

LEGISLATIVE COUNCIL BRIEF

**Vietnamese Refugees and Migrants:
The Way Forward**

INTRODUCTION

At the meeting of the Executive Council on 22 February 2000, the Council ADVISED and the Chief Executive ORDERED that the strategy in dealing with the residual problems relating to Vietnamese Refugees (VRs) and Vietnamese Migrants (VMs) should be as follows -

(a) VRs

To widen the Local Resettlement Scheme to allow all VRs to apply for settlement in Hong Kong.

(b) VMs

- (i) to allow the non-nationals and their family members to apply for settlement in Hong Kong under the Local Resettlement Scheme; and
- (ii) to continue to repatriate the unclean cases once the factors holding up their return are removed.

(c) Pillar Point Centre

To close the Centre as soon as practicable.

(d) Vietnamese Illegal Immigrants (VIIs) and Millport Policy

To terminate the Millport policy.

(e) **United Nations High Commissioner for Refugees (UNHCR)
“Debt”**

To continue with efforts to press the UNHCR for repayment of the outstanding advances and appeal for donations.

BACKGROUND AND ARGUMENT

General Background

2. At the meeting of the Executive Council on 6 January 1998, the Council ADVISED and the Chief Executive ORDERED, among other things, that

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- (a) the “port of first asylum policy” for Vietnamese people arriving in Hong Kong should end, and the Immigration Ordinance should be amended accordingly;
- (b) the Administration should continue to pursue the resettlement of VRs to third countries and repatriation of VMs to Vietnam.

3. The package of measures were announced on 9 January 1998. There have since been significant developments on several fronts -

- (a) a standing mechanism for clearance and repatriation of VIIs has been agreed with the Vietnamese Government. Vietnamese officials now come to Hong Kong periodically on our invitation to interview and give clearance to new VII arrivals. Double or multiple-backers only requires clearance by correspondence. The mechanism has been operating smoothly with the average time for repatriation of VIIs after arrest kept reasonably short (about two months);
- (b) although the port of first asylum policy was not the cause of VII arrivals in recent years, the number of VIIs intercepted has dropped after abolition of the policy from a monthly average of 143 in 1997 to 75 in 1998 and 79 in 1999;

- (c) as a result of (a) and (b) above, the last Vietnamese detention centre, High Island Detention Centre, was closed in May 1998; and
- (d) UNHCR funds for the maintenance of VRs in Hong Kong has run out in January 2000. Confronted with massive refugee problems around the world, UNHCR has further reduced its presence in Hong Kong. Only one career staff has remained, whose post would lapse in a few months' time. Thereafter, the UNHCR sub-office in Hong Kong would be run by local staff only, to be overseen by the Regional Office in Beijing.

4. Apart from the above, it has become virtually impossible to resettle the 973 VRs and repatriate all the 567 VMs stranded in Hong Kong. The Administration has carefully examined various options to solve the residual problems. The options are discussed below.

Vietnamese Refugees¹

(A) Resettlement overseas

5. As at 1 February 2000, there were 973 VRs in Hong Kong. The resettlement of these remaining refugees has become almost impossible. The majority of them have no family connection overseas, or have criminal records and/or drug addiction problems. Their cases have all been rejected by the main resettlement countries despite repeated submissions by the UNHCR. In 1998 and 1999, only 231 and 71 VRs were resettled respectively. Only one is resettled so far this year.

6. The Administration has taken every opportunity to lobby the resettlement countries to accept VRs from Hong Kong. In particular, we have urged the British Government to take more refugees from Hong Kong in view of

Footnote 1: Vietnamese refugees refer to -

- (a) those who arrived before 16 June 1988 and were accorded refugee status without screening; and
- (b) those who arrived after this date but have been determined as refugees after screening or being mandated by the United Nations High Commissioner for Refugees.

its special responsibility over the problem. In response, Britain has relaxed the family reunion criterion since July 1997 and accepted 129 VRs which is more than any other countries. However, it has become clear that we have approached the end of this long drawn out process of resettlement. According to the UNHCR, there are only 16 active cases involving 37 VRs. Their chance of successful resettlement, however, is remote given their adverse record. We made a direct appeal to the international community at the UNHCR Executive Committee Meeting held in Geneva in October last year but received no response. The remaining VR cases can all be regarded as hard-core unresettleable cases. Nearly all of the VRs now in Hong Kong have been here for over 10 years or, for children, since birth.

