resettlement in the United States but refused the offer unless his son, who was screened separately as an adult and denied refugee status, could join him. In two other cases, we concluded, based on the documentation in UNHCR's files, that the applicants had failed to establish a well-founded fear of persecution. In the fifth case, the applicant was screened out due to a lack of plausibility about portions of his claims. However, when we raised questions about portions of his claims and pointed out to UNHCR the strength of those aspects of the claim where plausibility had not been questioned, UNHCR reexamined his case and mandated refugee status for him. A UNHCR official acknowledged judgmental errors in this case. According to the official, any system dependent upon human judgments will sometimes produce errors.

In the other five cases, documentation in UNHCR's case files indicates that the applicants could not establish a well-founded fear of persecution for any of the reasons specified in the 1951 Convention. On the basis of available documentation, it appears these cases were reasonably adjudicated.

Indonesia's Procedures and Criteria Consistent With CPA Guidelines

Both Indonesian government and UNHCR officials stated that refugee screening procedures were generally carried out under UNHCR guidelines, in accordance with internationally accepted refugee status determination criteria. Our review of the process indicated that it met the basic structural requirements of the international guidelines, such as provision for appeal of negative first instance decisions and the application of international

¹⁵UNHCR Handbook on Procedures and Criteria for Determining Refugee Status (Handbook) indicates that at a minimum the spouse and minor children benefit from the principle of family unity. In practice, other dependents, such as aged parents of refugees, are normally considered if living in the same household.

refugee status determination criteria. UNHCR trained both P3V and appeals level officials in the application of the procedures, according to UNHCR officials.¹⁶

A total of 18,131 persons were screened under the CPA in Indonesia. Appendix III describes Indonesia's screening process. Table 2 shows the results of first-instance and appeals screening.

Table 2: Indonesia Refugee Status Determination Results (March 1989-September 1993)

	Allowed refugee status	Refugee status not approved	Percent approved
First-instance screening	5,083	13,048	28
Appeal	2,759	9,463	22.5
UNHCR mandate	•	•	•
Total ^a	7,842	10,289	43.3

^aSome screened out at first-instance did not appeal their decisions.

Of 13,048 persons screened out at first-instance, 12,222 filed appeals. The appeals process in Indonesia consisted of a Review Committee, which reviewed all appeals, and an Appeals Board, which reviewed those cases on which the Review Committee could not reach a decision. The Review Committee decided the large majority of the appeals, confirming 9,392 negative decisions and reversing 2,592 (about 21.6 percent). The Committee could not reach a decision on 238 cases, and these were referred to the Appeals Board. The Board reversed 167, or about 70 percent of the cases referred to it, to positive decisions.

UNHCR officials in both Jakarta and Galang (the island asylum camp in northern Indonesia) told us they were most concerned with ensuring that deserving asylum seekers were screened in and concentrated their efforts to that end. They said that in their view Indonesian officials were too generous in screening in weaker cases, but UNHCR (in keeping with its policy) did not challenge the Indonesians' decisions on asylum seekers they believed to be undeserving. A UNHCR official told us it was in the Indonesian government's interest to screen in and have resettled in third countries as many applicants as possible, because those remaining in the camp represented a problem for the government.

¹⁶"P3V" is the Indonesian inter-ministerial task force created to deal with Vietnamese boat people.

Corruption Apparent in Indonesia's Screening Process

Rumors of corruption began appearing in Indonesia at the inception of the status determination process. The first documented reporting of corruption appeared in June 1991, when a UNHCR official at Galang in a memorandum to his office in Jakarta reported rumors of P3V officials soliciting sexual favors from female asylum seekers and offerings of such services by the asylum seekers in exchange for favorable screening decisions. Boat People S.O.S. provided us numerous statements, affidavits, and referrals of individuals who had been asked for or had paid bribes or other demands for themselves or family members in exchange for favorable screening decisions. The alleged corruption involved not only Indonesian government officials in Galang and Jakarta, but two Indonesian legal consultants employed by UNHCR, as well. The allegations included assertions that asylum seekers with genuine refugee claims were screened out due to their inability to meet corruption demands.

Affidavits and interviews with individuals referred to us by Boat People S.O.S. and discussions with UNHCR officials in Jakarta and Galang and inhabitants of the Galang camp indicated potentially widespread corruption in the screening process. UNHCR officials told us that there was undoubtedly corruption in the camps during the screening process. And, residents in the camp indicated that corruption existed. A Vietnamese camp leader told us, for example, that P3V officials actively solicited bribes and asylees willingly offered payment in exchange for help in the screening process.

UNHCR officials told us that despite widespread rumors of corruption they had no hard evidence of it. A senior UNHCR official told us that UNHCR had no authority to investigate Indonesian government officials' activities and that UNHCR could only urge Indonesian authorities to pursue the matter. The official told us that Indonesian authorities regularly conducted investigations at Galang and that a number of cases were overturned as a result. He said, because P3V officials were removed and cases were overturned, he concluded that corruption was involved. He said he never saw a documented corruption case, however, and Indonesian authorities did not acknowledge corruption. Indonesian officials also denied to us that any corruption existed in the refugee determination process.

UNHCR officials in Indonesia told us they took various steps to combat corruption by pressuring the Indonesian government to minimize it. These included mentioning allegations to Indonesian authorities, discussing rumors with high-level foreign government officials during consultations and visits to the Galang camp, and publishing allegations in quarterly

operations reports, all in the attempt to embarrass the government into acting.

UNHCR officials acknowledged there were no posters or leaflets distributed in the camps urging residents not to participate in corruption and to report any bribery solicitations. There were no UNHCR notices or warnings to camp officials. There were also no provisions, such as hot lines, established for residents to report anonymously.

A UNHCR official at Galang told us that on his own initiative he conducted a 15-month investigation into corruption in the camp. The official, who for a time lived in the camp and had his own network of informants, was unable to obtain proof of corruption. During his investigation, the official compiled a list of about 40 corruption cases, all instances of individuals paying bribes but being screened out nonetheless. The official said he heard of these cases only because the individuals were complaining in an attempt to recoup their bribe money. According to the official, none of the cases in his investigation involved individuals with strong refugee claims being screened out because they could not pay bribes. The official concluded that asylum seekers were active participants in corruption and were unwilling to provide direct evidence because it benefited those with weak claims.

In response to intense criticism by nongovernmental organizations and some members of the U.S. Congress in late 1994 and early 1995, UNHCR launched a series of four reviews of screening procedures and the impacts of corruption on the screening caseload in Indonesia. The reviews, conducted by UNHCR attorneys and senior program personnel from outside Indonesia, examined a total of 486 nonrandomly selected cases, representing about 10 percent of the remaining camp population.¹⁷ The selected cases included high-visibility cases, such as the 22 cases screened positive by UNHCR but negative by Indonesian officials, all the cases examined by UNHCR's two Indonesian legal consultants who had corruption allegations lodged against them, and 21 cases previously referred from the U.S. Department of State and nongovernmental organizations. The reviews also included both positive and negative cases on which UNHCR consultants and Indonesian officials had reached the same decisions.

The reviews upheld the screening decisions in 481 of the 486 cases reviewed. The remaining five cases were given refugee status under UNHCR's mandate authority, although this status had not yet been

¹⁷Cases do not equate to numbers of individuals: A case can involve several individuals.

recognized by the Indonesian government or communicated to the asylum seekers at the time of our field work in January 1996. The reviews concluded that, overall, Indonesia's screening procedures properly identified and screened in cases with serious protection concerns, but that a small number of borderline cases could possibly have benefited from more sympathetic application of the screening criteria. The reviews found that corruption was a factor that impinged on screening procedures, but was rarely, if ever, substantiated in the case files, and that the chief effect was to inflate the number of positive decisions by also screening in weak cases. The reviews did not support the assertion that strong cases failed because they could not pay corruption demands.

The reviews also concluded that UNHCR did not take adequate steps to detect or prevent corruption in the screening process, allowing corruption to undermine the integrity of the process. They also indicated that UNHCR took no actions with regard to the two Indonesian legal consultants alleged to have been involved in corruption.¹⁸

In a limited test of Indonesia's processing procedures and screening decisions, we examined a sample of 10 cases. All were cases alleged by Boat People S.O.S. to have been improperly screened out and included seven cases where the individuals were allegedly screened out because they could not pay bribes demanded of them. Our review of UNHCR case files in the branch office near Galang (the files did not contain P3V or appeals data) indicated that in five of the seven cases allegedly screened out due to the applicants' inability to pay bribes, the decisions reached appeared to be reasonable and consistent with screening criteria. In two of the cases, however, the applicants appeared to have reasonable claims and the screening decisions appeared to be incorrect. Both cases had been examined by UNHCR as part of its 1995 review, however, and both were among the five cases mandated during the review.

