

Policies and Issues relating to Vietnamese Boat People in Malaysia

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Abstract

An island in Malaysia bear witness to the survival of Vietnamese boat people fleeing their war-torn country in the mid-70s. Thousands of Vietnamese boat people were granted temporary refuge on Bidong Island while they were processed for resettlement by the United Nations High Commissioner for Refugees (UNHCR). The island situated off the coast of Terengganu was designated as the principal refugee camp for Vietnamese boat people in Malaysia in August 1978 with the Malaysia government towing any arriving boatloads of refugees to the island. Despite its ability to receive 4,500 refugees, the less than one square mile island ended up with a refugee population of more than 40,000 by June 1979. This paper presents a literature assessment of Malaysia's strategy and policy adopted during that period of time, as well as current legal framework on refugee and asylum seekers, to better understand how Malaysia dealt with Vietnamese boat people and how it is currently dealing with refugees and asylum seekers.

Keywords: Historical policy paper, Vietnamese boat people, Bidong Island, refugees, asylum seekers, Malaysia

INTRODUCTION

In 2005, the United Nations High Commissioner for Refugees (UNHCR) reported that the last remaining Vietnamese boat people, out of more than 250,000 who had landed in Malaysia more than thirty years ago, has returned home (UN News, 2005). This marked a significant milestone in the history of the exodus, especially for Malaysia. Since 1975, UNHCR has assisted in the resettlement of 240,000 Vietnamese refugees from Malaysia to third countries, while 9,000 others have chosen to return to their homeland. According to Volker Türk, UNHCR Representative in Malaysia, the voluntary repatriation of the final Vietnamese refugee from the boat people period brings an important chapter in the history of refugees in Malaysia to a close, while also demonstrates that a lasting solution for a refugee problem can be found.

This paper reviews the issues of Vietnamese boat people (hereinafter referred as VBP) in Malaysia from 1975 to 1991. It includes literature that covers matters involving VBP in Malaysia and shows that the past issues related to the VBP are essential for the Malaysian government to better prepare for and manage similar reoccurrences, if any. The amount of empirical evidence covering the policy remains substantial, but it is scattered in different literature. This has created challenges for academicians and students in policy studies to have a simple but comprehensive reference for issues relating to the VBP from the perspective of Malaysia.

A major conclusion drawn from this paper is that there is a need for further research on compiling approaches, particularly examples of what could be called ‘intermediate’ systems of handling future similar cases like the VBP. As many observers have noted, VBP is a sensitive issue for certain countries especially for the country of origin of these VBP and the Association of Southeast Asian Nations (ASEAN) members. The way VBP was handled by the government excited intense emotion, sentiment and political attachment. In the end, an integrated coordination among the private and public organizations was the key of success for the Malaysian government to handle the VBP.

The major concern of the present studies are due to the lack of awareness among public relating to Malaysian refugee policies. Recent cases on refugees has been criticize by many and claimed that Malaysia has no capabilities to manage refugees efficiently. In addition, the criticism were sometime made without any basis and full understanding of Malaysia’s roles in aiding those refugees. Failure to educate Malaysians in understanding Malaysia’s position in managing refuges will threat national security under its core values. In April, 2020, the media has reported on Malaysia standpoint to no longer accepting refugees due to some country not keeping up promises in placing the refugees. Due to this, Malaysia has been labelled as a country that has no compassion, as statement reported as “Malaysia has made no effort to establish its own capacity to protect refugees” (Human Rights Watch, 2011). The bad perception towards Malaysia leads to unfairly worldwide condemnation. Therefore, this present paper aims in reminiscing the forgotten initiatives and humanitarian acts that Malaysia made for misplaced VBP, the refugees who fled from Vietnam by sea due to its civil war. From 1954, one million refugees had fled from the north to the south to escape war, famine, and the communist reform campaign. Eventually, these refugees fled from Vietnam altogether starting from the mid-70s (Vo, 2006). Further discussions obtained from secondary data, explains the development in refining the refugee’s policies during and after the event of VBP’s placement in Bidong Island. The event witnessed Malaysia’s capability in improving its refugee’s policies and act as subjective evidences on how Malaysia used its past experience in managing refugees.

VIETNAMESE BOAT PEOPLE (VBP)

Cambodia's refugee crisis began in 1970, when the United States expanded its war into Cambodia in an attempt to halt military supplies from passing through the country. Millions of civilians left the countryside and flocked to Phnom Penh and Battambang, swelling the population in those urban areas from half a million to four million (SarDesai, 1992).

