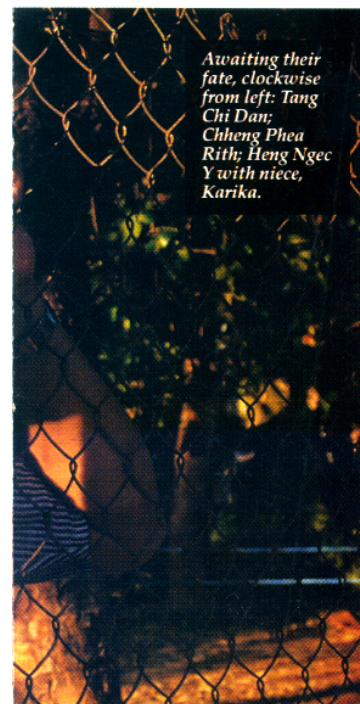




THE

ONLY WHEN HENG NGEC Y BEGINS talking about her escape by boat from Cambodia to Australia is she unable to keep her grief in check. A small but sturdy woman of 42, with a round face and wounded eyes, Heng lost 24 family members through execution and other treatment by Pol Pot's Khmer Rouge, including her parents, husband, siblings and three children. Through the wire fence at Western Australia's Port Hedland Reception and Processing Centre, she tells her story with a barely-restrained desperation. Only at the end, when she gives a slight, sad smile, do I realise how much she still hopes that things will come out right, that she will be allowed to stay and survive in Australia.

More than two-and-a-half years after reaching these shores, the former school-teacher and five other members of her family have been incarcerated in the remote



Awaiting their fate, clockwise from left: Tang Chi Dan; Chheng Phea Rith; Heng Ngec Y with niece, Karika.



PHOTOS STEVE BUNK

After months of waiting to hear their fate — freedom in Australia or return to their homelands — the boat people confined in Western Australia grew increasingly depressed, fretful and restless. Defying officialdom, Steve Bunk spoke to some of the detainees through the wire of the Port Hedland camp and met the lawyers trying to help them seek asylum.

LONG WAIT

reception centre some 1800km north of Perth. Their application for refugee status has been rejected twice in a three-stage process, in language that her lawyer claims is clearly formulaic. All that remains is rejection by a delegate of federal Immigration Minister Gerry Hand, which inevitably will be followed by deportation. "You could say my life has no meaning if the Australian Government doesn't accept me," Heng says through an interpreter. "I don't want to go back; I would rather die, if only the children could stay here instead."

Almost certainly, though, the Heng family will share the probable fate of repatriation with more than 90 per cent of the 653 people from 14 boats — primarily from Cambodia, China and Vietnam — who have landed in Australia without permission during the three years from November 1989. At the time of writing, 57

have been granted refugee status, about 140 have been sent home or returned voluntarily, 21 have escaped, and the rest (including 23 children born to incarcerated people) remain in detention, 300 of them at Port Hedland.

Heng's delicate composure finally crumbles when she tells of her escape by boat from Cambodia. "I felt that this was a country just like America. It had freedom and human rights; democracy. Before I escaped, one boat had sunk because of an overload of people. I left Cambodia in May 1990. I thought if my life terminated during the trip, it would be better than staying in Cambodia. My boat almost sank twice because of stormy weather. The last storm was very bad.

"I still remember on the first of June, the ocean was very high and I felt I wouldn't survive much longer. I worried

about the children, I didn't want them to die that way, I wanted a good future for them. During that hard time, we met ocean fishermen and we called for help. It was about 5pm, so they could see us waving. They had a CB radio and called the Australian Navy to help us. They transferred us by a small, rubber dinghy. It took until midnight. By then, our boat had sunk. We felt very happy when we could get on the Australian Navy's boat."

That happiness didn't last long for Heng and the 79 others who had been on board the Kray Sar with her. "We arrived safely in Darwin and the Immigration people interviewed us. They took us to a bush camp, where they set up a big tent, like for soldiers. We lived there four months, from June to October. Everyone slept on cots. When it was raining, everyone got wet. There were many mosquitoes. >

Detainees are fingerprinted or head-counted daily. If the count does not tally, they sit while the guards seek out those missing.

