

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Question

Please provide some documentary evidence regarding Vietnamese law(s) against illegal departure by Vietnamese in the late 1970s to early 1980s (before 1985) to indicate whether people were punished for illegal departure in 1979.

RESPONSE

Please provide some documentary evidence regarding Vietnamese law(s) against illegal departure by Vietnamese in the late 1970s to early 1980s (before 1985) to indicate whether people were punished for illegal departure in 1979.

The year 1979 saw a number of important events occur in response to the large number of Indochinese refugees in South East Asia. In January that year, the ASEAN Foreign Ministers issued a statement asking for recognition by the international community of the seriousness of the problems ASEAN countries faced in absorbing these people. In addition, it stated that

The ASEAN Foreign Ministers emphasized that the continuation of the refugee problem, apart from causing difficulties to ASEAN countries, would seriously affect the stability of the region. Noting that the outflow of people from Indochina has reached alarming proportions, they stressed that the Government of Vietnam, which has pledged to promote regional peace and stability and other countries of origin should take appropriate measures to tackle the problem at the source. (ASEAN 1979, "Joint Press Statement The Special ASEAN Foreign Ministers Meeting on Indochinese Refugees", Bangkok, 13 January - <http://www.aseansec.org/1258.htm> - Accessed 20 August 2007 – Attachment 1)

Numbers leaving Vietnam continued to increase in succeeding months with additional refugees created following the invasion of Cambodia at the end of 1978. Earlier in 1978 problems with China and the resultant exodus of a significant number of ethnic Chinese from North Vietnam to China along with the suspension of China's aid program to Vietnam in June all contributed to the creation of the refugee crisis of the following year (See e.g. Centre for Applied Linguistics University of California 1980, "Indochinese refugee education guides : general information series #22"

<http://content.cdlib.org/xtf/view?docId=hb138nb08w&brand=calisphere&chunk.id=meta> – Accessed 20 August 2007 – Attachment 2).

Following meetings between the UNHCR and the Government of Vietnam, a Memorandum of Understanding was agreed to on 30th May 1979 to facilitate the "orderly departure of person who wish to leave Vietnam for countries of new residence". It was, however, only at the UN Conference in Geneva on 20-21 July convened by the UN Secretary-General and attended by 65 countries that Vietnam was finally pressured to accept responsibility for the large scale exodus of people to neighbouring countries or beyond:

The countries of resettlement including the US, the UK, Australia, France and Canada pledged to increase the places of resettlement of Boat people from 125,000 to 260,000. On their part, the ASEAN countries and Hong Kong undertook to 'fully respect the principle of first asylum'. Vietnam promised that 'for a reasonable period of time it will make every effort to stop illegal departures' and to implement the Orderly Departure Programme (ODP). (Chetty, A. Lakshmana 2001, "Resolution of the Problem of Boat People: The Case for a Global Initiative", *ISIL Year Book of International Humanitarian and Refugee Law* <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/8.html> - Accessed 17 August 2007 – Attachment 3)

The Memorandum stipulated that

Authorized exit of those people who wish to leave Viet Nam and settle in foreign countries – family reunion and other humanitarian cases – will be carried out as soon as possible and to the maximum extent. The number of such people will depend both on the volume of applications for exit from Viet Nam and on receiving countries' ability to issue entry visas. (Memorandum of Understanding Between the UNHCR and Vietnam May 30 1979, in Druke, L 1993, *Preventive Action for Refugee Producing Situations*, Peter Lang, Frankfurt am Main, p. 241 http://64.233.179.104/scholar?hl=en&lr=&q=cache:fDxna_aQ8nsJ:www.unhcr.bg/luise/kn2.pdf+preventive+action+refugee – Accessed 20 August 2007 – Attachment 4)

Relevant official Vietnamese documents in English from this period are not easily accessible but there are many indications that at least until the middle of 1979, the Vietnamese government was actively involved in encouraging the outmigration of some of these people.

In a June 1979 article in the *Far Eastern Economic Review* it was reported that

Rough estimates put Hanoi's receipts from the refugee traffic at US\$115 million for the past year -- about 2.5% of the total estimated gross national product. The ministries in effect issue departure orders to southern provincial capitals. There, local officials negotiate contracts with boat organisers for the journeys to Asean countries. And a tax of about four taels of gold is levied on each "official" passenger. As a greater number of organisers as well as communist military officers once profiteering from the exodus join the ranks of refugees, the REVIEW

has been told repeatedly the details of the "industry" arising from Hanoi's apparent desire to rid itself of social misfits and to control privately-hoarded gold. ...