The refugees who escaped Vietnam by boat and ship following the end of the Vietnam War in 1975 are referred to as VBP. This migrant and humanitarian crisis peaked in 1978 and 1979, but persisted into the early 1990s. In short, the term VBP was used to refer to the Vietnamese people who fled their country in mass exodus between 1975 and 1995. It was estimated that the number of VBP leaving Vietnam and arriving safely in another country totaled almost 800,000 during that period (Vo, 2006). However about 200,000 to 400,000 VBP failed to survive the journey after facing danger from pirates, over-crowded boats and storms (Vo, 2006; United Nations High Commission for Refugees, 2005). Popular destinations for the VBP were the Southeast Asian countries including Malaysia.

According to Vo (2006), the northeast route to Hong Kong which took roughly five to six weeks was largely utilised by ethnic Chinese from the north. They used slow sailing and antique junks or sailboats to hug the Chinese shoreline, which was quite safe as they do not have to worry about pirates. They could also return to the coast in the event of a storm. Southerners, on the other hand, mostly took the southwestern route to Malaysia or Indonesia but avoiding Thailand due to its ruthless pirates. They sailed aboard motorised boats that could achieve speeds of up to seven knots per hour, and their journeys only took five to seven days unless they got lost, experienced engine trouble, or ran across pirates. The distance between Rach Gia and Terengganu on Malaysia's west coast was 350 miles, while the distance between My Tho in the Mekong delta and Terengganu was 475 miles. This is a clear indication why Malaysia was one of VBP’s top destination at that point of time despite the extreme danger that comes with it.

As the years went by, the refugee influx grew, exceeding 50,000 a month at times. Around 300,000 VBP arrived in several Asian countries in 1978 and 1979 (Vo, 2006). As a result of the influx of VBP, several governments have been wary of granting asylum to newcomers for fear of them settling permanently in the area. Malaysia and Thailand, the two most popular destinations, have begun to refuse VBP boats. According to Vo, 267 vessels carrying 40,000 VBP were sent away in 1979 and to discourage immigrants from requesting refuge, those who were allowed to stay were placed in camps with limited facilities.

This mass migration of VBP in the Southeast Asian countries had resulted an international humanitarian crisis (Frost, 2018). After negotiations and an international conference in 1979, Vietnam agreed to limit the flow of people leaving the country. The Southeast Asian countries agreed to admit the boat people temporarily and the rest of the world, especially the more developed countries, agreed to assume most of the costs of caring for the boat people and to resettle them in their countries. St. Cartmail (1983) estimates that Canada received 83,783 Vietnamese refugees by 31 August 1982, while Vo (2006) estimated that the United States accepted 167,000 additional refugees between 1979 and 1980.

LEGAL FRAMEWORK ON REFUGEES IN MALAYSIA

In the current status quo, despite its history of hosting refugees, Malaysian law facilitate limited protection for refugees. This is especially so due to the position of Malaysia on refugees' issues in the international stage, albeit the fact that Malaysia is not a party to the international law regime pertaining to refugee enacted by the United Nations General Assembly such as the 1951 Convention Relating to the Status of Refugees, which was also known as 1951 Refugee Convention, as well as the 1967 Protocol Relating to the Status of Refugees.

In general, the gist of the 1951 Refugee Convention is upholding the principle of non-refoulement contained in Article 33. According to this principle, a refugee should not be returned to a country where he or she faces serious threats to his or her life or freedom. This protection may not be claimed by refugees who are reasonably regarded as a danger to the security of the country, or having been convicted of a particularly serious crime, are considered a danger to the community.

Both international laws required the states parties to ratified with the Secretary-General of the United Nations in order for the same to be enforced in their respective states. Since Malaysia has never ratified the international laws, there is no legislation to govern refugees or asylum seekers in Malaysia.

In Malaysian law, these refugee and asylum seeker is collectively classified as illegal immigrants. The only applicable law in Malaysia that related to the matter of illegal immigrants is the Immigration Act 1959.

An ad hoc policy space has been central to Malaysia's approach to refugee policy and practice (Munir-Asen,K., 2018). According to her, refugees are not afforded a specific category under Malaysian immigration law and do not have legal status in the country. Though steps have been made in widening the protection space for refugees, they are at risk of being detained, do not have work rights, are unable to access public health services on the same basis as Malaysian nationals, and cannot access the public education system.