Of the three remaining cases, one appeared to have a reasonable claim for refugee status but was screened out at first instance. However, he fled Galang for Australia before his case was appealed.¹⁹ UNHCR officials told us that had he been screened out on appeal, he probably would have received UNHCR mandated refugee status. The second case appeared to be reasonably adjudicated. In the third case, we raised questions that resulted in UNHCR's mandating the individual. In this case, Indonesian authorities screened the individual out at both first instance screening and upon

¹⁸UNHCR dismissed the officials in 1994.

¹⁹The individual was granted refugee status in Australia.

appeal. UNHCR representatives had recommended that the individual be screened in at first instance, but UNHCR concurred in the appeal decision. UNHCR also rejected the individual at mandate review, on the bases that elements of the individual's claims did not constitute persecution and additional important representations presented at appeal lacked credibility. UNHCR reconsidered and mandated the case after we raised questions about whether elements of the individual's and his family's treatment after 1975, taken together, could afford the individual the benefit of a doubt—even without considering the information provided at appeal.

Department of State Failed to Monitor Screening Processes

As a participating country and a major contributor to the CPA, the United States has a strong interest in the CPA's effective implementation. The Department of State has responsibility for ensuring that U.S. interests in international programs that receive U.S. funding are protected.

Despite widespread concerns that corruption affected the refugee screening process, State Department officials told us they had only a general awareness of the problem in Indonesia and elsewhere in the region. Our review indicated that while State Department's Washington and embassy officials were familiar with the CPA program and had in-depth knowledge of asylum seekers' care and maintenance and resettlement issues, they possessed only cursory knowledge of the first-asylum countries' screening processes and weaknesses in them. It was not until advocacy groups began petitioning State and UNHCR in mid-1994 (after the screening process had essentially concluded) to look into charges of corruption that the scope of the alleged corruption became known. It appears that until that time, State relied on UNHCR reporting to determine how the screening process was being implemented and confined its oversight and management to care and maintenance and resettlement issues. State officials acknowledged to us that the Department failed to become aware of the problems in the camps early enough and that the Department did not adequately monitor the screening processes of the countries of first-asylum to ensure their integrity.

UNHCR's Returnee Monitoring Procedures Appeared Effective

UNHCR's monitoring efforts in Vietnam began with the voluntary repatriation of 75 persons from Hong Kong in March 1989, thereby pre-dating the June 1989 CPA. The legal basis for UNHCR's program is a Memorandum of Understanding between UNHCR and Vietnam, signed in December 1988, which committed the Vietnamese government to "... ensure that the voluntary return from the countries of first-asylum will

take place in conditions of safety and dignity in conformity with national and international law.” This translated, in practice, to ensuring that no voluntary returnees would be subjected to punitive or discriminatory measures related to their illegal departures, stays abroad, or returnee status, and that they would not be subjected to intimidation or harassment. The Memorandum of Understanding also stipulated that UNHCR would have full access to voluntary returnees. Involuntary returnees were not covered by the Memorandum of Understanding, but subsequent Memoranda between the Vietnamese and first-asylum governments relating to repatriation of nonrefugees provided the same assurances for involuntary returnees that the UNHCR/Vietnam agreement afforded voluntary returnees.²⁰

We found UNHCR’s monitoring program to be well structured and implemented, achieving broad national coverage and contact with large numbers of returnees. Together with a network of contacts made up of western governments, nongovernmental organizations, journalists, and other interested individuals, UNHCR was able to maintain visibility over a significant portion of the returnee population, thus helping to monitor the Vietnam government’s adherence to internationally agreed terms of returnee admission, reception, and reintegration. As of January 1996, UNHCR monitors had visited all 53 provinces in Vietnam, 360 of the 363 districts with resident returnees, and about 20,000 (about 26 percent) of the approximately 77,000 returnee population. UNHCR and other officials we spoke with in Vietnam told us that they had no knowledge of any political persecution among returnees. Appendix IV describes UNHCR’s returnee monitoring process.

Monitoring Efforts Identified No Evidence of Persecution Among Returnees

Both UNHCR and British monitoring officials told us they had found no evidence of persecution among the returnee population. We also met with officials of the U.S. Embassies in Hanoi and Bangkok and Immigration and Naturalization Service officials who administer the Orderly Departure Program; the European Union and several nongovernmental organizations who were conducting returnee assistance programs; Asia Watch; and numerous individuals with personal knowledge of returnee cases who had traveled independently in Vietnam. They told us they were not aware of any instance of persecution among the returnees.

²⁰UNHCR was a party to the Memoranda of Understanding involving Thailand, Malaysia, Indonesia, and the Philippines; UNHCR was not a party to Vietnam’s Memorandum of Understanding with Hong Kong and United Kingdom.

In a limited test of the status of returnees, we examined 12 cases referred to us by Boat People S.O.S. and Asia Watch as examples of persecution or cases for special concern. Our discussions on these cases with UNHCR monitoring officers and examination of UNHCR's case files indicated that none of the individuals had been subjected to persecution by the government related to their departure. According to UNHCR monitoring officers, three of the individuals were in prison for predeparture criminal offenses, such as murder and armed robbery. Three others were briefly arrested for criminal activities but were released from prison and had re-integrated well, as had the other individuals.

In addition, we interviewed 22 returnees from northern and southern Vietnam and discussed their experiences since returning. All of the returnees told us that they had not experienced problems with government officials since their return. Our discussions indicated that all had assimilated well and had been welcomed back into their communities. The returnees' most common complaints were economic difficulties and establishing family registration when attempting to relocate to new provinces.

The absence of protection-related problems for returnees does not mean that there are not concerns over the Vietnamese government's human rights conduct. Political opposition is not tolerated by government authorities, even in the present mood of reforms. According to Asia Watch, those who publicly question the authority of the Communist Party have been detained and imprisoned, be they proponents of multiparty democracy, advocates of civil and political rights, or religious leaders seeking greater autonomy from official control. UNHCR officials told us that returnees who were forcibly returned or were politically active and outspoken in the camps of first-asylum often faced extended questioning by government security officials upon return. Though a matter of concern, an Asia Watch official told us that in their opinion these interrogations do not rise to the level of persecution. We were told by UNHCR officials that the government questioning ends soon after the individuals' return to their homes.

Monitoring Costs

UNHCR's monitoring effort in Vietnam is unprecedented: There has been no other refugee situation where UNHCR has conducted individual case monitoring. UNHCR has expended \$8.8 million, including an estimated \$1.6 million for 1996, to maintain its monitoring operation in Vietnam.

In addition, between 1993 and 1995, UNHCR allocated \$34.4 million to support the economic and social reintegration of returnees. This assistance included cash grants of \$240 to \$360 to each returnee, the operation of two reception centers, in-country travel costs of returnees, and additional assistance to unaccompanied minors and other vulnerable returnees.

The assistance also included approximately \$9 million in micro-projects (such as the construction of schools, health clinics, water delivery systems, and bridges). The micro-projects were designed to benefit local populations that absorb the returnees as well as returnees themselves. UNHCR views the projects as an important mechanism for cultivating goodwill among local officials who assist in the monitoring effort and prevents resentment among the local populations who are often jealous of returnees' reintegration allowances.

UNHCR and U.S. CPA Expenditures

In annual funding appeals for the CPA program, UNHCR requested voluntary contributions of about \$640 million between 1990 and 1995. It received substantially less in contributions, expending an estimated \$444 million in Special Program (CPA) and General Program (regional) funds between 1989 and 1995. (See table 3.)

Table 3: Schedule of UNHCR CPA Budgets and Expenditures (1989-95)

Dollars in millions

	1989	1990	1991	1992	1993	1994	1995	Total
Budgets:								
Special programs	•	\$69.56	\$90.49	\$102.41	\$85.97	\$78.41	\$67.03	\$493.87
General programs	•	38.94	28.15	28.47	24.82	14.97	10.51	145.86
Total	•	108.50	118.64	130.88	110.79	93.38	77.54	639.73
Expenditures:^a								
Special programs	\$12.25	44.64	58.88	58.75	55.24	50.78	34.91	315.45
General programs ^b	33.54	20.79	19.86	19.06	14.81	10.12	10.51 ^c	128.69
Total	\$45.79	\$65.43	\$78.74	\$77.81	\$70.05	\$60.90	\$45.42	\$444.14^d

^aAccording to UNHCR officials, CPA expenditures were limited to available voluntary contributions.

