

The U.N. Comprehensive Plan of Action

A Report by Tom Clark, Coordinator, ICCR

I was the Canadian on a six-member team of U.S., Canadian and Australian non-governmental organizations (NGOs) that visited Vietnam, Thailand and Hong Kong 14-21 May 1991. The team included: **Le Xuan Khoa**, Indochina Resource Action Center, Washington; **Burgess Carr**, Episcopal Migration Ministries, New York; **Dale de Haan**, Immigration Refugee Program, Church World Service, New York; **Ralston Deffenbaugh**, Lutheran Immigration and Refugee Services, New York; **Tom Clark**, Inter-Church Committee for Refugees, Toronto; **Russell Rollason**, Australian Council for Overseas Aid, Canberra.

The trip followed a renewed and stronger commitment issued by the Steering Committee for the U.N. Comprehensive Plan of Action on 30 April 1991. With the team, I was able to examine aspects of the Plan, especially regarding:

- the safety and dignity of voluntary return to Vietnam;
- the discouragement of clandestine departures from Vietnam;
- the conditions of detention in Hong Kong; and
- the fairness of the Screening procedures in Thailand and Hong Kong which decide whether Vietnamese are refugees to be resettled in the West.

In Thailand, the team visited Bangkok airport departures and Phanat Nikhom processing. The planned trip to witness screening at Sikhui was cancelled because UNHCR feared a riot. The team met U.S. and Australian consular officials. I was able to meet UNHCR staff responsible for screening training and review. I also had a breakfast meeting with the Canadian NGO link. In Vietnam, the

team visited Hanoi, Hai Phong, Hong Gai in Quang Ninh and Ho Chi Minh City. We met NGOs, peoples committees, the British first Under-Secretary and Australian Ambassador in Hanoi, and numerous returned Vietnamese in Hai Phong, Hong Gai and Ho Chi Minh city.

I continued with some of the team to Hong Kong where I met an NGO group over breakfast and had an extensive discussion with the UNHCR team. My colleagues continued to visit two detention camps and to meet with the government officials responsible. One member went on to Cambodia. Another went on to Kuala Lumpur.

The Steering Committee report of 30 April 1991 called for an NGO visit. Our visit was coordinated by the UNHCR with cooperation from authorities in Thailand, Vietnam and Hong Kong. My thanks to officials and returnees who gave interviews and answered questions.

Voluntary Return

Reasons for return were hard to get from interviews, whether at Bangkok airport, in Phanat Nikhom camp Thailand or back in Vietnam. Some had been screened out and some had not yet been screened. Most had not been in camps a long time. Many seemed to have travelled in 1989 and returned during 1990.

It is an observation not a criticism that people returning seemed sad and lethargic in Bangkok airport. UNHCR said there were camp farewell parties. Return from a camp community is not an easy thing. The human aspects of return and all the dynamics of the camp conditions are critical factors. My NGO contact in Thailand said people would go back with "no objec-

tion" if told to, but were unlikely to volunteer to return. It was a kind of face-saving.

The camp conditions contribute to difficulties in voluntary return. There had been protests in Phanat Nikhom with reports of two dead in an incident 3 March 1991. A further death was reported in the press during my return. In the camp, UNHCR had a video about conditions in Vietnam and a room of magazines and newspapers from Vietnam. There was a room for signing up for voluntary return. This is where interviewing began. On one occasion I went outside with my interpreter and was surrounded by a crowd. Almost none had heard of the CPA or had expected screening when they left. Most were apprehensive about screening: "I have a relative — will I go?"; "I was in the army in the South, will I go?" Obviously, reflection and objective decision making are difficult in Phanat Nikhom.

I left for Canada before the visit to the detention camps in Hong Kong. However, they have been described on many occasions and such descriptions were updated at our meeting with UNHCR, Hong Kong. The frenzy of uncertainty seems worse in Hong Kong than in Thailand. The camps in both countries have self-armed vigilante gangs. UNHCR pointed out that in a camp situation police activity, such as arrest of criminal elements and trial with witnesses, becomes a legal nightmare. From both Thailand and Hong Kong I got a sense of camp solidarity behind the fantasy of attaining resettlement in the West — even after screening. UNHCR conceded that flaws in the screening process were an opening for NGOs opposing return to argue against it. Observers felt organized camp oppo-

sition to return developed around the few large scale criminal organizers who would have to face prosecution if returned to Vietnam. Paradoxically, it seems the closed camps are places that block the kind of individual reflection and frank counselling which could lead to voluntary return. A Hong Kong NGO confided that efforts at forced return would lead to riots and bloodshed. The British Under-Secretary in Hanoi said that if people wished to end their self-inflicted misery in Hong Kong they could always leave. In practice this is not so. Not only are the camps a monumental assault on human rights and decency, but they breed conditions that defeat the intended goal of voluntary return.