Generally, section 6 of the Immigration Act 1959 provides the control of entry into Malaysia in which reads as follows:

“No person other than a citizen shall enter Malaysia unless-

- (a) he is in possession of a valid Entry Permit lawfully issued to him under section 10;*
- (b) his name is endorsed upon a valid Entry Permit in accordance with section 12, and he is in the company of the holder of the Permit;*
- (c) he is in possession of a valid Pass lawfully issued to him to enter Malaysia; or*

(d) he is exempted from this section by an order made under section 55.”

The entry into Malaysia by way other than specified thereof amounting to an offence under section 6(3) of the Act whereby they can be convicted and punished to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both, and shall also be liable to whipping of not more than six strokes.

The punishment has been strengthening in 2002 where the amendment was made to the Immigration Act 1959 via Immigration (Amendment) Act 2002, Act A1154 to introduced mandatory whipping for persons guilty of entering Malaysia illegally.

In light of the Immigration Act and the amendment, section 6 of the Immigration Act 1959 subjecting illegal immigrants including refugees in this matter to fines, arrest, detention, imprisonment, whipping punishment and deportation.

The position has been affirmed by Malaysian Court in the case of *S. Subramaniam v Public Prosecutor* [2007] 1 CLJ 470; in which the court stated that the Immigration Act 1959/63 in general and in particular section 6(1)(c) and section 6(3) are applicable to the applicant as an asylum seeker and refugee; and that the 1951 Convention and the 1967 Protocol are not legally binding on Malaysian courts.

Thus, it appears that presently Malaysia's legal and administrative frameworks are still insufficient to effectively manage refugees and asylum-seekers (Chuah et. al., 2019). By law, undocumented migrants, who make up a third of the migrant population, are not distinguished from refugees and asylum seekers (UNHCR, 2017). Refugees recognised by UNHCR Malaysia, on the other hand, have a "de facto" status that permits them to remain in Malaysia but without formal protection under its national law (Puras, 2015). According to UNHCR (2013), this mixed-migration dynamic complicates refugee protection. At the same time, the absence of legal framework also caused them to lack official access to basic education and job rights (Letchamanan, 2013). Unlike in the past, when VBP were placed in dedicated camps, migrants today resides among host communities and other migrant groups in urban areas (Crisp & Umlas, 2012). While this seems to be an improvement compared to how VBP were treated when they first arrived in Malaysia more than thirty years ago, it also poses a new set of security, social, and health issues for the refugee and asylum-seeker community (UNHCR, 2009).

BIDONG ISLAND AS A VBP REFUGEE CAMP

In response to the overloading of VBP, Malaysia with the aid of the United Nations (UN) set up a refugee camp on a small and isolated island called Bidong Island. As the number of VBP grew up drastically beginning 1979, it caused the inability of Malaysian government. This forced the UN and other international humanitarian organizations like the Red Cross to provide food, water, housing, and medical care to them (Cunliffe, 1995).

Bidong Island, a tiny island off the coast of Terengganu, was designated as the authorized refugee camp in Malaysia in August 1978. Since 1978, the Malaysian government has instructed any arriving boatloads of refugees to land on the island. The island at that time served as a temporary home and transit point for thousands of refugees before they were accepted to the third countries. At the island, they lived in unsanitary living conditions in basic shelters such as boat timbers, plastic sheeting, flattened tin cans, and palm fronds. At one point, the island held 40,000 people, making it the most densely populated place in Malaysia. Figure 1 shows the location of the island and its attachment with the state of Terengganu. The red arrows show the sea route for the VBP from Vietnam to Bidong Island between 1975 and 1991. The figure also shows the current image of Bidong Island in 2021.



Figure 1. Red arrows indicate the route of VBP from Vietnam to Bidong Island – 1957 to 1991.
Below right corner of Figure 1 shows the current image of Bidong Island in 2021

The United Nations High Commission for Refugees (UNHCR) and many relief and aid organizations assisted the refugees. Food and drinking water had to be imported by barge from the Terengganu mainland. Water was rationed at one gallon per day per person. The food ration was mostly rice and canned meat and vegetables. Sanitation in the crowded conditions was the greatest problem. The United States and other governments had representatives on the island to interview refugees for resettlement. With the expansion of the numbers to be resettled after the July 1979 Geneva Conference, the population of Bidong Island slowly declined (Suhrke, 1981). The last refugee left in 1991. Since then, it was returned to the state government of Terengganu.

