

Detained

Pending repatriation

Hoi Trinh

A personal perspective on the Vietnamese boat people in Hong Kong.

The Editorial in *Refugee Concern* newsmagazine (Issue 4, March 1995, published by Refugee Concern Hong Kong) began with these words:

Someone once said words to the effect that we would not be truly civilised until we cared as much about the man starving halfway around the world as we cared about the man starving next door.

In many ways, Australia has been trying to assist those halfway around the world through Austcare and other non-government organisations. These achievements are commendable. However, Australia could do much more to alleviate human suffering by taking a more humanitarian approach when processing off-shore refugee and resettlement applications. In particular, Australia must ensure that its domestic policies do not adversely affect the well being of refugees overseas.

The issue

For many people the issue of Vietnamese boat people has been too complex and has gone on too long. It is the 21st anniversary of the Communist victory in South Vietnam on 30 April 1975 and this will remind many Vietnamese in Australia of the beginning of their dangerous exodus across the South China Sea in search of liberty. Many perished on the way to find a better future while some triumphantly made it to Australia where they are now rebuilding their lives and enjoying the freedom they were searching for.

Following the fall of Saigon in April 1975, the Communist victors began their campaign of ideological conversion. Hundreds of thousands of ex-officers of the South Vietnamese Government were put in so-called 're-education' camps across the country. Some were detained for a few years while others of more senior ranking were imprisoned for up to 15 years. Those who were considered to belong to the capitalist class had their property confiscated. Families were moved to New Economic Zones located in mountainous regions as punishment for their capitalist background.

This inevitably led to the mass exodus of South Vietnamese to neighbouring Asian countries. For a while the people of the Western world were shocked by what they saw on their TV screens every night. Vietnamese people from all walks of life left their homes and set sail for the open sea crammed in dangerous numbers in rickety crafts. Those who survived the perilous journey were awarded automatic refugee status pending resettlement in the West.

This did not last long. On 15 June 1988 (14 March 1989 for other asylum countries), Hong Kong announced that all arrivals would thereafter be 'screened' to determine their status, a practice which is applied in Western countries to 'sift the wheat from the chaff', the political refugee from the economic migrant.

Since then, all new arrivals have been treated as asylum seekers pending status determination. They are detained in detention centres

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until they can be screened. If the definition of a refugee is met, that is, a person who has a well-founded fear of persecution if returned, they are granted refugee status (screened-in) and moved to 'refugee' camps while those denied status (screened-out) remain in closed detention centres pending repatriation.

Being a Vietnamese migrant myself who came to Australia ten years ago, I have always been intrigued by the war and interested to see how the international community would end the boat people tragedy, a primary product of the infamous Vietnam War in its own right.

An opportunity came in the summer of 1992 when the then *Australian Lawyers for Refugees Inc. (ALRI)* asked me if I would like to join their volunteer legal team in Hong Kong for three months as a paralegal/interpreter. As it turned out, not only did I stay in Hong Kong that entire summer, my next two summers were also spent in Hong Kong where I had the pleasure of working for a remarkable 65-year-old grandmother lawyer, Pam Baker of Pam Baker & Co, the backbone of the now Hong Kong-based *Lawyers for Refugees (LR)*.

Hong Kong

At present, there are approximately 40,000 Vietnamese boat people still living in refugee camps in Hong Kong, Malaysia, Indonesia, Thailand and the Philippines. Hong Kong for the moment is bearing the bulk of the burden, housing more than half of the total population. At a meeting in Bangkok in January 1995, the United Nations High Commission for Refugees (UNHCR) and host governments decided that all but 1500 of those remaining in the camps did not satisfy the criteria for political refugee status, and will therefore be forcibly repatriated over the next few months, unless they volunteer to go home first.

In choosing to follow this path, first, the UNHCR and host governments have in effect reversed their policy of encouraging voluntary repatriation.

Second, the international community and most notably the UNHCR continue to ignore the fact that the refugee status screening process is fundamentally flawed and unfair. This has resulted in *bona fide* refugees being wrongly screened out.

The US Senate public hearing in July 1995 saw many refugee law experts and lawyers working closely with refugees testifying that the determination procedure is riddled with problems of translation, obtaining information, guidance for the applicants on procedures and their right to appeal. Most importantly, in Hong Kong the process is overridden by an executive desire to halt refugee arrivals to such an extent that international law for refugees is being wilfully ignored. In addition, the screening process has been severely compromised by the extent of corruption among immigration officials, most notably, in the Philippines and Indonesia.



Education in the camps has been axed, leaving the children to fend for themselves. [Whitehead Detention Centre, Hong Kong, Section 1.]