(B) Resettlement in the Mainland

7. Being a signatory to the 1951 United Nations Convention relating to the Status of Refugees (the Refugee Convention), China is one of the resettlement countries. Theoretically, VRs in Hong Kong can be resettled in the Mainland. However, the Mainland has already accepted more than 280,000 refugees from Vietnam which pose a very heavy burden, and the Mainland authorities have indicated that they are unable to take in the VRs in Hong Kong. In any event, removal of VRs to the Mainland would likely be met with fierce resistance and protracted legal challenges.

(C) Voluntary return to Vietnam

8. The Vietnamese Government as a matter of principle objects to the return of VRs, although they have accepted a handful of vulnerable cases (mainly VRs with mental illness) from Hong Kong on humanitarian grounds. Of the 280,000 VRs in Mainland China, the Vietnamese Government have refused to take back those who volunteered to return, despite promise of UNHCR financial contribution. It is unlikely that the Vietnamese Government would change its position for Hong Kong. Furthermore, except a few vulnerable cases, none of the remaining VRs in Hong Kong have so volunteered despite active counselling and promotion by the UNHCR. It is not envisaged that further efforts in this regard would produce positive results.

(D) Revocation of refugee status

9. Under the Refugee Convention, refugee status could be revoked where the circumstances in connection with which a person has been recognized as a refugee have ceased to exist and the person can no longer refuse to return to the country of his nationality. Vietnam has undergone considerable changes over the past 20 years, but the basic social and economic systems remain largely the same. Any attempt to revoke the refugee status of VRs in Hong Kong may be fiercely resisted by the VRs and criticised by the international community. The UNHCR has indicated that it would not support this course of action. Our legislation has also not provided for the revocation of refugee status. The Vietnamese Government is unlikely to agree to take back these Vietnamese even if their refugee status is revoked.

(E) Local integration

10. VRs not accepted by any country would have to stay in Hong Kong indefinitely. Some have been here for over 20 years. Recognizing that they will be here to stay for a long time, our policy has been to encourage them to lead a normal and independent life, and be self-reliant. Services at the Pillar Point Vietnamese Refugee Centre (PPVRC) have been gradually withdrawn, and about 130 VR school children have been allowed to attend local schools since September 1998.

11. Many VRs in Hong Kong have de facto integrated into the society, working to support themselves, and many have their own accommodation outside PPVRC. However, a Local Resettlement Scheme² introduced in 1986 has not been effective. After 13 years of operation, only 196 of the 250 places have been taken up.

12. The refugee status has put the VRs in Hong Kong in a limbo. Some still harbour the false hope of resettling overseas. Others have given up.

Footnote 2: The Local Resettlement Scheme was approved by the then Governor-in-Council on 6 February 1986.

VRs meeting the following criteria are eligible to apply for settlement in Hong Kong -

- (a) they have been in Hong Kong since July 1982;
- (b) they should be ethnic Chinese;
- (c) they should be financially independent; and
- (d) they should not meet the resettlement criteria of other resettlement countries.

The Scheme has a monthly quota of 20 and an overall quota of 250.

Those who seek a healthy life often encounter difficulties, for example in finding a job, because of their status and because they do not have equal access to various services and facilities as ordinary Hong Kong citizens do. Their state of hopelessness and illusion breeds frustrations, crime and violence. This poses a continuing threat and burden to the society of Hong Kong. The longer we allow this state of affairs to continue, the more difficult and costly it would be for the problem to be resolved.

13. The Administration considers that the only effective and durable solution to the VR problem lies in complete local integration. The Local Resettlement Scheme should be widened to allow all VRs to apply for settlement in Hong Kong. Successful applicants would be allowed to stay and accordingly be issued with Hong Kong Identity Card (not Hong Kong Permanent Identity Card) and Document of Identity as travel document.

14. The success or otherwise of this option depends on the willingness of VRs to seek local settlement. While there is no question of the Administration compelling the VRs to accept our offer, it would be made clear that those who do not apply would not be eligible for benefits such as public housing and social security. They would be told that UNHCR would no longer provide for their maintenance and that PPVRC would be closed (see **paragraph 24** below). A time limit for application would be set so that the Local Resettlement Scheme would not be seen as an open-ended offer. This would also reduce the risk of a misguided influx of VIIs.

Vietnamese Migrants³

15. Since January 1998, we have successfully repatriated some 121 VMs to Vietnam. The returnees were mostly jailed VMs who have served their sentence. The residual caseload of 567 VMs can be divided into two main categories - namely, "non-nationals" who have been rejected by Vietnam; and Vietnamese nationals who for various reasons could not be repatriated (i.e. the unclean cases). A breakdown of the reasons holding up the return of VMs is at Annex A.