There is a logistical side to return. The Vietnamese department of immigration, which we met in Hanoi, sends immigration officers to the camps to interview volunteers for return. They prepare the dossier for the return to their point of departure. There are also medical checks. It struck me how similar the process was to interviews by Canadian officials for immigration to Canada.

Safety in Return

In our interview with returnees, international NGO staff, diplomats, foreign journalists, European Community (E.C.) and UNHCR staff, we heard no evidence to indicate returnees suffer harassment, maltreatment or discrimination. The Vietnamese Government at national and peoples committee levels supports return with safety and dignity. To my surprise, there was no visible signs of resentment from family or friends towards the returnees. Perhaps because the pattern of seeking opportunity elsewhere is taken for granted. Vietnam is willing and able to assure returnees' basic rights.

Those who had visited Vietnam before were surprised by the considerable progress made towards a more open society. People bustled around, freely moving around the country and

visiting friends. Small retail businesses abound. Around Hanoi there were houses being built along the roadside in what appeared to be small private farms. We sensed a desire for further progress towards a free and open society. I heard reports of odd human rights violations — a writer had been detained and a Baptist clergyman harassed for trying to start social programs. The courts are not developed, there is no independent judiciary, there is no recourse for rights violations. However, there is now a criminal code. There was less visible sign of police than I have seen in Mexico. There was no sense of fear such as I have felt in El Salvador. I had written letters of concern to the Canadian Government about return to Somalia and Sri Lanka before leaving on this trip. Vietnam is in a different league. Not everyone, however, returns to Vietnam without penalty. The Vice-Chair of Hai Phong refugee committee told us that those associated with large scale clandestine departures had been prosecuted. Those who were involved returned knowing they faced prosecution. The penalties seem to be up to three years in prison. There was one death penalty of a person whom UNHCR said was associated with seven deaths.

My confidence in safe return was enhanced by the monitoring of those returned. True, UNHCR cannot forever ensure the safety of all returnees. UNHCR tries to do checks on a random basis. Almost all returnees knew how to get hold of UNHCR. Some had done so on financial matters. The random checking can be impressive — in one area 80 percent had been visited. However, there is more protection than UNHCR's. There is an informal network, which ensures word gets out internationally. Indeed, the danger in ensuring information about an event is accurate. The increasing presence of international NGO staff in both urban and rural areas contributes to the flow of information and enhances confidence in the formal monitoring process.

There was not a sense that visits were orchestrated. Rather, we were

making calls on our own selection of cases. True, a check to ensure people would be at home had been made in some cases. We were able to visit and talk freely with returnees with or without government or UNHCR staff present. A visit the last day in Ho Chi Minh city impressed me. Our member of the U.S. Vietnamese community, Le Quam Khoa, took us to the Ministry of Labour, asked for and was given the file of cases pending, and selected an important profile. We set off for an impromptu visit with two Ministry of Labour counsellors. The address was a cousin's house — the person had moved. The cousin, however, offered to take us to the new address nearby. After a few friendly tips from neighbours, we arrived. The man was sick — medical assistance from UNHCR was pending. Donor governments had been slow to give funds to UNHCR we told him. He was an officer from the Cambodian campaign who had deserted the army. He had left for Thailand with his wife and child. He had been screened out. Perhaps he should have been screened in. What happened when he got back? He had to go to the police station the next day. There he received amnesty. Lacking the promised UNHCR monthly payments of \$30 U.S., he went to protest at the Ministry of Labour. The Ministry phoned UNHCR for a letter promising the funds and then advanced them. We told the returnee of the E.C. Assistance Program and vocational training opportunities. In impromptu encounters of this sort, there was no sense of fear or resentment of us or the Ministry of Labour staff who were with us. The relatives, neighbours and family seemed friendly and relaxed.