^bWe excluded general program expenditures in Thailand because UNHCR's program in Thailand includes various refugee-related activities in addition to CPA activities, and UNHCR did not have a breakout of General Program expenditures for CPA versus other activities.

^cBudget estimate. Complete expenditure data were not available at the time of our review.

^dThese figures exclude the costs of UNHCR monitoring activities in Vietnam.

Table 4 shows U.S. contributions of \$150.83 million to UNHCR's General and Special Programs in support of the CPA during fiscal years 1990-96.

Table 4: Schedule of U.S. Contributions to UNHCR CPA Programs for Fiscal Years 1990-96, as of February 1996

Dollars in millions

	1990	1991	1992	1993	1994	1995	1996	Total
Special programs	\$11.54	\$18.10	\$22.35	\$16.98	\$12.00	\$8.50	\$10.00	\$99.47
General programs ^a	^b	5.13	13.62	9.00	12.61	11.00	^b	51.36
Total	\$11.54	\$23.23	\$35.97	\$25.98	\$24.61	\$19.50	\$10.00^c	\$150.83

^aAccording to State officials, contributions to UNHCR's General Program were for Asia, and a portion could have been used for elements of other UNHCR programs in the region.

^bThe State Department made no general program contributions in support of the CPA during these periods.

^cThe State Department stipulated that none of the 10 million fiscal year 1996 contribution could be used for any movements of asylum seekers under involuntary repatriation programs.

The United States also contributed \$9.05 million to various nongovernmental organizations for CPA-related activities between fiscal years 1992 and 1996. Recipient organizations included

- Save the Children Federation (\$3.40 million),
- World Vision (\$1.46 million),
- International Catholic Migration Commission (\$2.23 million),
- Southeast Asia Resource Action Center (\$1.77 million),
- Hmong National Development (\$0.13 million), and
- InterAction (\$0.06 million).

Agency Comments

The Department of State and UNHCR generally agreed with this report. (UNHCR comments are reprinted in app. V; State did not provide written comments.) The Immigration and Naturalization Service (INS) provided technical clarifications (which we incorporated as appropriate), but did not provide written comments.

Scope and Methodology

We conducted our review at the Department of State and INS in Washington, D.C., and at UNHCR Headquarters in Geneva, Switzerland; in Hong Kong and Indonesia; and in Vietnam.

At all these locations, we examined available program records and files and interviewed knowledgeable officials involved with the program. We did not examine in depth all of the CPA first-asylum countries' programs but limited our review to Hong Kong and Indonesia. We selected Hong Kong because of the large asylum seeker population, which included Vietnamese from both the North and South, and Indonesia because its distinctly southern Vietnamese asylum seeker population was representative of the other first-asylum country populations, and because it was one of the countries with alleged corruption in the screening process.

Our review of the refugee status determination process was limited in that we were not permitted to review Hong Kong or Indonesian government files, nor did we interview asylum seekers in these countries. However, we did review documents contained in UNHCR files, and took notes on them. UNHCR also provided us with written summaries of the cases. We do not believe the information contained in UNHCR's files was sufficient for us to make conclusive, independent determinations on the asylum seekers' refugee status. However, we determined whether the decisions made by Hong Kong, Indonesia, and UNHCR officials on the cases appeared reasonable based upon international refugee adjudication standards and information available to us in the files. We assessed the cases on these bases.

Our scope was limited to examining how the CPA was implemented in these countries and did not include an examination of subsequent resettlement activities involving UNHCR and the resettlement countries. This included resettlement activities in which the U.S. Department of State and the INS may have been involved.

Status Determination Process

We took several steps to assess whether CPA refugee status determination procedures were implemented in accordance with international standards and criteria. We interviewed and reviewed documents and testimonies by critics of the asylum screening process—Lawyers Committee for Human Rights, Refugees International, United States Catholic Conference, Refugee Concern Hong Kong, among others, to obtain an understanding of the problems they alleged were prevalent. To obtain an understanding of the program and its alleged weaknesses, we interviewed UNHCR officials currently involved in the CPA program and numerous officials who had first-hand knowledge of the status determination process from their tours of duty in Geneva and the countries of first-asylum during the early stages

of the CPA. In these meetings we obtained detailed information on each step of the screening process, including training of first-asylum country screening officials, prescreening counseling provided asylum seekers, appeals counseling, case monitoring by UNHCR, and other procedures to ensure the fairness of the process.

To obtain U.S. and international refugee determination standards and criteria, we interviewed U.S. and UNHCR officials and examined pertinent U.S. legislation and U.N. documents, which establish refugee determination criteria and describe adjudication procedures. The latter included INS Refugee Processing Guidelines and the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status.

In Hong Kong, we met with government officials responsible for each phase of the status determination process and obtained pertinent documents descriptive of the process. In these meetings, we inquired into how the screening process was designed and implemented and evaluated those processes against criticisms levied by nongovernmental organizations that represent asylee interests. We met with a prominent local attorney and an official from the refugee legal advocacy organization, LAVAS, who provided legal counsel to asylum seekers to obtain their insights, evaluations, and criticisms of the screening process.

As a limited test of both screening procedures and screening decisions, we examined 10 cases represented by the Lawyers Committee for Human Rights (five cases) and Boat People S.O.S. (five cases) as having been wrongly screened out. We reviewed these cases from both the merits of the claim and the soundness of the process perspective. However, our access to case files was limited. The government of Hong Kong denied us access to its screening files. UNHCR officials reviewed their case files with us and allowed us to take notes. They also provided us with written summaries of the cases. They did not permit us to make copies of material contained in the case files.

UNHCR files did not contain transcripts or detailed interview write-ups of the first-instance screening interviews by Hong Kong screening officials or transcripts from the Refugee Status Review Board. Also, we did not interview asylees. However, UNHCR's case files contained the Hong Kong authorities' decisions and the stated reasons for them; the asylum seekers' biographical profiles;²¹ written appeals of first-instance screening

²¹The profiles contain such information as the asylee's family history; school, work and military experience; periods of time in re-education camps or New Economic Zones; and details supporting claims of persecution.

decisions by the asylum seekers and/or their UNHCR-provided or private legal counsellors; and statements by UNHCR officials reviewing the cases for mandate status. The latter included the asylum seekers' claims, summaries of the applicants' claims made to the Hong Kong authorities and their decisions, and UNHCR's independent assessments and recommendations regarding mandate status. The files also sometimes contained other documentation, such as reports from UNHCR monitors in Vietnam verifying some aspect of asylum seekers' claims.

In Indonesia, we met with government, UNHCR, and U.S. Embassy officials, the chairman of the refugee camp committee, and other individuals with first-hand experience with the screening process in order to determine how the process was designed and implemented. To test the screening process, we examined 10 cases represented by Boat People S.O.S. as examples of cases wrongly screened out due to corruption or inappropriate application of refugee criteria. In conducting our case reviews, we reviewed documentation made available to us by UNHCR and discussed the merits of the cases and the adjudication process with UNHCR officials. Similar to Hong Kong, our access to case files was limited. As in Hong Kong, UNHCR officials in Indonesia reviewed their case files with us and allowed us to take notes. They also provided us with written summaries of the cases. The Indonesian government denied us access to their screening files and UNHCR's files did not contain P3V documents or documents related to the appeals process. Therefore, we could not make definitive determinations on the accuracy of the Indonesian authorities' screening decisions. We reviewed the decisions to determine whether they appeared reasonable based on information in the UNHCR case files and UNHCR reviewers' assessments of the claims.

Allegations of Corruption

To develop information about alleged corruption in the CPA program, we interviewed State Department, UNHCR, and nongovernmental organization officials, and other persons knowledgeable of the screening process and camp life. From Boat People S.O.S., we obtained documents, affidavits, and reports that Boat People S.O.S. represented to us as proof of corruption in the screening process. We did not verify the authenticity of the information provided to us by Boat People S.O.S. We reviewed documents and files at the Department of State and at UNHCR offices in Geneva and Indonesia for reporting on corruption in an attempt to determine what actions were taken to respond to corruption charges. We also interviewed seven former residents of first-asylum camps in the

region who said they had first-hand experience with corruption in their status determination proceedings.

In Indonesia, we examined seven cases represented to us by Boat People S.O.S. to have been wrongly screened out due to corruption in order to determine whether (1) the individuals presented strong refugee claims and (2) there were any indications of corruption. We also reviewed three other cases represented to us by Boat People S.O.S. to have been improperly screened out. As in Hong Kong, we did not interview the asylum seekers whose cases we examined.