It is Vietnamese policy, they said, to encourage "undesirables," mostly ethnic Chinese, to leave. "They use scare tactics," said one. "After the government takes everything, they threaten the urban population with orders to move to New Economic Zones ... it is just like [the Khmer Rouge] did in Kampuchea ... except that instead of killing ... people, they ship them out." Other organisers also talked about despatch orders coming direct from Hanoi. "Ut Quang [a Kien Giang province official] reports to the provincial chief in Rach Gia [Kien Giang's capital] who makes a full report to Hanoi. They [Hanoi] know how many boats have been authorised to leave and how much gold has been collected by the government." (Sacerdoti G., 1979, "How Hanoi cashes in: Boat organisers and former communist officials tell of taxes on the refugee trade", *Far Eastern Economic Review*, Vol. 104, No 24, pp. 24-26 http://www.feer.com/articles/archive/1979/7906_15/P024.html Accessed 21 August 2007 – Attachment 5)

Another commentator argued that

Behind the racket are senior members of the Hanoi Government and Mafia-like syndicates set up to coordinate the operation outside Vietnam. According to reports, the Hanoi Government appointed a Politburo member, Nguyen Van Linh, answerable only to the Prime Minister, Pham Van Dong, to organize the traffic, although it was understood that official involvement should be kept to a minimum...

...Disclosures made by refugees in Manila and Hong Kong, including evidence given at conspiracy trials, have conclusively established that the Socialist Republic of Vietnam had connived at and been a culpable party to the refugee traffic organized by criminal syndicates based in Vietnam, Macao, Hong Kong, Singapore and elsewhere. (Cartmail, K. St 1983, *Exodus Indochina*, Heinemann, Auckland, 1983, pp. 98, 99 – Attachment 6)

Countries such as Malaysia and Thailand became increasingly concerned as the year progressed and on 15th June the then Malaysian Deputy Prime Minister Dr Mahatir Mohammed asserted that refugees arriving by boat who attempted to land on Malaysian shores would be "shot on sight". (Druke, L 1993, *Preventive Action for Refugee Producing Situations*, Peter Lang, Frankfurt am Main, p. 75 http://64.233.179.104/scholar?hl=en&lr=&q=cache:fDxna_aQ8nsJ:www.unhcr.bg/luise/kn2.pdf+preventive+action+refugee – Accessed 20 August 2007 – Attachment 4)

At its June Ministerial Meeting in Bali at the end of June ASEAN called upon support from the international community to assist in solving some of the Indochinese refugee problems and formally declared that it would not accept any more "illegal" immigrants:

23. The Foreign Ministers agreed that Vietnam is responsible for the unending exodus of illegal immigrants and has a decisive role to play in resolving the problem at source. They strongly deplored the fact that Vietnam had not taken any effective measures to stop the exodus. The Foreign Ministers further expressed serious concern over the incessant influx of Kampuchean illegal immigrants into Thailand arising out of the armed intervention and military operations in Kampuchea.
24. The Foreign Ministers stressed that ASEAN countries which had become a heavy burden of providing temporary shelter to the illegal immigrants/displaced persons (refugees) have reached the limit of their endurance and have decided they would not accept any new arrivals. They reiterated the decision of ASEAN countries to take firm and effective measures to prevent further inflow of illegal immigrants/displaced persons (refugees). The Foreign

Ministers gave notice that the ASEAN countries would send out the illegal immigrants/displaced persons (refugees) in their existing camps should they not be accepted by resettlement countries, or by the respective Indochinese countries within a reasonable time-frame, and in the absence of any arrangements to the contrary. To ensure the effectiveness of these measures, the Foreign Ministers agreed to coordinate the effort, of their respective governments.

25. The Foreign Minister agreed that in the efforts at the international level to find a solution, emphasis should be given to solving the problem at source. They further agreed that as the country responsible for the exodus, Vietnam has a decisive role to play in the resolution of the problem. The Foreign Ministers appealed to the international community to prevail upon Vietnam to stop the exodus. Any illegal immigrants/displaced persons (refugees) leaving Vietnam or the other Indochinese states continue to be the responsibility of their respective countries of origin which must accept them back under existing international law and practice. This responsibility also applies to those who are now in camps in ASEAN countries... (ASEAN 1979, "Joint Communique Of The Twelfth ASEAN Ministerial Meeting Bali, 28-30 June 1979" <http://www.aseansec.org/1242.htm> - Accessed 21 August 2007 – Attachment 7)

The Geneva Conference resulted in additional measures taken to alleviate the problems referred to in the ASEAN statement, and Vietnam seemed to make some show of prosecuting some of those involved with people smuggling activities (Cartmail, K. St 1983, *Exodus Indochina*, Heinemann, Auckland, 1983, e.g. pp. 26, 99ff – Attachment 6). Numbers of refugees dramatically fell in subsequent months.

List of Sources Consulted

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http://www.irb-cisr.gc.ca/en/research/rir/index_e.htm

UK Home Office <http://www.homeoffice.gov.uk/>

US Department of State <http://www.state.gov/>

United Nations (UN)

UNHCR <http://www.unhcr.org>

Refworld <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>

Non-Government Organisations

World Legal Information Institute <http://www.worldlii.org/>

International News & Politics

BBC News <http://news.bbc.co.uk>

Search Engines

Google <http://www.google.com.au/>

Copernic <http://www.copernic.com/>

Vivisimo <http://www.vivisimo.com>

Databases:

FACTIVA (news database)

CISNET (Department of Immigration Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

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