Third, despite assurances from both the Office of the UNHCR and the Vietnamese Government the fact remains that Vietnam is still a socialist state which persecutes as well as prosecutes its political dissidents. There have also been cases of returnees being harassed and imprisoned on the false pretext of having committed 'crimes' before they fled the country.

Having said all that, the heart-wrenching fact remains: the asylum seekers prefer to be detained even though in the poorest, most inadequate facilities. Many have been detained for more than seven years.

What can Australia do?

The question of precisely what could, or should be done in the circumstances is admittedly one of considerable controversy.

In an attempt to discourage Vietnamese from remaining in detention centres, the United States and other countries including Australia changed their policy in 1993 requiring failed refugee applicants to return to Vietnam while awaiting the results of their visa applications to reunite them with their spouses living overseas. There can be no dispute about the urgent necessity to process these split family cases and allow the reunion of family members some of whom have been separated for up to four years.

A recent US Court ruling held that US policy violates the *US Immigration and Nationality Act* which provides that 'no person shall be . . . discriminated against in the issuance of an immigration visa because of the person's . . . nationality . . . or place of residence'. This illustrates how the international community has mismanaged the refugee situation in pursuit of its agenda, resulting in anger and disbelief on the part of the boat people.

International conventions and equity demand that immigrant visa applications for Vietnamese detainees be processed while they remain in the camps. All applications should be treated alike, irrespective of nationality and place of

residence. Requiring asylum seekers to return to Vietnam to be considered for a visa application places them in a distressing and potentially dangerous situation.

The argument for resettlement in the West on humanitarian grounds also applies to the cases concerning unaccompanied minors and those who are found to be stateless. One is considered to be stateless if no government recognises you as their national. For example, the Vietnamese Government categorises people of Chinese origin, albeit born in Vietnam, as non-nationals of Vietnam if they do not possess any form of Vietnamese identification documents such as household registration to prove the existence of their former life in Vietnam.

The recent *habeas corpus* (illegal detention) case heard in the High Court of Hong Kong and the Privy Council in London highlights the fact that for many years a large number of these stateless people have been illegally detained with their legal rights being totally disregarded. Despite the Vietnamese Government's consistent policy not to accept the repatriation of non-nationals, the Hong Kong Government continued to arbitrarily detain these people until the Privy Council's ruling ordered their release on the basis that it was unlawful to detain them indefinitely.

These stateless people still do not have a home to go to, and neither do they have any credible assurance from the international community that they will be resettled. There is not only a moral obligation but also an international duty to resettle these stateless people.

Australia can play a significant role in resolving the present situation concerning the rest of the camp population. Uncensored information about the situation in Vietnam should be made available and any legal rights to which the detainees are entitled should be readily acknowledged. It must be recognised that this is not just Hong Kong's problem but an international one requiring a great deal of goodwill from all the Western nations involved. Resettling a few hundred stateless people does not pose a huge threat to national security. In fact by doing so, Australia would act within the spirit of international conventions for refugees.

In October 1994 the Australian Senate resolved that the UNHCR and the Commonwealth Government should look

into allegations of incompetence, bribery and sexual demands from immigration officers in asylum countries. These actions have undermined an effective screening process and it is alleged that there is an urgent need to rectify the situation.

On the one hand, it is important to ensure that internationally recognised immigration procedure is not abused. On the other, Australia must ensure that applicants who have arrived on our shore, despite having been screened out elsewhere incompetently or negligently, are rescreened.

Last year Australian Immigration Officers granted refugee status to two Vietnamese applicants despite the fact that they had been determined not to be refugees by Malaysian immigration officers. Australia, however, stopped screening new arrivals shortly after this incident announcing that they would not rescreen those who failed to gain refugee status elsewhere. To process these new arrivals' applications is not only required by our own common law principles but also by international refugee law.

It becomes increasingly evident that there has to be collective international effort to enable Vietnam to prosper through economic progress and political liberalisation, particularly to assist those asylum seekers forced to return. Australia's efforts to assist Vietnam through aid and trade is a step in the right direction. However, Australia must ensure that as a trade off for assistance, Hanoi gives a guarantee that it will respect basic human rights. After all, if the human rights of refugees were respected at home, there would have been no reason for them to flee to other countries in the first place.

Conclusion

For the boat people in asylum countries such as Hong Kong, many months or years of uncertainty still lie ahead. Those in the camps still face years of detention while they wait in vain for resettlement.

As suggested above, the international community, including Australia, must quickly respond to the problem by introducing drastic measures to remedy the fundamentally flawed refugee status screening process. We also need to assess split family cases for resettlement on humanitarian grounds and respect the legal rights of detainees. Unless this is done, the sorry tale of Vietnamese boat people will continue to haunt our consciences in the years to come.



The distinctive SOS formation: a cry for help to an unhearing world. [Whitehead Detention Centre, Hong Kong.]