<At night it was very cold, in the daytime very hot. We were warned not to go beyond the plastic fence, because there might be wild animals or poison reptiles. After about two months, one lawyer came around, in August. But no-one told me about my legal rights. The lawyer told us they would come to help when we applied for refugee status. Around September, we filled out the forms but the lawyer was not always available. We moved to Berrimah [a Darwin suburb] on the 5th of October. It was like a caravan park there. In May, they transferred us to Sydney. I felt worried, I didn't know where they were taking me. We stayed in Sydney from May to October 25, 1991, at Villawood, then came to Port Hedland."

Support groups say there are many potential breaches of Australian law and international human rights agreements in Heng's story. They cite as examples her rights to be told that she may have a lawyer and get access to legal advice, to have an interpreter available, to not be sheltered in the substandard conditions of a scout camp 85km from Darwin, to be counselled for the post-trauma stress of her horrific experiences in Cambodia, and to not suffer prolonged detention while her request for refugee status remains unresolved.

Heng's position is not unique. Other asylum seekers at Port Hedland tell of waiting months before being allowed legal counsel, of security guards or other unqualified personnel helping them fill out their initial applications for refugee status, of being moved from one compound to another — five times, in some cases — during which they were sometimes separated from family members and almost always from their lawyers.

A confidential, 32-page report on the boat people filed last March to the Department of Immigration, Local Government and Ethnic Affairs (DILGEA) by the acting secretary of the Human Rights Commission, Bill Chapman, stated: "The situation in respect of detainees of long standing is clearly in contravention of international human rights standards relating to prolonged arbitrary detention, including those standards which require that the circumstances of detention must be capable of judicial and administrative review."

To date, the courts have not reviewed the detention of boat people or DILGEA's refugee determination procedures. But a major legal offensive has been mounted to appeal in the Federal Court the anticipated DILGEA decisions against granting refugee status to them. Some of the final rejections are expected this month. Solicitors and barristers from several high-powered law firms have agreed to take up where the administrative claim-filing of government-funded lawyers ends, and represent the boat people *pro bono* (for the greater good).

One way for the Government to preempt the potentially damaging exercise of judicial review of the refugee situation is to send the asylum seekers home before legal challenges are issued. Almost all have reached the third stage of the assessment system, and their applications have been found wanting. If and when final decisions are handed down against them, only court injunctions can stay their deportation while those decisions are appealed to the Federal Court.

The Immigration Minister, Gerry Hand, declined to be

interviewed for this article, but a liaison officer from his department, Harley Dadswell, did note that, "If someone is in a situation where their removal from Australia is imminent and a legal challenge is issued, then their legal challenge takes precedence." The first such legal challenge began last month for two Chinese boat people hospitalised in Perth with serious injuries sustained in August when they jumped off the roof of the Port Hedland detention centre to protest against the Government's handling of their cases.

Seven other Chinese — some of whom were also among the protesting jumpers — were taken from their beds at dawn on October 23 and put onto an RAAF aircraft near Port Hedland and flown back to China. Support groups say the seven are now in prison and facing trial. Dadswell, however, says that Australia's Beijing embassy has been reassured repeatedly that this is not the case, although he admits he doesn't know where the seven are.

Journalists aren't officially allowed inside the barbed-wire-topped cyclone fence that surrounds the Port Hedland encampment. The only way to speak with the detainees is to stand on the grassy verge beside Dempster Street and talk through the wire while guards patrol nearby. While the Department of Immigration doesn't encourage this, officials admit the



Detainee lawyers, from left, Vanessa Haigh, barrister Nick Poynder, Matthew Rendall, Seth Richardson, an interpreter and Jennifer Lewis.

road is public property and there's nothing they can do about it. They say a tight lid is kept on the boat people for their own protection. In refusing my request to tour the Port Hedland facility, the department's Canberra media liaison officer, Jenny Hoskin, said reporters had never been allowed onto an Australian detention site despite "considerable pressure", especially following the arrival of fresh groups of boat people. She said that if these individuals turned out to be bona fide political refugees and were named or photographed for the media, the result could be persecution. She then added: "If they're prepared to be interviewed or photographed full-face, perhaps they're not as afraid of persecution as they claim." The asylum-seekers we spoke to and photographed, however, all accepted the risk; as one said, they were all desperate and afraid, and they felt that only "by the truth being told to the public" would their cases receive a fair hearing.