To obtain additional insight into corruption allegations, we interviewed a UNHCR official who conducted a 15-month investigation on corruption in Galang camp. We also examined the results of a series of UNHCR case reviews conducted in 1995, which included cases handled by UNHCR's Indonesian legal consultants alleged to have engaged in corruption. While UNHCR officials did not provide us the full reports or case files on their 1995 reviews, they discussed the results with us and provided us a brief summary of the review. We were denied access to Indonesian government files, and high level Indonesian government officials we met with denied the existence of corruption in the screening process.

Treatment of Returnees to Vietnam

To determine whether those who returned to Vietnam were subject to persecution by the government, we examined UNHCR's program for monitoring returnees and the skills, access, and independence of their monitors. We met with U.S. Embassy officials in Bangkok and Hanoi and officials from the INS who administer the Orderly Departure Program and were familiar with conditions in Vietnam. We inquired into their freedom of movement and access to returnees in Vietnam and whether the government of Vietnam was abiding by its commitments not to persecute returnees. We met with the human rights group, Asia Watch, to obtain names of returnees of concern to them and reviewed that organization's reporting on Vietnam. We met with officials from the British Embassy in Hanoi who monitor persons forcibly returned to Vietnam from Hong Kong and obtained their assessment of the Vietnamese government's treatment of this caseload. We also met with officials from several nongovernmental organizations who work with the returnee population, and with numerous individuals who had traveled independently within Vietnam and had personal knowledge of some returnee cases to determine how the returnees were faring as a whole and whether they were aware of any instances of persecution.

While in Vietnam, we interviewed 22 returnees from both the north and south of Vietnam to determine what challenges they have faced since returning home and whether they have experienced any problems from the government. We also observed UNHCR officials as they (1) met an Orderly Return Program flight from Hong Kong and (2) conducted a monitoring mission to observe their freedom of movement, access to returnees, and whether the presence of Vietnamese authorities inhibited the candidness of returnees' statements. We also examined UNHCR's returnee monitoring database and obtained information on 12 returnee cases presented to us from Boat People S.O.S. and Asia Watch as examples of persons being persecuted or of special concern.

Cost Data

To determine costs of the CPA, we obtained financial data from the UNHCR and the Department of State. We did not verify the accuracy of the data provided.

We conducted our review from November 1995 to August 1996 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Chairmen and Ranking Minority Members of the House and Senate Committees on Appropriations, the House Government Reform and Oversight Committee, the Senate Governmental Affairs Committee, and other interested committees; the Secretary of State and the Attorney General; the United Nations High Commissioner for Refugees; and others upon request.

If you or your staff have any further questions concerning this report, please contact me at (202) 512-4128. Major contributors to this report were David R. Martin, Assistant Director, and Patrick A. Dickriede, Senior Evaluator.

Sincerely yours,



Harold J. Johnson, Associate Director
International Relations and Trade Issues

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Abbreviations

ASEAN	Association of Southeast Asian Nations
CPA	Comprehensive Plan of Action
INS	Immigration and Naturalization Service
ODP	Orderly Departure Program
UNHCR	United Nations High Commissioner for Refugees

The Comprehensive Plan of Action Stipulated National Programs Using International Screening Standards

The Comprehensive Plan of Action (CPA) agreement called for a consistent, regionwide refugee status-determination process to be conducted by first-asylum countries' national authorities in accordance with established international refugee criteria and procedures. The United Nations High Commissioner for Refugees (UNHCR) was to participate in the process in an observer and advisory capacity and was to institute a comprehensive regional training program for the national officials involved in the process.

The refugee screening criteria to be followed were those recognized in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, bearing in mind the 1948 Universal Declaration of Human Rights and the special circumstances and needs of the asylum seekers. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status was to serve as an authoritative and interpretative guide in developing and applying CPA screening criteria.¹

The UNHCR Handbook quotes the 1951 Convention definition of a refugee as any person who

... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion is outside the country of his nationality and is ... unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside ... of his former habitual residence ... is unable or, owing to such fear, is unwilling to return to it.

The Handbook includes detailed discussions of the international instruments defining a refugee; the criteria for determining refugee status (including exclusion clauses, special cases, and the principle of family unity); and the procedures for determining refugee status (including principles and methods for establishing the facts in a case, and the application of benefit of the doubt).

CPA screening procedures to be followed by the governments of the countries of first-asylum were to be in accordance with those endorsed by the Executive Committee of UNHCR, as follows:

¹Basic procedures for determining refugee status were endorsed by the Executive Committee of UNHCR, 28th Session, 1977. At the same session, the Executive Committee requested that UNHCR consider issuing a handbook for the guidance of governments, relating to procedures and criteria for determining refugee status. The UNHCR Handbook was initially published in 1979.

- The competent interviewing official shall have clear instruction for dealing with the case and should act in accordance with the principle of non-refoulement.²
- The applicant should receive the necessary guidance as to the screening procedures to be followed.
- There should be a clearly identified authority—whenever possible a single control authority—with responsibility for examining requests for refugee status and making a decision in the first instance.
- The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his or her case to the proper authorities. The applicant should also be given the opportunity to contact a UNHCR representative.
- If recognized as a refugee, the applicant should be informed accordingly and provided written documentation certifying his or her refugee status.
- If not recognized as a refugee, the applicant should be given a reasonable time to appeal for a formal reconsideration of the decision.
- The applicant should be permitted to remain in the first-asylum country pending a decision on his or her initial request, and any appeal to higher authority.

UNHCR's Responsibilities Under the CPA

The Office of the United Nations High Commissioner for Refugees was established by statute adopted by the U.N. General Assembly on December 14, 1950, as an annex to U.N. Resolution 428 (v). The statute stipulated that the work of the High Commissioner is humanitarian and social in nature and of an entirely nonpolitical character and that the High Commissioner is to provide international protection, under the auspices of the United Nations, to refugees falling within the competence of his or her office. In establishing the Office, the General Assembly called upon governments to cooperate with the High Commissioner in the performance of the Office's functions concerning refugees falling under its competence. While recognizing that the Office's effectiveness depended upon the cooperation of U.N. member and nonmember states, the statute gave UNHCR no directional or enforcement authority over them. The statute states that the High Commissioner should follow policy directives of the General Assembly or the Economic and Social Council. The Executive Committee of the High Commissioner's Program, a 49 member-state advisory committee on refugees, approves and supervises the material assistance program of the High Commissioner's Office and advises the

²Participating states shall not expel or return a refugee to the frontiers or territories where his or her life or freedom would be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion.

High Commissioner on the implementation of the Commissioner's functions under the statute.

UNHCR's responsibilities under the CPA were consistent with those envisioned by the Office's enabling statute. The agreement charged UNHCR with coordinating the CPA's implementation with involved countries and devising procedures for monitoring its progress. The CPA stipulated that first-asylum countries were to be responsible for screening asylum seekers for refugee status, and that UNHCR was to participate in the process in an observer and advisory capacity. UNHCR's responsibilities in the screening process were to include:

- assisting the first-asylum countries in designing and implementing their screening processes,
- providing comprehensive training for national officials involved in asylum seeker screening, and
- advising asylum seekers about the screening processes and procedures.

UNHCR was also charged under the agreement with coordinating with first-asylum and third countries the timely resettlement of those found to be refugees and with administering a safe, dignified repatriation program for those found to be nonrefugees.

A UNHCR senior legal officer in Geneva told us that, with regard to refugee status determinations, the CPA's authors recognized that the first-asylum countries were sovereign decisionmakers, and the CPA authors did not expect UNHCR to ensure a proper decision in every case. The CPA's authors, he said, did not view UNHCR as the final arbiter in refugee determinations, and UNHCR was not the decision-making body. As previously noted, the Statute of the Office of High Commissioner authorizes UNHCR to make its own determinations about individuals' refugee status. This authority is commonly referred to as mandate authority. In what was essentially an additional procedure in the refugee status determination process, UNHCR could examine screened out asylum seeker cases for mandate (refugee) status. The CPA agreement did not make specific reference to UNHCR's mandate authority, but Hong Kong nonetheless recognized this authority. The other countries of first-asylum had not formally recognized this UNHCR authority as of June 1996, but some, such as the Philippines and Indonesia, indicated to us that UNHCR's mandates would be honored.

**Application of
International and U.S.
Refugee Screening
Standards Can Differ**

The U.S. Immigration and Nationality Act³ as amended, defines a refugee (in part) as

... any person who ... is unable or unwilling to return to ... [his or her country of nationality or habitual residence] because of persecution or [underscoring added] a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion ...