Footnote 3 : Vietnamese migrants refer to those asylum-seekers who arrived in Hong Kong between 16 June 1988 and 16 June 1995 (when the Comprehensive Plan of Action came to an end) and have been screened out as non-refugees. Arrivals after 16 June 1995 but before 9 January 1998 may exercise their right to be screened to become refugees or migrants. Those who did not exercise that right and those who arrived on or after 9 January are referred to as Vietnamese illegal immigrants.

(A) Non-nationals

16. There are 327 VMs rejected as “non-nationals” (most of whom are ethnic Chinese). We have pressed the Vietnamese Government to re-consider these cases. The Vietnamese Government indicated that they saw no need to interview the non-nationals, and would reconsider only if we could unearth fresh information to support their cases. After painstaking efforts to establish the family links of individual cases, the Administration has submitted 62 cases for re-consideration but only 18 have been accepted for return by the Vietnamese side.

17. The Administration has exhausted all its efforts on the non-national cases. The UNHCR has also approached third countries for the resettlement of some non-nationals as “stateless” persons, but the response was negative. These 327 non-nationals are arguably “stateless”. Most of them and their family members (about 108 in number) have been in Hong Kong for over 10 years with no prospect of being accepted elsewhere. Their situation is similar to the VRs. While some of them have effectively merged into the society, working to support themselves, most still lead a dismal life. About 80% of them live in PPVRC.

18. The Administration considers that for these 327 non-nationals together with 108 of their family members, complete local integration is the only durable solution. They are arguably de facto stateless persons. Under the 1954 United Nations Convention relating to the Status of Stateless Persons, which applies in both Mainland China and Hong Kong, we have an obligation to facilitate as far as possible the assimilation and naturalisation of stateless persons. The scope of the Local Resettlement Scheme should be widened to accommodate also the non-nationals and their family members. Taking into account both VRs and VMs, the revised criteria under the widened Local Resettlement Scheme are at Annex B. Profile of VRs and eligible VMs are at Annex C.

(B) The “Unclean” cases

19. Apart from the 108 family members of non-nationals, there are another 132 VMs who have been cleared for return by the Vietnamese Government but cannot be repatriated for the time being for various reasons such as ill-health, jail sentence and escape from custody. The Administration has so far succeeded in

persuading Vietnam not to set any deadline for repatriation, so that the VMs may be repatriated once the factors holding up their return are removed.

Pillar Point Vietnamese Refugee Centre

20. PPVRC is an open centre managed by “Caritas-Hong Kong”, who has been appointed by UNHCR since 1998. Before 1996, UNHCR fully funded the operation of PPVRC and was providing various services to VRs and VMs through NGOs. In 1996, Government began to make a modest financial contribution for some of the services provided. In 1998, because of financial difficulties, UNHCR has substantially reduced its budget for PPVRC. Government began contributing slightly more than half of the costs (about \$13.5 million a year) on the ground that about the same proportion of the residents in PPVRC were non-refugees. In 1999, the financial position of UNHCR further deteriorated. Funds available were barely sufficient for providing subsistence allowance to the vulnerable VR cases (e.g. abandoned children and chronically sick or handicapped persons). All other programmes were terminated and UNHCR has effectively withdrawn its involvement in the operation of PPVRC. UNHCR has indicated that no funds would be available beyond January 2000. Furthermore, Caritas also urges Government to resolve the VR/VM problem soon as they are reluctant to manage PPVRC beyond 1999/2000.

21. At present, PPVRC’s population consists of about 580 VRs, 430 VMs and 60 ECVs. All residents are permitted to work and are free to seek their own accommodation outside the Centre. Unauthorised entry into PPVRC is prohibited. Residents are not required to pay rent.

22. The existence of PPVRC has created a host of problems and is a stumbling block to our efforts to encourage VRs and VMs to lead a normal and self-reliant life. Although a breeding ground for crime, violence and drug offences, PPVRC is used as a fall-back home by those who have effectively moved out. Caritas has been grappling with the management problems with support from the Police, but the inherent environment of PPVRC makes the task formidable. If the situation is allowed to perpetuate, untoward incidents are bound to erupt, e.g. the outbreak of violence in June last year.

23. Built in 1982 as temporary housing, the physical structure of PPVRC is

also approaching the end of its designed life. Structural and fire safety is a major concern and maintenance has become very costly.