PAST VIETNAMESE BOAT PEOPLE ISSUES IN MALAYSIA

In the case of the VBP, they abandoned their homes because they have no other choice. The two main concerns for them to take the action were politics and economics. They flee to escape persecution by their own Government at that time. Thus, for them leaving Vietnam was the best choice in order to protect their lives and their family members. Once they leave their homeland, then there is also no option for them to safely return home. Their governments will not protect them from human-rights abuses. People who choose to leave their homes for opportunities abroad fall under the category of migrants. Country like Malaysia does not have legislation for the granting of asylum or refugee title. It is known that the VBP do not have basic rights to employment, education and healthcare. For the Malaysian Government, it is just the act of humanitarian to serve these VBP the basic needs as referring to the Maslow Theory of Needs.

Some of them have successfully resettled and attained asylum in the third countries. In these third countries, they involve in the contribution to the domestic economic growth. By providing them with job opportunities, they can start productive lives in their host countries. They can integrate into labor force especially in the private sectors. As a results, they can become productive members of society. However, there must be strictly monitoring from the International agency such as United Nations (UN) that these people must not being exploited economically in any informal work sectors or trafficked into sex work.

The VBP can be easily being perceived as liability to other sovereign country like Malaysia. To some Malaysians, these people are extremist which have different culture, believe and motives coming to Malaysia. On the other hand, the VBP perceived themselves as victims by their own Country. For them, grouping as extremists is a false and inaccurate generalisation. The argument is that they are innocent

people who are the victims of terror in their own country. The terrorism, tyranny and war that create VBP into this situation. The Malaysian Government has a huge responsibility to shape the mind and think of every Malaysians to think a certain way about the VBP. There is a vital need to critically evaluate any news and information that come from so that the Malaysians not to fall prey to sensationalized news and misinformation.

The issue of hygiene and sanitation is another concern of the Malaysia Government towards the VBP. The VBP who occupied the Bidong Island lived in areas with very limited sanitations systems and health facilities. They are a group who is at higher risk during any pandemics. It was lucky at that time, the pandemic of COVID-19 is not existing yet. The VBP did not choose to live in restricted areas with low sanitation. They were more vulnerable to contacting virus.

It is very difficult of Malaysians to accept VBP in the local community. To be accepted and included in the local community is something these people truly appreciate but it is impossible to be.

DIPLOMATIC ISSUE

A study by Baharuddin and Enh (2018) has provided insights into the issue related to VBP in Malaysia which became a global concern from 1975 to 1991. Their study addressed major factors that contributed to the problem, and diplomatic relation between Malaysia and Vietnam that influenced Malaysian government to assist in resolving the issue of VBP.

The settlement of VBP in Malaysia was a global issue that needs to be addressed well. This is because Malaysia was trying to prevent any denial of the human rights that can jeopardize them to migrate to the third country. The experience in handling the VBP provides an advantage for Malaysia in case a similar crisis occurs again. Malaysia has emphasized that the issue of VBP was not a mere domestic issue (Ahmad, 1979). It was a global issue that needed to be addressed jointly by other UN country members. Understanding the history, definitions and laws relating to international refugees has enabled Malaysia to manage the VBP efficiently. Malaysia was able to understand the status of the VBP, who were entitled the status of VBP, their rights and factors that made them the refugees.

In the case of Malaysia, UNHCR plays an important role in protecting and preserving the welfare and the human rights of refugees (UNHCR, 2005). Through UNHCR, Malaysia had acted according the rules and conventions stated by the UN. The VBP got the human rights they deserved as prescribed by the UN. They had almost the same human rights as other Malaysian citizens except that their mobility was restricted.

When the Federal Government declared Bidong Island as a refugee center for the VBP in 1976, it gave the negative impact to the local fishermen. The island now became a restricted area to those who were not related to the administration of the VBP. It prevented fishermen from fishing near the Island. Several incidents happened when local fishermen were chased away by the Malaysian enforcement agency for allegedly approaching Bidong Island. To some fishermen, the island was used as a temporary shelter from storm and rough sea.

From 1976 to 1991, fishermen from areas like Batu Rakit, Meras, Mengabang Telipot, Merang and Setiu had claimed a loss nearly RM2 million a year due to the restriction of coming near to the island (*Berita Harian*, 2015). Due to the difficulty, the fishermen migrated to other areas which were far from their homeland. In 1989, the Terengganu Fishermen Association or *Persatuan Nelayan Terengganu (PENENTU)* demanded damages of RM36 million from the UNHCR. The demand was based on the loss of income for 3000 fishermen who were unable to fish near the island.