The Immigration and Naturalization Service's (INS) 1983 refugee processing guidelines state that the burden of proof of refugee status rests with the applicant. According to INS' guidelines, the applicable burden to be met by the applicant is a well-founded fear of persecution, based on one of the reasons for persecution in the refugee definition.

In determining an applicant's refugee status, INS officers must evaluate whether the applicant's statements and feelings lead to a finding of well-founded fear of persecution based on their consistency and credibility in light of known conditions and practices in the country from which refuge is sought.

In addition, Public Law 101-167⁴ states that certain categories of aliens (including Vietnamese who are members of categories of individuals determined by the Attorney General to be targets of persecution) may for purposes of refugee status determination establish that they have a well-founded fear of persecution based on one of the five reasons for persecution by asserting such a fear and asserting a credible basis for concern about the possibility of such persecution.

Categories of Vietnamese found by the Attorney General to be of interest to the United States include former South Vietnamese government officials and members of the military; persons formerly closely affiliated with the U.S. or Western institutions; those sent to re-education camps, or to New Economic Zones because they were considered politically or socially undesirable; members of certain ethnic or religious groups; and family members of the above.

According to INS guidelines, these categories of aliens shared common characteristics that identified them as targets of persecution in their countries. The facts surrounding the establishment of the categories were sufficiently known and established to permit what was, in essence,

³Section 101(a) (42), codified as 8 U.S.C. §1101 (a) (42).

⁴Public Law 101-167, Section 599D, 103 Statute 1261.

“judicial notice” to be taken without further proof. Thus, according to INS guidelines, if applicants clearly proved themselves to come within one of the established categories they would have also established themselves likely targets of persecution.

INS guidelines state that if in interviewing an applicant the INS officer is satisfied that he or she falls within a designated category, a strong likelihood will have been established that the applicant is qualified for refugee status. The interviewing officer should then obtain information regarding the applicant’s actual persecution or well-founded fear of persecution. Statements indicating that category applicants fled their country for fear of persecution or due to actual acts of persecution, if credible, are generally sufficient for findings of refugee status, according to INS guidelines.

Notwithstanding the view by some that the U.S. refugee definition fully replicates the international definition, both U.S. and UNHCR officials acknowledged that the definitions—and their applications—can differ.

According to senior INS officials, the international definition is forward-looking “owing to well-founded fear of being persecuted,” while the U.S. definition can look to the past “persecution or a well-founded fear of persecution.”

Thus, under the U.S. definition an applicant can be adjudicated a refugee on the basis of past persecution.⁵ Indeed, INS guidelines state that refugee status may be based upon persecution suffered in the past or upon the likelihood of future persecution. The presence of either is sufficient: Both conditions are not required.

According to UNHCR officials, refugee screening under international standards assesses and takes into account past persecution, but also when the persecution took place and ended, and the reasonable likelihood of future persecution upon the individual’s return to his or her country of

⁵According to the INS’ Basic Law Manual, which provides guidance on refugee and asylum adjudications, an applicant for refugee status may establish his claim by demonstrating past persecution in lieu of evidence of a well-founded fear of persecution. If it is determined that an applicant has established past persecution, he shall be presumed to have a well-founded fear of persecution. If, however, a preponderance of the evidence shows that conditions in the applicant’s country have changed to such an extent that the alien’s fear of being persecuted is no longer well-founded, an INS officer may deny refugee status in the exercise of discretion if the officer is satisfied that an alien who has suffered persecution in the past is no longer in danger of persecution. Nevertheless, if it is determined that the applicant has demonstrated compelling reasons for being unwilling to return arising out of the severity of the past persecution, he may be granted refugee status—Matter of Chen, Int. Dec. No. 3104 (BIA 1989).

origin. The officials stressed that while past persecution is an element in establishing whether an individual has a well-founded fear of persecution upon return, it is not sufficient to establish refugee status. They added, however, that past persecution can be the basis for refugee status on humanitarian grounds when the persecution was so egregious that the individual could not reasonably be expected to resume a normal life upon return.

UNHCR officials stated that changing conditions in asylum seekers' countries-of-origin must also be taken into account in assessing individuals' well-founded fear of persecution. UNHCR's assessment of conditions in Vietnam, based on reports from nongovernmental organizations, governments, and UNHCR's monitors in Vietnam indicated significantly improved conditions in the country. UNHCR reports on the CPA stated, for example, that what may have been a borderline case in the past could well fail to establish a well-founded fear of persecution now in light of improved conditions in Vietnam.

Asylum Seeker Screening Process in Hong Kong

All Vietnamese migrants arriving in Hong Kong before June 16, 1988, were automatically given refugee status, making them eligible for resettlement. However, according to Hong Kong government documents, it became increasingly clear during the mid-1980s that the large majority of arriving Vietnamese migrants did not have a well-founded fear of persecution in Vietnam and thus were not entitled to refugee status. According to the documents, departures from Vietnam appeared to be motivated principally by the desire for resettlement, rather than asylum, and resettlement countries were becoming increasingly reluctant to take people from Hong Kong.¹ The Hong Kong government therefore decided that it could no longer grant automatic refugee status, and on June 16, 1988, initiated refugee screening procedures. These procedures were amended in September 1988 following an agreement with UNHCR, and again in June 1989, following implementation of the CPA agreement. Between March 1989 and December 1995, 60,275 asylum seekers in Hong Kong were screened for refugee status under the CPA. About 11,300 (18.8 percent) were screened in and resettled. The remaining 48,900 were determined not to be refugees and were either voluntarily or involuntarily repatriated to Vietnam or remained in Hong Kong asylum camps.

Hong Kong government and UNHCR officials acknowledged mistakes in the implementation of Hong Kong's CPA processing procedures, particularly early in the process, but said the process improved as it matured. We also noted errors. However, we believe the process was generally implemented in accordance with CPA guidelines.

Hong Kong's Procedures and Criteria Were Consistent With CPA Guidance

We interviewed UNHCR and Hong Kong government officials and reviewed various documents they provided us in developing a description of Hong Kong's refugee screening procedures. Refugee screening in Hong Kong was a multitiered process involving both government bodies and UNHCR. The process included initial screening and an appeals process by the government, mandate review by UNHCR, and possible judicial review through the Hong Kong courts. The process is depicted in figure II.1.

¹During the 1980s, the balance between north and south Vietnamese arriving in Hong Kong began to change, with the proportion of northerners steadily increasing. In 1984, 28 percent came from the northern part of Vietnam, whereas by 1989 the proportion from the north had increased to 86 percent.

```

graph TD
    A[Orientation and process familiarization] --> B[Hong Kong government Initial screening]
    B --> C[Screened in as refugees]
    B --> D[Screened out]
    C --> E[Transferred to refugee camps to await resettlement]
    D --> F[Advised of right to appeal to Refugee Status Review Board: files given to UNHCR legal consultants]
    F --> G[If credible case UNHCR legal consultants prepared appeals]
    F --> H[If not credible applicants advised about submitting own appeals]
    G --> I[Review Board Screens appeals; applicants notified]
    H --> I
    I --> J[Refugees transferred to refugee camps to await resettlement]
    I --> K[Non-refugees remain in Hong Kong pending repatriation]
    I --> L[Optional appeal process]
    L --> M[Applicant could seek Judicial Review by Hong Kong Courts]
    L --> N[Review by Hong Kong Courts]
    M --> O[Hong Kong Legal Aid rejects applicant's petition]
    M --> P[Hong Kong Legal Aid accepts applicant's petition]
    N --> Q[Screening decision confirmed]
    N --> R[Screening decision set aside]
    R --> S[Applicant rescreened by Review Board]
    Q --> T[UNHCR audited cases for mandate review]
    S --> T
    T --> U[Accepted for mandate review]
    T --> V[Rejected for mandate review]
    U --> W[Mandate refugee status granted]
    U --> X[Mandate denied]
    V --> X
    W --> E
    X --> K
  
```

..... Optional appeal process

According to Hong Kong government reports, asylum seekers were informed upon interception in Hong Kong waters that they were entering the territory illegally and if they stayed would be subject to screening to determine their refugee status. They were told that those accorded refugee status would be resettled and those found not to be refugees would be detained pending repatriation.

Prior to initial, or first-instance, screening, both the Hong Kong Immigration Department and UNHCR were to provide asylum seekers orientation and process familiarization interviews and materials. UNHCR legal consultants and Australian lawyers (who were working under a Jesuit Refugee Service project) were to provide asylum seekers legal advice and assistance prior to first-instance screening. Private Hong Kong attorneys entitled to practice in Hong Kong, when hired by asylum seekers, could also provide legal advice at this stage.