24. To eliminate the substantial risks and burden posed by PPVRC, and in line with our objective to enhance local integration, the Centre should be close as soon as practicable, say, after a prior announcement of three months. Closure of PPVRC should be part and parcel of our offer of residency to the VRs and VMs. Those joining the Local Resettlement Scheme must move out of PPVRC and seek their own accommodation in the private sector. Like ordinary Hong Kong residents, they may apply for public rental housing and Comprehensive Social Security Assistance (CSSA) in due course if they meet the normal eligibility criteria. Those who are not eligible to join the Local Resettlement Scheme and those who choose to retain VR/VM status must also move out and live on their own means since UNHCR no longer funds the Centre's operation. We shall engage Caritas to provide active counseling and assistance in finding accommodation to needy cases.

VIIIs and Millport Policy

25. Under the Millport policy, Vietnamese asylum seekers in boats were assisted in their voluntary departure from Hong Kong. When the port of first asylum policy was abolished, it was decided not to do away with the Millport policy for the time being for fear that more VIIIs would be detained in our camps. Now that a standing mechanism for the clearance and repatriation of VIIIs has been established, the Millport policy should be terminated. There is evidence that the policy has been abused by VIIIs who claimed innocent passage through Hong Kong to another destination, say, Japan, but only to be caught sneaking into Hong Kong again soon after their boats were replenished.

Ex-China Vietnamese⁴

26. Over the years, some 24,000 ECVs have been repatriated to the Mainland. Removal of the last group of 352 ECVs remaining in Hong Kong has been held up because of the court proceedings they initiated against the

Footnote 4: Ex-China Vietnamese refer to those expelled from Vietnam to China in the late 70s and early 80s. They were settled in China for some years before coming to Hong Kong illegally.

Government. The Administration would continue to monitor development of the court cases.

UNHCR “Debt”

27. Up till 1998, the UNHCR has been making annual repayments to cover the advance payments made by the Hong Kong Government on the maintenance of VMs. The latest repayment was an amount of US\$0.5 million in February 1998. Since then, no repayments have been made and the cumulative “debt” stands at \$1.162 billion. The UNHCR is confronted with massive refugee and humanitarian problems around the world and is unable to raise funds for all of its programmes. Funding for refugee programmes in the Mainland would also end this year. UNHCR’s assessment is that since Asia is not regarded by the donor countries as a problem area, no earmarked donations would be forthcoming.

28. The Administration has made repeated appeals to the UNHCR and international community direct for donation on numerous occasions, including the UNHCR Executive Committee Meetings in successive years but no positive response was forthcoming. We have also urged the British Government and enlisted the assistance of the CPG. However, these efforts have produced no result.

29. The Director of Audit has been monitoring the subject. In his report published in October 1998, he recommended that the Administration should continue to press the UNHCR to fully repay the outstanding amounts as soon as possible; to seek the assistance of CPG and the British Government to press the UNHCR to repay the outstanding amounts; and to urge the CPG and British Government to appeal to the international community to make donations to the UNHCR earmarked for reimbursing the outstanding amounts. The Public Accounts Committee (PAC) endorsed his views.

30. We would continue with efforts to press the UNHCR for early repayment of the “debt” and to appeal for donations.

FINANCIAL AND STAFFING IMPLICATIONS

31. PPVRC is currently running at an annual recurrent cost of about \$20

million. This amount includes both the contribution from the Government and UNHCR. Although UNHCR confirms its commitment to meet the cost of maintaining VRs in the centre in a Statement of Understanding signed with Hong Kong Government in 1988, its funds for the purpose has depleted in January 2000. In the circumstances, we would have to bear the entire cost of the centre if its operation continues. Widening the Local Resettlement Scheme would entail recurrent expenditure on the part of the Government in the provision of public housing, social security, education and other public services. The Administration considers that the impact on our public housing programme would be insignificant. On education, it is estimate that the annual recurrent expenditure on schooling will be \$7 million.

32. As regards social security payments, the VRs and VMs would be able to satisfy the residence requirement (which can be waived in hardship cases) one year after having been granted resident status in Hong Kong. Subject to their meeting other eligibility criteria, they would then be entitled to CSSA. As a considerable number of the Vietnamese are at present employed in regular jobs, it is impossible to estimate how many would eventually apply and be found eligible for CSSA. At present, only some 90 cases involving a total of about 300 persons are receiving cash assistance from Caritas. The estimated CSSA payments for these 90 cases, if effected, will amount to \$9.2 million per year.

