



**Vietnamese Overseas Initiative for Conscience Empowerment
AUSTRALIA**

Submission by VOICE Australia to the
Senate Legal and Constitutional Affairs Legislation Committee's Inquiry –
Migration Amendment (Removal and Other Measures) Bill 2024

05 April 2024

Trung Doan, for VOICE Australia

HAS AUSTRALIA EVER RETURNED SOME PEOPLE BACK TO PERSECUTION?





Vietnamese Overseas Initiative for Conscience Empowerment AUSTRALIA

We thank the Committee for the opportunity of making this Submission. And we are willing to appear at a Committee hearing.

Australia has returned some people to then be jailed or beaten up, we know this because we know some of them

How do we know? Because we have maintained contact with some of the asylum seekers whom Australia returned to Vietnam. Some fled again and they have now been resettled in Canada after a multi-year effort to help them by VOICE Australia, VOICE Canada, the Vietnamese Community in Australia / Queensland chapter, and others, including fellow Australians. One of those Australians, Shira Sebban, has documented their plight in a recently published book, *Vietnam's Modern Day Boat People: Bridging Borders for Freedom* (Jefferson: McFarland, 2024), see next page.

What happened? Returnees who present at 2 separate handovers recounted to us that Vietnamese authorities verbally assured Australian representatives that Vietnam would not persecute anyone among them (They also made this assurance in writing, as shown in the Senate Hansard of 25 May, 2015, p. 120). As soon as Australian officials left, all boatpeople were put into detention for questioning. Then

- Vietnam jailed or sentenced people for organising the trip organisers (Vietnam did not even accuse them of profiting from the trips, because people pooled their own money to buy a boat and supplies)
- Among people given jail sentences, some escaped again, and are now in Canada
- For weeks, public loudspeakers near their schools (part of an extensive nationwide network of public loudspeakers) called out kids' names and ridiculed them as children of parents who were criminals for fleeing Vietnam
- Prison authorities broke a man's leg
- Police punched a woman in the chest, she vomited blood and lost consciousness
- Police discouraged employers from employing any returnee, and forbade all returnees from moving to another province to find jobs

We repeat our offer to appear at a hearing to present evidence and witnesses our claims above.

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Vietnam's Modern Day Boat People



The youngest children: from left, Koi, Nhi, and Hoa Nhlen in detention, June 2017 (courtesy Sunshine and Aaron Biskaps).

to her hometown of La Gi in Binh Thuan province to investigate her and Mrs. Lua's claims, Grace alleging:

The Vietnamese government paid an extended family member to lie to the Australian Embassy that the Vietnamese authorities didn't do any harm when they returned. They were paid 500,000 VND [a little over USD20] per night ... others were also invited and offered money but didn't go.

Mrs. Loan got so angry because the families are worried that it might affect their chances with the UN. I told her to calm down. The people who work for the Australian Embassy in Vietnam are not stupid. It has nothing to do with Australia because they are in Indonesia, but of course Australian Embassy officials needed to do an investigation because it is their government that originally returned these people to Vietnam without a chance to see the UN.

Figure: Mrs. Loan was sentenced for the crime of using her own money for organising a boat for her family and relatives to flee without seeking authorisation from the authorities they were fleeing from. Before being taken to jail, she escaped again with relatives. Unlike the first time where Australia turned back her boat, this time their boat broke down near Indonesia
Page 56 from *"Vietnam's Modern Day Boat People: Bridging Borders for Freedom"* (Jefferson: McFarland, 2024), with permission



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Recommendation 1: Amend the bill to require verification of allegations of returnees' resistance, and have independent observers present at removals

- If, for example, a government official claims that a person has refused to obtain a travel document from their recipient country, this is a serious allegation that can lead to imprisonment, and it needs to be legally challengeable, including by people after being repatriated.
- Similarly, verification is needed if a government official claims that a person has physically resisted a removal attempt. To verify this, independent observers are required, because otherwise it is a detainee's words against an official's words.
- The above independent observers should be able to appear in courts as witnesses.
- The observers' presence during removal should also help ensure that any force used to overcome resistance is proportionate and necessary.

Recommendation 2: Legislate to require Australian consulates to monitor failed asylum seekers whom Australia returned

This Recommendation applies not just to this bill: Whether this bill becomes law, Australia will continue to return asylum seekers to places where they fear persecution.

Why should Australia have this obligation to monitor? Australia's international obligation to not send refugees back to persecution implies an accompanying obligation to not send wrongly-failed asylum seekers back to persecution. If the latter obligation is not met then the former cannot be said to be met. This Recommendation helps the government to show that it meets this second and therefore the first-mentioned obligation.

How would monitoring work? Any returnee who wants to be monitored simply sends their mobile number to the Australian Consulate. If someone doesn't want monitoring, then they simply does not provide it. During the next 12 months, a Consulate official makes a few short video calls to the returnee and notes their



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observations arising from the calls. At any time, a returnee can indicate that they no longer wish to be monitored.

Monitor, then what? DFAT should regularly table its report to the Parliament summarising the statistics plus the above observations over the reporting period. For each returnee, the Consulate official should note in a non-identifying manner, about the monitoring. For example: Whether a call was answered, their view on what happened during a call, if a returnee claimed persecution then was that claim verifiable, if a returnee claimed that they were not persecuted then did they appear to do so freely, ..

Recommendation 3: Amend the bill so that if Australia must pressure a government, then it targets *only that government*..

.. but leave the people alone, especially peoples ruled by governments which are imposed upon them in elections that are not free nor fair. If diplomatic options such as calling in an ambassador need to be supplemented, then consider other options, such as below.

Some options for persuading a government while not punishing its people:

- Withhold foreign aid, but continue aid of a humanitarian nature
- Withhold support for that nation's desired position at the UN

The Independent National Security Legislation Monitor (INSLM)

We understand that the government has couched this bill in terms of border security, and therefore national security. This means that if this bill becomes law, it may fall within the scope of the INSLM, and the INSLM should examine it.

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