At first-instance screening Immigration Department assistants, using UNHCR-approved questionnaires, interviewed asylum seekers to collect biographical information. This included the individuals' personal and family histories; military service data; involvement in political parties or resistance organizations; religious activities; any denial of economic and social rights; prosecution; and motives for leaving and not wishing to return to Vietnam. There was also provision for any additional points or comments the individual wished to make. Immigration officers, assisted by government-provided interpreters, interviewed the asylum seekers, using the completed questionnaires as baseline data, and recorded their claims to refugee status. The officers made preliminary refugee status determinations from this data. These decisions were reviewed by senior immigration officers before the applicants were notified of the screening results. Notices of determination explaining the decisions were to be given all applicants. If screened in as refugees, the applicants were moved to a refugee camp to await resettlement. If screened out, applicants were advised of their right to appeal.

Screened out applicants could appeal to the Refugee Status Review Board, a body composed of government and nongovernment officials. The review process was to be initiated by submitting the cases to the Review Board within 28 days of receipt of the initial status determination.

On the day applicants were notified of negative determinations, copies of their files were to be given to UNHCR legal consultants—Agency for

Volunteer Service counselors,² who met and advised them on the merits of their cases. If the counselors believed particular claims warranted reconsideration, the counselors prepared the submissions to the Review Board. If not, they provided applicants counseling and guidelines for submitting their own written submissions. According to UNHCR and Review Board officials, Agency for Volunteer Service consultants filed about 25 percent of the approximately 49,000 appeals filed.

Private Hong Kong attorneys could also file appeals on behalf of their clients. Review Board officials estimated that about 8 percent of those whose cases were not appealed by UNHCR counselors retained private attorneys who submitted their appeals for them.

The Review Board was organized into two-person panels, each of which heard cases. No legal representation or oral evidence could be given at the Review Board, although according to the Board chairman about 25 percent of the asylum seekers making appeals were re-interviewed by Board members.³ A positive decision by either panel member could overturn negative Immigration Department decisions.

The Review Board provided the asylum seekers written notification of its decisions, with reasons for decisions. If screened in at this review, the asylum seekers were transferred to refugee camps to await resettlement. If screened out, they were informed that they would be permitted to remain in Hong Kong pending their repatriation.

According to a representative of the Hong Kong Attorney General's Office, under Hong Kong administrative law asylum seekers could seek judicial review of the Review Board's negative decisions in the Hong Kong courts if they believed the decisions were unreasonable or illegal, or involved procedural improprieties. Judicial review was not a review of the cases' merits but, rather, the procedures employed in deciding them.

Asylum seekers apply for judicial review of their cases through the Hong Kong Legal Aid Department, which determines the merits of the applicants' claims. The Department can reject the applications, request the Refugee Status Review Board to reconsider (rescreen) the cases, or refer them to the courts for judicial review. According to a Legal Aid Department official, 3,651 asylum seekers had applied for assistance as of

²The Agency for Volunteer Service was a local nongovernmental organization created and financed by UNHCR to provide legal counsel to denied applicants.

³UNHCR could monitor the re-interviews.

July 1996. Of that number, 450 had been granted Legal Aid Department assistance, and another 1,354 applications were under active consideration.

The Legal Aid Department official could not provide us the number of cases rescreened by the Review Board or heard by the courts. According to the official, those statistics were not kept. However, the official said that few cases actually go to court as the Department usually processes deserving cases through the Review Board. According to the Attorney General's Office representative we spoke with, there was only one instance where the court ordered a decision by the Review Board set aside. In that case, the court ruled that both the first-instance and Review Board decisions were flawed by procedural irregularities.⁴

In what became essentially another level of review, the Hong Kong government recognized UNHCR's right to grant refugee status under its own authority.⁵ This meant that in cases the Hong Kong government rejected but UNHCR considered meritorious, UNHCR was able to recognize persons as refugees under its own mandate. UNHCR viewed recognition of its mandate as an important safety net for ensuring that no persons with valid claims were improperly screened out and returned to Vietnam.

According to UNHCR officials in Hong Kong, all screened-out applicants' cases, about 46,000, were examined for the possibility of mandate and about 11,000 were selected for mandate review. UNHCR granted mandates (refugee status) to about 1,550.⁶

⁴The individual was later rescreened, and was screened in, by Hong Kong authorities.

⁵The Statute of the Office of the UNHCR authorizes UNHCR to make its own determinations about refugee status. This authority is commonly referred to as mandate authority.

⁶As of January 1996.

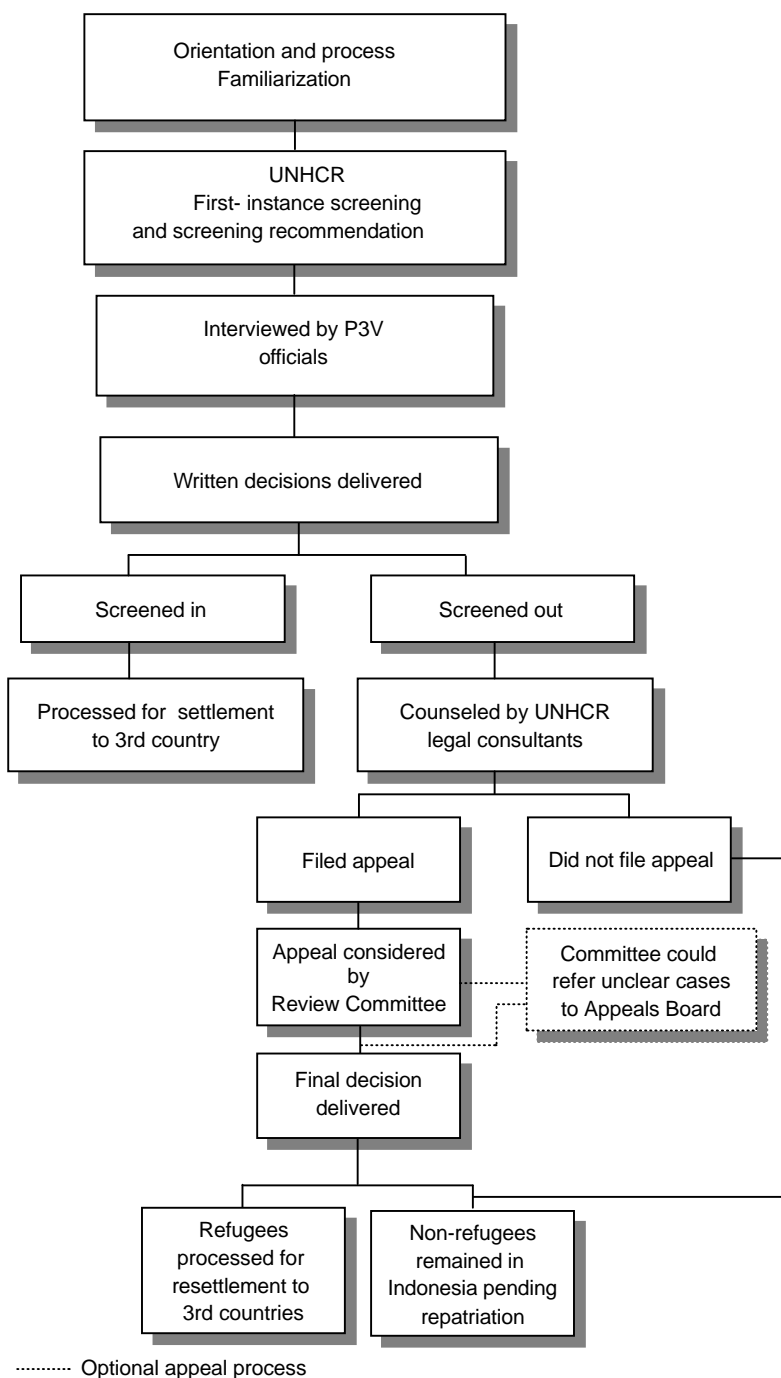
Asylum Seeker Screening Process in Indonesia

Refugee screening in Indonesia was a two-phased process that met basic international structural screening standards but did not contain some of the checks and balances we found in the Hong Kong process. UNHCR played a major role in the process, although the Indonesian authorities retained decision-making responsibilities.