Payments to the returnees go from UNHCR to the Ministry of Labour, which distributes it to the provinces. By-and-large this internal distribution seems to work. Most people we interviewed had received their money. Some had had to pay back loans or debts. Some had invested the money in things like a new fishing boat — Hong Kong had burned the old ones in its routine boat burning. There are

one time payments for medical and establishment costs, and a monthly \$30 payment for the first year. This reminded me of refugee resettlement in Canada. The main problem has been getting money from donor governments to UNHCR, which had been late with payments to the Ministry of Labour between November 1990 and May 1991. Such a delay leads to rumours of broken promises, which can hurt the return process.

If departure is from lack of opportunity, the E.C. program is one small measure to help deal with that while facilitating return with dignity. The program will build up infrastructure in vocational training for such skills as hairdressing, motor cycle repair, computer and English and French language. It will provide loans for a range of new business formations. Sixty percent of the loan funds are for non-returnees. We were impressed by the scope of the program and by the sense of urgency the Program Director in Hanoi showed in discussions on progress. We welcomed the substantial NGO involvement in the implementation of the program.

Clandestine Departures

Departures for Hong Kong began increasing again in early 1991 while departures for Thailand and elsewhere have fallen. Several officials, the Vice Chair of the Peoples Committee of Hang Ninh Province told us Vietnam had a responsibility for these people. The prosecution of some criminal elements associated with organized departures was a sign of this. Also, the government, with UNHCR, has used radio and TV to discourage departure. Members of our team appeared on TV to explain the CPA in Hong Gai. However, NGOs did not think the UNHCR media efforts had reached many people to date. Certainly, those in Phanat Nikhom, Thailand, were unaware of screening and the CPA when they left Vietnam. However, departure seems to be caused by several factors mainly outside the control of Vietnam.

The local Vietnamese officials mentioned these factors affecting departure: the economy is undergoing transformation; the beginnings of market economy have caused job dislocations; the country is poor as a result of economic isolation from the West and the collapse of the economy of the East; and troops have been brought back from Cambodia. Some energy and small scale construction had been visibly released in the North by the agricultural reforms. We could see coal export in the North and signs of manufacturing in the South. However, officials reported a poor harvest. The E.C. and other development and trade programs are therefore critical to facilitate successful return into this uncertain economic climate. However, poverty alone was not the single answer to clandestine departure.

We were able to visit the U.S. orderly departure program in Ho Chi Minh city. NGOs reported a history of harmful shifting definitions of eligibility. It seems that this program and the family reunification programs of Australia and Canada are now working more effectively to allow eligible family members to immigrate directly from Vietnam. The U.S. anticipates 10,000 per month for at least two years. There is less need for these persons to flee the country to seek resettlement. However, in Phanat Nikhom, several Vietnamese asked me about joining their relatives. They are not being screened in from the camps in Thailand unless they are a spouse or child of a resettled refugee. They would have to return to Vietnam before they could be processed.

The arrivals in Hong Kong are the object of newspaper articles and editorials. UNHCR said Hong Kong has set limits on the numbers it can take in detention centers. They had about 53,000 people when I was there. The capacity was said to be 58,000. UNHCR gave the impression of siege with prospects of public protest around the upcoming Hong Kong elections. I pointed out that Hong Kong had agreed to a treaty, the CPA, and how it handled its internal political matters was its responsibility. I

understand the U.N. Human Rights Committee recently examined the U.K. under article 40 of the Covenant on Civil and Political Rights. The treatment of aliens in Hong Kong featured prominently. From my fleeting encounter with a local NGO group, the appalling conditions of detention seemed to be the key issue. They want a way of getting these human beings out of counter-productive detention. The situation for children is especially cruel. In any event, new arrivals are presented as a massive problem for Hong Kong.