The Port Hedland complex itself is presentable, having

formerly housed single BHP employees. The Westbridge Migrant Hostel in the Sydney suburb of Villawood still holds 119 Cambodians but the other approximately 300 asylum seekers are here, far from the public eye and professional services. The guards, whose numbers have increased in recent months, wear uniforms but do not carry weapons. Church workers and others with access to the camp say the detainees' anxiety levels have risen rapidly since the Chinese seven were deported. Some asylum-seekers now keep all-night watches posted in their quarters.

Since February, five young lawyers with the Refugee Council of Australia (ROA) have been helping many Port Hedland detainees file applications for refugee status. Last month, the lawyers also kept watch on Port Hedland's airport to ensure that no RAAF aircraft big enough for a large-scale deportation had arrived. For everyone left at Port Hedland, there is now the stress of uncertainty — who will be next to go? And when?

The detainees are fingerprinted or head-counted daily when they enter the dining room. If the count does not tally, they sit in the room while the guards seek out the missing persons. Last month, with temperatures near 40 degrees, the air-conditioning in the dining room had not functioned for five weeks. Insiders say just two forks and two spoons are provided for every six people.

The ROA considers such actions to be "humane deterrence" — a tactic perfected on Cambodians in the Thai border camps, designed to worry and frustrate them into a sense of despair that might lead to their voluntary repatriation. Dadswell rejects this claim as "quite wrong". And he says the cutlery is constantly being pilfered by detainees, while he lays the blame for the air-conditioning problems on unavailability of parts.

At least nine suicide attempts — usually with Panadol and washing powder mixed in water — three hunger strikes, depression, paranoia, vandalism, temporary absence without leave and other reactions associated with long-term detention have occurred among the Port Hedland boat people. Some mothers in the camp have reportedly tried to give their children away to Australians, with the intention of committing suicide and thus saving the orphans from deportation.

There is no psychiatrist in town and no professional counselling for the stress associated with victims of trauma and torture, although Dadswell says moves are underway to provide counselling for trauma victims. Until mid-year, there was no official camp interpreter aside from those hired by the ROA for legal work, while the only social worker employed at the camp went home to Adelaide in July and has not been replaced.

The ROA lawyers themselves were castigated last month in Parliament by Hand. "What sort of advice did they give their clients?" he asked. "I can't presume to know but I wonder if they ever were honest with them, if they gave them realistic, practical advice, or whether they were simply fodder for a noble cause." The lawyers, he said, were "irresponsible" and "non-thinking", providing the boat people "with false hope" and tempting them "into taking drastic and futile measures such as hunger strikes".

It was late October when I first visited the Port Hedland camp, which Hand saw a year earlier, several months before the ROA's arrival. The lawyers' office was in a typical, tropical demountable behind the detention centre's gates. The central room was long and bare, the white walls adorned only by film posters and a few crayon drawings from local schoolchildren.

Team leader Seth Richardson, a blocky young man in shorts, sported a blond ponytail. Working with him were Vanessa Haigh,

Jennifer Lewis, Matthew Rendall, Red Cross worker Mary James and barrister Nick Poynder. James, whose tasks include tracing the relatives of detainees and ensuring that people aren't repatriated without the prior knowledge of their lawyers, clutched a clipboard to her chest: "If they decide to move some of them out tonight, I'll stay here until 2am if I have to."

Everyone started firing the latest news back and forth, about the group of 11 Romanians who arrived the previous night, of the first birthday celebration for one of several children born to mothers in detention, or of rumours floating around the camp



Haigh makes a night visit to the detainees' centre.

about a RAAF jet parked at the airport, waiting for the boat people. While I was there, a mini-crisis arrived at the door of Haigh's office in the person of a female guard. She asked to speak with Haigh, who returned to say camp manager Linda Anderson had demanded that I leave the premises.

A polite Anderson told me on the telephone: "I don't normally give interviews. I don't really know how to handle the media." This time, she said, Canberra had just told her no permission had been given for me to enter the compound. When I replied that the department's media liaison officer had accepted there was no way she could prevent me from seeing the lawyers, Anderson agreed that was true but said it could not be done on detention centre property. "They can't stop you from coming here," Poynder said as I left the premises.

In the evening, I joined the lawyers on their regular social visit to the exercise compound. They were greeted by children who flocked to be cuddled. Many of the kids speak English with an Australian accent — an acculturation some observers say is reason enough to warrant refugee status. The lawyers' welcome was obvious on the faces of the adult detainees. Gifts of fruit and flowers were offered, and when they prepared to leave, scores of people accompanied them to the locked gate to wave goodbye.