Indonesia's Procedures and Criteria Were Consistent With CPA Guidance

Refugee screening in Indonesia began in September 1989 and ended in September 1993. All asylum seekers arriving after March 17, 1989, were screened for refugee status. (Those arriving before that time were automatically accorded refugee status and the opportunity to resettle in third countries.) The process in Indonesia was essentially a two-stage (first-instance and appeals) system, involving both Indonesian government authorities and UNHCR. This process is depicted in figure III.1.

Figure III.1: Screening Procedures in
Indonesia



First-instance screening was conducted at Galang, the island asylum camp located several hundred miles north of Jakarta, the capital. Upon arrival at the camp, asylum seekers registered and provided basic biographical information to P3V, the Indonesian inter-ministerial task force created to deal with Vietnamese boat people. Later, UNHCR staff provided group prescreening counseling and materials and explained screening procedures and criteria. UNHCR staff, assisted by Vietnamese camp volunteers, then administered a more comprehensive questionnaire, designed to elicit more detailed information about the individuals' claims for refugee status. We did not evaluate the adequacy of the information provided to asylum seekers during prescreening counseling. However, an independent observer with long experience at Galang told us UNHCR provided the asylum seekers ample information on the screening process and that asylum seekers were well prepared for the screening process.

At first-instance screening, preliminary interviews were conducted by UNHCR legal consultants, attorneys trained in international refugee determination procedures and criteria. The consultants were assisted by UNHCR interpreters. The consultants prepared written case evaluations and screening recommendations, on the basis of the applicants' biographical data and the interviews. The consultants worked under the supervision of a senior UNHCR legal officer, who was responsible for reviewing the consultants' case evaluations.

The asylum seekers' files, containing their biographical data, the UNHCR questionnaires, and the consultants' evaluations and screening recommendations were then passed to P3V. Teams of P3V officials, consisting of an interviewing officer and an interpreter, interviewed the asylum seekers to assess their credibility and verify the accuracy of the information in the UNHCR consultants' preliminary interviews. (UNHCR representatives were free to monitor the interviews, but only spot checked them, according to UNHCR officials.) The interviewing officers then prepared the first-instance screening decisions.

The UNHCR consultants' interviews were, in effect, the substantive first-instance screening interviews. According to UNHCR officials, P3V officials placed strong credence in the consultants' evaluations, and rarely disagreed with their recommendations. A UNHCR official told us that of the more than 3,000 cases screened positive by UNHCR at first-instance, P3V disagreed with the consultants' recommendations in only 22 cases. A UNHCR official informed us that some P3V interviewing officers asked only

a few questions of applicants, relying on the consultants' evaluations in reaching their decisions.

Written screening decisions were served to each applicant. Screened-in cases were processed for resettlement in third countries; those screened out were informed of their right to submit a written appeal.

Screened out applicants had 15 days from the date of notification to appeal their decisions. UNHCR legal consultants counseled applicants, mostly in group sessions, on how to submit their appeals. UNHCR-trained camp-resident volunteers assisted applicants in drafting their appeals.¹

Applicants' appeals were considered by the inter-ministerial Review Committee in Jakarta. The Committee based its deliberations on the applicants' appeals submissions and case files, which had been forwarded from Galang. It did not reinterview asylum seekers, according to UNHCR officials. The Committee could uphold or reverse negative first-instance decisions depending upon whether it believed the appeals submissions provided additional credible information and whether the cases had been screened in conformance with international refugee status determination criteria. Most appeals were decided at the Review Committee level. These decisions were considered final; however, according to UNHCR, many of the positive decisions were delivered to the applicants as late as 1 year or more after the decision was made. This was contrary to the CPA's guidance concerning prompt notification, and, according to a UNHCR program officer, provided an opportunity for corruption to occur.

The Committee had the option of referring questionable or unclear cases to a 10-member Appeals Board for final determination. The Committee referred only those cases on which it could not make a clear determination.

A UNHCR representative attended Review Committee and Appeals Board meetings as an observer and advisor. The representative was also responsible for presenting UNHCR's views on cases at appeal. UNHCR officials involved in the screening process told us applicants' case files and appeals were forwarded to the UNHCR office in Jakarta at the same time they were sent to the Review Committee. They said UNHCR in Jakarta reviewed all asylum seekers' appeals before they were discussed by the Review Committee to determine those with merit. They said that while

¹Indonesia did not permit nongovernmental organizations to participate in applicant counseling, as the Hong Kong government did with Agency for Volunteer Service counselors.

P3V at Galang had almost always accepted UNHCR positive screening recommendations at first instance, there were occasionally cases that P3V denied despite the recommendations. The Galang consultants noted those cases for Jakarta's review. The officials told us they instructed their representative to present UNHCR's views on the cases it felt strongly about to the Review Committee and/or Appeals Board.

According to UNHCR officials, UNHCR and the Review Committee or Appeals Board reached consensus on every case UNHCR believed merited refugee status. The Indonesian authorities accepted UNHCR's positive first-instance recommendations on all but 22 cases, screening out those cases during the appeals process. During the appeals process UNHCR concurred with the Review Committee's and/or Board's negative decisions. Thus, according to UNHCR officials, because no meritorious claims remained in question, UNHCR had no need to exercise its mandate authority. (Later, however, UNHCR mandated seven cases as a result of its reviews of screening decisions.)

UNHCR Monitoring of Returnees to Vietnam

The CPA charged UNHCR with administering the repatriation of asylum seekers determined not to be refugees but did not specifically charge the agency with the monitoring mission. However, U.N. Secretary General Javier Perez de Cueller did so in a September 1990 letter to the High Commissioner for Refugees, when he requested that the High Commissioner, independent of the mandate as High Commissioner for Refugees and on an exceptional basis, serve as the Secretary General's Special Representative to coordinate and monitor the returnees program to Vietnam. In his letter, the Secretary General noted that the CPA's success depended upon a balanced implementation of all its aspects, including that of the return and reintegration of persons determined not to be refugees, and that humanitarian consideration argued strongly for the United Nation's continued involvement in the matter.

As of February 1996, UNHCR employed seven international staff as monitoring officers (four based in Hanoi and three in Ho Chi Minh City) and a contingent of national administrative and support staff to implement its monitoring program. All of the monitoring officers were fluent in Vietnamese—several were also fluent in regional dialects. Five of the monitoring officers had worked in first-asylum country programs prior to taking positions as monitors in Vietnam. None of the monitoring officers needed or used interpreters in their work.

The UNHCR monitoring system is built around and keyed to priority cases, returnees of special significance or concern or those who specifically request monitoring upon their return.¹ UNHCR offices in the first-asylum countries are to notify the Hanoi office of pending returnees, both priority and routine cases. This information is to be placed in returnee databases in UNHCR's Hanoi and Ho Chi Minh City offices.

Returnees, who usually arrived by air in Hanoi or Ho Chi Minh City, were to be met by UNHCR officers and first-asylum country embassy representatives,² in addition to Vietnamese authorities. If the flights comprised involuntary returnees from Hong Kong, they were also to be met by British Embassy officials, as Hong Kong's involuntary return program, called the Orderly Return Program, was being carried out under a bilateral agreement between the British and Hong Kong governments

¹Examples of priority monitoring include individuals who may have been politically active in first-asylum camps or who may have been facing prosecution or imprisonment for criminal acts committed before their departure from Vietnam.

²According to UNHCR officials, embassy representatives usually met only Orderly Return Program, or involuntary returnee, flights.

and Vietnam. British Embassy monitoring officers were to independently monitor Hong Kong's involuntary returnees, including priority cases. British and UNHCR officers viewed their dual monitoring of these cases as positive reinforcement of each other's efforts. The British viewed their monitoring effort as necessary to be consistent with their orderly return Memorandum of Understanding with the Vietnam government, notwithstanding UNHCR's monitoring program.

Returnees were to be transferred from the airports to reception centers, where they were to undergo registration and reintegration processing by government agencies and foreign nongovernmental organizations, such as Nordic Assistance to Returning Vietnamese. They were also to be visited by UNHCR monitors, who were to answer any questions, pass out business cards with addresses and telephone numbers where they could be reached,³ and take names and addresses of individuals who requested priority monitoring.

From the returnee databases, UNHCR planned monitoring missions—field trips designed to visit specific priority cases. These cases were supplemented with names of routine returnees in the area. The monitors notified the government authorities of their monitoring mission destinations (by province, district, and village) and in the south provided lists of all returnees in the provinces to be visited.⁴

According to UNHCR monitoring officials this approach had several advantages. It

- ensured government authorities of UNHCR's openness, while securing the assistance of local officials as guides in finding individual returnees;⁵
- ensured systematic planning so that all priority cases would be visited;
- was more efficient than random visits; and
- did not specify individual priority cases to be visited.