The above issue triggered the concern from both State and Federal Governments. An effort from the State Government to the Federal Government was made to request 50 nautical miles from Kuala Terengganu to be used as VBP settlement. On December 1988, the Federal Government agreed with

the request from the State Government. The conflict ended on November 30, 1991 after the government announced that Bidong Island would be closed from being a temporary settlement center for Vietnamese refugees forever.

RESPONSIBILITIES WITH OTHER COUNTRY

The Prime Minister, Tan Sri Muhyiddin Yassin in ASEAN Summit - United Nation (UN), emphasized that Malaysia could no longer accept a greater number of refugees into the country. Malaysia demands shared burden and responsibilities pertaining to refugees' matter to overcome the issue as ruled in Global Compact on Refugees (GCR) (Bernama, 2020). According to Sahak, Nordin and Ishak (2020), whilst dealing with VBP, Malaysia was under international pressure and critics for turning the VBP away as the country was struggling to handle those who were already in the territory.

According to Turk and Garlick (2016), as widely recognized in political discussion and academic literature, one of the aims of international cooperation in this region is to ensure a fairer distribution among states of the costs and disadvantages of hosting refugees on their territory, as well as the potential benefits. "Burden sharing" could be described as the process by which the various costs of granting shelter to refugees to a state are more equitable when shared with the other states. Refusing to become the signatory, Malaysia could avoid being the transit point for the refugees in the future (Malay Mail, 2015).

The Comprehensive Plan of Action for Indo-Chinese Refugees (CPA) brought together donor and resettlement countries, in coping with the significant scale of the refugee movements in South-East Asia in the 1970s–90s. Those were the refugees who escaped from Vietnam, Cambodia and Laos by sea or land. In 1979, an international conference summoned that South-East Asian countries would accept and offer temporary shelter while USA, Canada, Australia and European countries would sort out the relocation of the refugees.

It is crucial to get support and funding from both parties. Hence, UNCHR shall work hand-in-hand with the World Bank, regional development banks and other United Nation organizations to work in getting sufficient funding to help the host countries handling refugee's welfare. A support from UNCHR and NGO is crucial in helping the refugees. This is because most of them are at limbo as the transit country could only provide temporary solution to their problems and does not provide adequate law to protect them (Sahak, Nordin & Ishak, 2020).

CONCLUSION

In dealing with VBP, Malaysia was under international pressure and critics for turning the VBP away as the country was struggling to handle those who were already in the territory. Malaysia is not a signatory to the convention relating to the status of refugees (1951) and the protocol relating to the status of refugees (1967). By not becoming a member, Malaysia was not obliged to uphold the conventions and could stick to the domestic law. It could be foreseen, that majority of the refugees nowadays are leaning towards economic migrant instead. Refusing to become the signatory, Malaysia could avoid being the transit point for the refugees in the future. However, there will be other implication for not being a signatory to the convention, where Malaysia will not be recognized as good host by UNCHR. According to Helton (1991), The Malaysian Foreign Minister chaired the 1989 conference in Geneva on Indochinese refugees, which was convened to establish a new consensus on solutions for VBP in Asia. The conference resulted in a regional arrangement to guarantee temporary refuge for the period necessary to determine who among the boat people were refugees who would then be resettled, and who among them were not and were subject to return. This has resulted the closure of the camp by UNCHR and Malaysia in 2001. This event marked the 21 years Malaysia in cooperating with more than a quarter-million people that has transited at the country that happened 5 days before the end of Comprehensive Plan of Action (CPA), a multinational effort that was established in 1989 to

stem the flow of asylum-seekers who braved shark-infested waters and pirate attacks to leave not limit to Vietnam but also Laos.

In tackling the migration problem, Malaysia only relies on the Immigration Act 1963. Section 6 of the Act states that anyone who enters Malaysia but could not provide relevant paperwork will be penalized. However, the Act does not differentiate between refugees and illegal migrants which could pose a great risk to be arrested or detained by the authority. Hence, a support from UNCHR and NGO plays an important role in helping the refugees by providing adequate law to protect them. Munir- Asen (2018) in his discussion paper which has been presented explains on the regularization of refugees Malaysia may become a reality, with the newly elected Pakatan Harapan in government. Their election manifesto pledged to ratify the Refugee Convention and separately referred to the plight of the Rohingya as a specific area to which they will direct attention. How and when this becomes a reality is uncertain. Importantly, the development of concrete policy measures to ensure the effective administration and protection of refugees is crucial if the Malaysian government is to provide concerted protection to refugees. The country has the potential to lead the way in refugee management by building on existing protection activities.

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