NGOs, Vietnamese officials, foreign diplomats in Vietnam and Thailand, and UNHCR officials all reported the dramatic effect on departures because of rumours from outside Vietnam. In particular, they almost all reported how a U.S. Congressman's suggestion of using Vietnamese labour in Kuwait correlated with a surge in arrivals in Hong Kong. In our interviews we asked if people would depart again and if they knew of people who would take them. On several occasions neighbours nodded when we asked if they knew of people who would take them. I got the impression of a pattern of departure. The rumor is the trigger. Paradoxically, Canada, Australia, France, Hong Kong and Thailand have a big say in clandestine departures and these governments must assume responsibility for the rumours and the departures they cause. In this respect, Canadian Prime Minister Brian Mulroney's comments of the week beginning 20 May 1991 in favour of increased resettlement from Hong Kong could have led to increased departures from Vietnam undermining the CPA agreement.

Screening Procedures

The NGOs consulted in Hong Kong and in Thailand did not feel that screening was the most pressing issue. The UNHCR team in Hong Kong agreed with my proposition that flaws in the screening had added to the uncertainties of persons screened out and made voluntary return more dif-

difficult. The Steering Committee meeting of April 30 1991 had decided to try to improve the screening procedures. I did talk to the UNHCR officials in Thailand. I was assigned a UNHCR interpreter in Phanat Nikhom camp. I spoke to NGOs in Thailand. I was aware of court cases in Hong Kong.

When a human right such as the right to asylum is at issue, a fair and public hearing before independent decision makers is required. In Thailand, a cohort of government officials with graduate educational levels are trained according to the UNHCR Handbook to apply the Convention. This is not consistent with the concept of independent decision making. UNHCR has the job of acting as a kind of appeal body, reading the transcripts in Thai. However, the UNHCR staff person is not technically an independent decision maker either. From my cursory discussions, it seems the Convention Refugee definition is being applied in accordance with the Universal Declaration and regional

instruments as the CPA requires. No one denied the possibility of bribery, as a magazine reporter had alleged, but UNHCR argued it could not be widespread or the success rate would be much higher! The sort of cases protected are those who have been in re-education or with links to the military. The definition is applied as of the time of departure from Vietnam. I was told Thai interpreters have a bias against Vietnamese and I was not happy with the approach my interpreter in the camp took. UNHCR told me somewhat coolly that court action like that which took place in Hong Kong was unlikely in Thailand. I wonder why?

Clearly the screening is erratic. As a tool for voluntary return or even "no objection" return, the asylum granting approach is acceptable given the consequence of error. After all, this is not return to the conflict of Sri Lanka, the death squads of Guatemala, or the military chaos of Somalia. The army deserter we interviewed in Ho Chi

Minh city was likely screened out in error, yet the consequence was not life threatening. However, the screening would have to be much improved when the prospect of the forcible return of a mistakenly screened out refugee could be at issue.

Conclusion

The CPA must not be forgotten. Here is a potential solution to a problem for many refugees in this region. I was satisfied Vietnam was complying in good faith with the CPA agreements. I was uneasy about the compliance of other parties. Alternatives to the closed camp deterrence approach must be found if voluntary return is to be significantly increased. Vietnam must be included in the international instruments for human rights development and trade to turn around the present routine adventure of clandestine departure.

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Invitational Workshops*

HUMANITARIAN INTERVENTION

The emergence of a novel international practice for securing the safety of persons within a particular state or region (eg., the case of the Kurds) has motivated the need for a new framework of analysis, where state self-interests are not the ultimate rationale.

Partners: CRS and YCISS

Place: York University

Date: 5 November 1991

Contact: Farhana Mather (416) 736-5663

PHASE II:

TOWARDS A PRACTICAL EARLY WARNING SYSTEM: REFUGEES AND DISPLACED PERSONS

The ability to anticipate refugee flows and develop practical implementation plans for early warning systems is the subject of this workshop, now in its second phase of discussions.

Place: King City, Ontario

Date: 5, 6, 7, 8 November 1991

Contact: Farhana Mather (416) 736-5663

* Attendance at the above workshops is by invitation only.

Forthcoming Seminar*

MORAL HEROISM

Harry Crowe Memorial Lecture Series

Guest Lecturer – Professor Stephen Katz, Cornell University

The 1991 Lecture Series, "On Moral Heroism," takes as its theme the example of non-Jews helping Jews at the risk of endangering their own lives. Lecture topics include the Holocaust, and case studies of individual acts of moral heroism.

Place: Osgoode Hall, York University

Date: 27, 28, 29 October 1991

Contact: Farhana Mather (416) 736-5663

*The Lecture Series is open to the public.