One afternoon, a translator and I sat outside the fence and talked with detainee Tang Chi Dan. A 41-year-old North Vietnamese national of Chinese background, he had a wife and two children when he was arrested in late 1977 for harbouring illegal aliens from China, a charge he denies. "The 'illegal aliens' were actually my cousins who were on a friendly visit," his official statement reads. "The police alleged that my cousins were spies and that I was co-operating with them to incite rebellion in Vietnam."

Tang was taken to a police station, beaten into unconsciousness and thrown into a dark, concrete cell just big enough to stand up in, with finger-sized ventilation holes. He was kept there for 10 months, let out only for beatings, interrogation and to sign a >

<forced confession. He became lice-infested, skeletal from inadequate food and suffered shoulder, chest and internal injuries.

Tang was sentenced in court to 24-months' imprisonment. "The ethnic Chinese were classified as political prisoners, whereas the Vietnamese there were common criminals," Tang's statement said. It added that about 70 per cent of the inmates died, many from the results of beatings and others from starvation. When Tang was released, almost nine years after being jailed, he was near death. Eventually, he sneaked into China and took a boat to Australia, arriving at Darwin on March 4, 1991.

"First, I was detained for 28 days in the prison," he recalled. "I tried to commit suicide." He hit himself repeatedly on the head with a metal bucket and lost consciousness. Bleeding, he was

Chheng Phea Rith has been in detention for 21 months, waiting to learn his fate in Australia. He lost his immediate family to the scourge of Pol Pot 18 years ago, when Chheng was nine years old. From 1975 to 1979, he did forced labour in a Cambodian children's camp, during which he was chronically malnourished and beaten regularly. Some children were shot, others tied up and left to die in the jungle. After the Vietnamese occupied Cambodia, Chheng volunteered to help collect skeletons from the mass graves left by Pol Pot's soldiers, so proper burial ceremonies could be conducted. "We climbed down into the graves and tied skeletons together in bundles," he recalled. "I felt that among the skeletons, I didn't know which were my parents."

In 1984, he joined the Vietnamese-controlled Cambodian army under the Heng Samrin Government. On guard duty one night, he returned fire from soldiers who did not respond to the password, only to learn in the morning that he had killed a Vietnamese soldier. He was tied up and placed in a metal box 150cm square, where he remained for two months. Accused of being a Pol Pot sympathiser, he was let out of the box only a half-dozen times, for interrogation, beatings and electric shocks. Chheng then was placed for about five hours in another box in the sun, which became so hot the metal seriously burned his body. "When I was brought out of this box, I was prepared to say anything that would make the soldiers happy." For three years, he endured a windowless, wooden cell of about three by two metres. He had no trial, no visitors and was never let out of the cell. When he was released, it took about six months for him to recover his health, and then he was commanded to return to the army.

He escaped by boat to Australia in January 1991, reaching Darwin in March. "When I arrived, the marines [Australian Navy] handed us to another group and took me to a lockup area for eight days," Chheng told me. "I didn't know this time if I would survive or be executed or punished." He first saw a lawyer at Westbridge, eight months later. In Port Hedland he admitted, "I feel very worried and miserable in this camp. My whole life is being locked up. I have very little hope about my refugee status."

Chheng's written rejection by the RCOA referred to him as an officer and mentioned a charge of theft of military property. Such errors, Haigh explained later, are typical of the committee's reports — in this case, the application of a former Cambodian army officer accused of theft had been processed at about the same time as Chheng's papers. Entire blocks of commentary are transferred verbatim from one assessment to another, Haigh said. Male applicants have even been referred to as "she" throughout the summing up of their rejections.

For Cambodian applicants especially, the argument is frequently made in these summations that political conditions have improved since they left and that they can now return without fear. This is contradicted by media reports that the Khmer Rouge is waiting for the result of next May's elections to militarily challenge the winner.

Foreign Affairs Minister Senator Gareth Evans said earlier this year: "It's difficult to accept as a general proposition that nobody should go back to Cambodia while the general situation is as it is now. Because to do so would be to act quite inconsistently with our support for the return of 350,000 displaced persons from the Thai-Cambodian border." The RCOA argues that Cambodian

Continued on page 45



Far from the public eye: the Port Hedland detention centre.

handcuffed, bound at the feet and sent to hospital, only to be returned to jail a few hours later. He eventually was transferred to a detention camp in Darwin, where he stayed for about six months before being sent to Port Hedland.