33. The additional expenditure arising from extending social services to these Vietnamese settled in Hong Kong will be offset in part or in full by the saving arising from the closure of the PPVRC. There will also be recurrent saving of 21 posts amounting to \$12 million a year in staffing resources for the Vietnamese Section of Immigration Department and the Security Bureau.

PUBLIC CONSULTATION

34. After the incident in Pillar Point in June last year, the Administration has made known to the Legislative Council and the public that it would consider various options for a durable solution to the remaining problems. While it was generally agreed that we should continue with efforts to resettle the remaining VRs and repatriate the VMs, there have been calls from some sectors of the community for locally integrating the remaining VRs and VMs.

PUBLICITY

35. Apart from issuing a press release and holding a press conference, we will also issue a Legislative Council brief and be prepared to brief the Legislative Council Panel on Security. Briefings will also be held at the Pillar Point Centre to explain the closure of the Centre and application procedures for the Widened Local Resettlement Scheme to eligible VRs and VMs.

SUBJECT OFFICER AND TELEPHONE NUMBER

36. For enquiries, please contact Mr K S So, Principal Assistant Secretary for Security, at 2810 2506.

Government Secretarial
Security Bureau
22 February 2000

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The Way Forward**

ANNEXES

- Annex A - Vietnamese Migrants: Reasons holding up repatriation
- Annex B - Local Resettlement Scheme: Revised Criteria
- Annex C - Profile of Vietnamese Refugees and eligible Vietnamese Migrants

Vietnamese Migrants
Reasons holding up repatriation

Without clearance

Non-nationals 327

“Unclean” for return

Family members of Non-nationals 108

Family members of Ex-China Vietnamese (ECVs) 37

Medical hold cases 44

Imprisonment 26

Escapees 19

Pending enquiry with Vietnamese Government 3

Pending review by Refugee Status Review Board 3

Total

567

Annex B

Local Resettlement Scheme

Revised Criteria

Under the Local Resettlement Scheme, the following persons will be eligible to apply for settlement in Hong Kong –

- (a) all Vietnamese refugees who arrived Hong Kong before 9 January 1998 and since not departed Hong Kong;
- (b) Vietnamese migrants (i.e. non-refugees) meeting all of the following criteria –
 - (i) rejected by the Vietnamese Government as non-nationals;
 - (ii) not accepted by other countries; and
 - (iii) last arrived Hong Kong before 9 January 1998 and have since not departed Hong Kong; and
 - (iv) have not been determined by the Director of Immigration as refugees from Vietnam in China;
- (c) family members of (b) above who arrived Hong Kong before 9 January 1998 and have since not departed Hong Kong.

The widened Scheme will have no quota, but subject to an application deadline of six weeks after announcement is made.

As a general rule, applicants will also need to produce proof that they do not or no longer live in the Pillar Point Centre before formal approval is given to them under the Scheme.

Profile of Vietnamese Refugees (VRs) and eligible Vietnamese Migrants (VMs)

I by year of arrival

| | <u>No. of VRs</u> | <u>No. of VMs</u> |
|----------------|-------------------------|-------------------------|
| 1991 or before | 726(75%) | 299(69%) |
| 1992 or after | 0(0%) | 24(5%) |
| born in HK | <u>247(25%)</u> | <u>112(26%)</u> |
| Total: | <u><u>973(100%)</u></u> | <u><u>435(100%)</u></u> |

II by family size

| | <u>No. of VRs</u> | <u>No. of VMs</u> |
|---------------------|-------------------------|-------------------------|
| singleton | 442(45%) | 48(11%) |
| with family members | <u>531(55%)</u> | <u>387(89%)</u> |
| Total: | <u><u>973(100%)</u></u> | <u><u>435(100%)</u></u> |

III by age and sex

| Age | <u>No. VRs</u> | | | <u>No. VMs</u> | | |
|---------|----------------|---------------|----------------|----------------|---------------|----------------|
| | <u>Male</u> | <u>Female</u> | <u>Total</u> | <u>Male</u> | <u>Female</u> | <u>Total</u> |
| 0 – 8 | 128 | 135 | 263 (27%) | 96 | 83 | 179 (41%) |
| 19 –50 | 466 | 188 | 654 (67%) | 146 | 98 | 244 (56%) |
| over 50 | <u>41</u> | <u>15</u> | <u>56 (6%)</u> | <u>8</u> | <u>4</u> | <u>12 (3%)</u> |
| Total: | 635 (65%) | 338 (35%) | 973 (100%) | 250 (57%) | 185 (43%) | 435 (100%) |