This approach also enabled UNHCR to visit with local government officials and help ensure that local officials were adhering to government commitments not to persecute returnees.

³Unrestricted communication in Vietnam has led to increased direct contact by returnees with UNHCR monitoring officers. In 1995, for example, UNHCR's Ho Chi Minh City office had 1,168 walk-in visits.

⁴In commenting on a draft of this report, UNHCR said that it does not provide government authorities lists of returnees to be monitored in the north.

⁵According to UNHCR monitors, there are no street signs in many Vietnamese villages, and individuals must be located by local officials.

Monitoring missions, which normally consisted of two monitoring officers in the south and one in the north, were designed to contact 100 to 150 returnees per mission. Monitoring officers had conducted 363 monitoring missions as of our visit in February 1996. As they traveled, the monitors stopped at villages to ask village leaders and local citizens how local returnees were faring as a whole. They also visited outlying areas to ask similar questions. The monitors then visited individual returnees. UNHCR monitors told us that through these practices they gained a good knowledge about a much larger proportion of returnees than the numbers visited would indicate.

If the officers sensed a returnee was reluctant to speak candidly they employed the technique of either occupying government officials with one officer while the other took the individual aside, or simply taking the returnee aside, to discuss the situation. According to UNHCR officials, as well as our observations while interviewing returnees in Dong Nai province, government officials normally did not attend the interviews but rather waited in places such as coffee shops until the monitoring visits were completed. Monitors, as well as others with extensive experience in Vietnamese culture told us, however, that Vietnamese speak their minds freely and would not be reticent to voice their concerns of treatment in front of government officials.

The government's attitude and attention toward monitoring has evolved over time; returnee monitoring initially drew considerable government attention, according to UNHCR monitoring officers. They said their monitoring missions drew entourages of 10 to 12 persons, including officials from the Ministry of Interior and the Ministry of Labor, War Invalids, and Social Affairs; but, over time the government's attitude grew more relaxed. Over the last several years UNHCR monitoring officers were usually accompanied only by an official from the Labor and Social Welfare Department under the provincial Peoples' Committee and the Labor Ministry. These departments are UNHCR's counterparts and hosts in the provinces. They organize and administer the distribution of UNHCR's individual cash grants and support the planning and implementation of UNHCR's micro-projects.

Comments From the United Nations High Commissioner for Refugees

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

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AO/0277/96

9 September 1996

Dear Mr. Johnson,

Thank you for providing UNHCR a copy of your draft report "VIETNAMESE ASYLUM SEEKERS - Refugee Screening Procedures Under the Comprehensive Plan of Action" for the purpose of advance review and comment.

UNHCR's comments on the draft report are as follows:

1) Page 3, paragraph 1: The tumultuous backdrop to the creation of the Comprehensive Plan of Action (CPA) can hardly be over-emphasized. The CPA may be said to have been born out of a desperate need to find a common ground among three major parties (countries of origin, countries of first asylum, and countries which felt it imperative to provide protection to refugees). Only from the vantage of the situation of 1989 can one give proper perspective to the achievements of the CPA. UNHCR would therefore wish that the circumstances which led to the creation of the CPA be highlighted. One might reword the background description as follows:

"... However, by the late 1980s the combined effects of an unabating outflow, large numbers of asylees already in asylum camps, push-backs and denial of asylum policies known as interdiction at sea adopted by first asylum countries, wanton violence on the high seas, departure from rescue-at-sea principles and practice, and decreasing resettlement opportunities which placed increasing burdens on neighboring countries and territories, led to a crisis in the region involving the loss of innocent lives and the pressing need to reassess the situation in a comprehensive manner."

2) Page 5, paragraph 2: While the CPA agreement (Annex to the Report of the Secretary-General, A/44/523 dated 22 September 1989) may not appear to be explicit with regard to UNHCR's role in monitoring the situation of returnees, the CPA document does state, at part F. 13. (c) that:

./.

Mr. Harold J. Johnson, Associate Director
International Relations and Trade Issues
United States General Accounting Office
Washington, D.C. 20548
U.S.A.

Now on p. 2.

Now on p. 4.

- 2 -

"Returns will be administered in accordance with the above principles by UNHCR and ICM ... according to the terms of the Memorandum of Understanding signed with Viet Nam on 13 December 1988."

The Memorandum of Understanding, at paragraph 3 states:

"In the framework of a voluntary repatriation programme, the two sides have agreed to co-operate on the basis of the following principles and conditions

... d) In the exercise of UNHCR's traditional monitoring functions, SRV will allow UNHCR full access to the returnees.

So, while it may not be said that UNHCR's monitoring of the situation of returnees was a requirement of the CPA, it was an integral aspect of the entire package.

3) Page 5, paragraph 4: The CPA agreement, at paragraph 14, contemplated "alternatives recognized as being acceptable under international practices" if voluntary repatriation was not making sufficient progress. Out of this were born the various Orderly Return Programmes, each arranged between the concerned countries of first asylum and the Government of Vietnam. We are concerned that the statement in the GAO draft report that the Steering Committee of the CPA member countries "announced" such policy of return of Vietnamese non-refugees could be misunderstood to mean that the Steering Committee established a new policy. We believe that it would be more accurate to say: "The Committee reaffirmed that the only viable option for Vietnamese determined to be non-refugees was for them to return to Vietnam, either voluntarily or under a mandatory repatriation program."

4) Page 12, paragraph 1: While it may be the case that the Hong Kong Immigration Department officials reported to the GAO that they conducted CPA screening in accordance with the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, and no additional criteria were developed, we believe that note may be taken of the development of a document by UNHCR in November 1992 titled "Refugee Status Determination and Special Procedures under the Comprehensive Plan of Action". This guideline, while it does not have the authority of the UNHCR Handbook or the 1951 Convention relating to the Status of Refugees, provided an additional source of guidance against which Vietnamese claims to refugee status could be assessed, particularly at the appeals stage.

5) Page 19, paragraph 1: UNHCR would agree that the alleged existence of corruption in the screening process in Indonesia created an impression that refugee status was at times for sale. While this can be said to have undermined the integrity of the process as undeserving cases may have been screened-in due to corruption, the point must be firmly made that there have been no indications of any deserving cases being denied refugee status due to corruption. We believe that the draft report makes this point, but we are

Now on p. 6.
See comment 1.

Now on p. 10.

See comment 2.

Now on p. 15.

Appendix V
Comments From the United Nations High
Commissioner for Refugees

- 3 -

concerned that some readers may nevertheless choose to interpret the existence of corruption within the screening process as having impacted on the protection needs of those persons who deserved it.

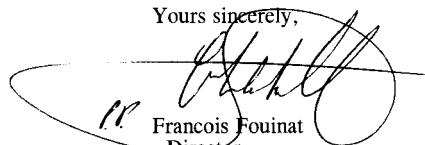
6) Page 50, paragraph 3 (Appendix III): UNHCR Indonesia has confirmed that altogether seven, not five, cases were given mandate status.

7) Page 52, paragraph 1 (Appendix IV): Concerning the returnee database, we believe that it may be worthwhile to note that the database's protection-relevant elements are accessible only to UNHCR's international staff. There are two databases, one in the south for the southern caseload and one in the north for the northern caseload.

8) Page 53, paragraph 1 (Appendix IV): Only in the south does UNHCR provide the Vietnamese authorities with a list of returnees to be monitored. There is no practice of providing lists of returnees to be monitored in the north.

We should like to express our appreciation to the General Accounting Office for the evident care and attention given to accuracy and fairness in the preparation of this report on the CPA.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Fouinat', is written over a large, faint oval shape.

Francois Fouinat
Director

Regional Bureau for Asia & the Pacific

Now on p. 45.
See comment 3.

Now on p. 46.
See comment 4.

Now on p. 47.
See comment 4.

The following are GAO's comments on the United Nations High Commissioner for Refugees letter dated September 9, 1996.

GAO Comments

1. We agree that the CPA Steering Committee's March 1996 announcement reaffirmed language in the CPA that asylum seekers found not to be refugees should be repatriated, and we revised our report accordingly.
2. Hong Kong Immigration Department officials we spoke with stated that refugee screening was conducted in accordance with UNHCR guidelines and that no additional screening criteria beyond that stipulated in the CPA were applied.
3. While our draft report referred to mandates resulting from UNHCR's 1995 reviews, we modified the report to reflect the number of mandates resulting from all UNHCR reviews in Indonesia.
4. We modified the report to incorporate this suggestion.

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