"The only difference here from a communist country is death," Tang said. "The Australian Government did not beat me up but if they send me back to China or Vietnam, I think they are inhumane. What I need most is freedom. Let the Australian people, who are democratic people, decide whether experiences in China and Vietnam are qualified and fitted to the refugee definition of the United Nations."

A 1951 UN Convention defines refugees as people who have a well-founded fear of persecution because of race, religion, nationality, membership of a particular social group or political opinion, are outside their own country and are unable or unwilling to seek its protection. In Australia, the Refugee Status Review Committee (RSRC) is the main body making such decisions. Its four sitting members include one representative each from Immigration, Foreign Affairs, the Attorney-General's office and a community person nominated by the detainee's lawyers. A 2-2 vote or better will grant refugee status but in each application filed by the RCOA — covering about 180 people — the Immigration and Foreign Affairs representatives have both voted no every time. In rejecting Tang's application, the committee declared that his imprisonment and forced labour, "whilst considered to be heavy-handed, are not considered to be excessive or persecutory". Haigh responded to this with, "If nine years in prison doesn't amount to persecution, I don't know what does."

<applicants face rejection not on the details of their individual cases but because of a government policy that to accept them would undermine the peace process in Cambodia.

Dadswell says: "I have no personal knowledge of any such policy, either overt or covert, direct or indirect." The RCOA says other nationalities are receiving similar treatment because of fears that the floodgates will open if Australia is seen to be accepting illegal arrivals. "I don't know that the Government has ever argued that there is a floodgate," Dadswell counters. "The Government sees this as a matter of controlling its borders."

Indeed, the floodgate argument would appear specious at best; as a recent editorial in *The Canberra Times* noted, "Of the one-and-a-half million people who have fled Indo-China by boat in the past 20 years, fewer than 3000 made it to Australia."

Another frequent complaint is that asylum seekers are "economic refugees" who do not fit the UN definition for refugee status. Opponents of this thinking say that even when the charge is true, Australia should consider its part in the economic destruction wrought in Vietnam and Cambodia by the Vietnam War. Yet another charge made by Hand and others is that the asylum-seekers are "queue-jumpers". Dadswell says normal channels of migration to Australia are open to people of other countries, although he does admit it could be a "dilemma" if some asylum-seekers cannot get permission from their home countries to leave. Australia's record in accepting off-shore refugees — people who follow proper application procedures while still overseas — is exemplary. Only in the statistically tiny realm of on-shore or illegal entries has the Government clamped down.

Changes made to the oft-amended Migration Act in December 1989, shortly after the first in the current wave of unauthorised boats arrived, meant that boat people are no longer eligible for consideration to stay in Australia on humanitarian grounds. A fast-tracking procedure for processing claims was implemented in February, but the RCOA lawyers say its main effect on the boat people was to limit the time available for their lawyers to prepare their applications and submit responses to rejections of them. Dadswell argues that the process has sped up this year, but acknowledges that most boat people remain in detention.

Last May, a clause was added to a Migration Amendment Bill which prevents courts from releasing boat people from custody. The Bill was passed by the Senate and the House of Representatives on the same day, without prior scrutiny of the new clause by a Senate standing committee. That quick manoeuvre halted a Federal Court examination of the prolonged detention of boat people which was to be heard two days after the Bill was passed. At the time of writing, the High Court is considering the constitutionality of this law, with a decision imminent. Hand has also introduced draft legislation which would narrow the grounds for review of decisions against asylum-seekers.

Much of the blame for the overlong detention in Australia of boat people can be traced to 1989, the year the first boat people now in detention arrived. The then-prime minister, Bob Hawke, reacted to news of the Tiananmen Square massacre that year with an emotional announcement that Chinese students and their relatives in Australia would not be returned against their will. About 1000 Chinese in Australia at the time have since applied for refugee status, while a further 15,000 Chinese who arrived on student visas since have also applied to remain as refugees. By late 1992, the Government was considering about 21,000 applications for asylum, more than 70 per cent of them Chinese.

Father Larry Reitmeyer, outspoken Port Hedland priest who has now left his ministry in an effort to organise a centralised Catholic refugee office in Australia, says, "Somehow, they must find a policy that treats these people more like humans and not like criminals." Asked to frame the boat people's plight in a phrase, he replies, "I would suggest the Biblical expression: 'Let my people go'."

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