



OPERATIONAL GUIDANCE NOTE

VIETNAM

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Vietnam and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** This guidance must also be read in conjunction with any COI Service Vietnam Country of Origin Information at:

http://www.homeoffice.gov.uk/rds/country_reports.html

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance set out below. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

Source documents

- 1.4** A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

- 2.1** During World War II, Japanese forces displaced the French colonial rulers of Vietnam. Following Japan's surrender, the Viet Minh, a communist-dominated nationalist grouping under the leadership of Ho Chi Minh, stepped into the power vacuum and proclaimed Vietnam's independence in September 1945. The French tried to re-establish their authority over Vietnam, however, and fighting erupted between their forces and the Viet Minh. Following their defeat, the French agreed to withdraw in 1954. Vietnam was effectively divided into a communist-controlled North (the Democratic Republic of Vietnam) and a Western-backed South (the Republic of Vietnam). After the South reneged on an agreement to hold nation-wide elections, the North began to strengthen the communist movement in the South with the aim of achieving national re-unification. The South became increasingly dependent on the USA.¹
- 2.2** The US began direct military intervention in the early 1960s and increased its commitment in Vietnam as the war escalated, reaching over 500,000 US troops in 1968. Withdrawal began thereafter due to lack of military success and domestic US opposition to the war. The US and North Vietnam finally reached a peace agreement in 1973. At this point, many Western countries, including the UK, established full diplomatic relations with North Vietnam. The civil war continued, however, and in 1975 the southern forces were defeated. Vietnam was formally re-unified as the Socialist Republic of Vietnam in 1976 and admitted into the UN in 1977.²
- 2.3** But national re-unification did not lead to peace and stability. Relations with Cambodia's Khmer Rouge government and their Chinese backers soon deteriorated. After a series of provocative border incidents, Vietnam sent troops to Cambodia in 1978, removed Pol Pot's regime and installed a friendly government. Vietnam's intervention was widely condemned internationally. China launched a short punitive invasion into northern Vietnam in 1979, although quickly withdrew. Conflict in Cambodia continued into the 1980s as Vietnamese forces and their Cambodian allies faced attack from Khmer Rouge guerrillas. Vietnam endured a period of international isolation, supported only by the Soviet Union and its allies. Vietnamese forces finally withdrew from Cambodia in 1989.³
- 2.4** Vietnam's economy, sapped by over 30 years of war, was further weakened by the disastrous introduction of Soviet-style collectivist economic policies after reunification. As Vietnam neared economic collapse, hundreds of thousands of refugees (the 'Vietnamese Boat People') fled in the late 1970s/early 1980s. Vietnam's government, faced also with declining Soviet aid, was forced to make a drastic change in economic direction. In 1986, Vietnam introduced a ground-breaking new economic programme which slowly introduced liberal market principles and set the foundations for today's rapid economic growth in Vietnam. Following formal settlement of the Cambodian conflict at the 1991 Paris Conference, Vietnam's international isolation ended. Vietnam normalised relations with China in 1991, with Japan in 1993 and with the US in 1995.⁴
- 2.5** Vietnam is a one party state in which the Communist Party of Vietnam (CPV) decides all major policy issues, which are then implemented by the government. There are no free elections. The country is led by a triumvirate of CPV General Secretary, State President and Prime Minister. No legal opposition to the regime is permitted in Vietnam, but neither is there much sign of widespread popular opposition. The CPV still enjoys popular support following its success in defeating the French colonialist rulers, resisting American intervention, re-unifying the country, opposing Chinese encroachment and creating and maintaining peace and stability. In addition, liberal economic policies pursued since the late 1980s have delivered average GDP growth of around 8% in recent years and increasingly

¹ FCO Country Profile 5.01.09

² FCO Country Profile 5.01.09

³ FCO Country Profile 5.01.09

⁴ FCO Country Profile 5.01.09

high living standards for most of the population. Vietnam's record on poverty reduction is excellent. The younger generation are interested in their economic prospects and are becoming increasingly vocal and open to debate. As Vietnam has opened to the world, ordinary people enjoy much more personal freedom on a day-to-day level than previously but the security apparatus keeps an effective watch on society.⁵

- 2.6** The main legislative body in Vietnam is the National Assembly, which convenes biannually. In recent years the National Assembly has developed from little more than a rubber stamping body to one which increasingly scrutinises government policy and holds ministers accountable for their performance. However, the National Assembly remains firmly under the control of the CPV and thus is still far from being a proper democratic legislature.⁶
- 2.7** Overall, the great majority of Vietnamese people enjoy greater security, prosperity and personal liberty than previously in their history. Vietnam has also made great strides in terms of economic and social rights. However, notwithstanding gradual improvements over recent years, Vietnam's record on civil and political rights remains poor. Restrictions on freedom of expression, freedom of the media, freedom of religion and the continued application of the death penalty are particular causes for concern.⁷ Vietnam has one of the highest execution rates in the world. Official statistics are a state secret but the government has said that approximately 100 people were sentenced to death in 2007; with about half of the sentences carried out. In the Penal Code 29 offences carry the death penalty, including financial crimes such as corruption and embezzlement, also drugs offences, which probably constitute the majority of cases. Amnesty International estimated that 83 death sentences were handed down for drug trafficking offences alone in 2008.⁸
- 2.8** There has been some progress in 2008 in Vietnam's efforts to strengthen civil and political rights but there have also been setbacks. The government is pursuing a legal and judicial reform programme to strengthen the rule of law and the National Assembly has demonstrated its growing influence over the law-making and decision-making process. Proposals have been put forward to reduce significantly the scope of the death penalty. Over recent years, there has been greater religious freedom, with the government recognising more congregations, though land disputes remain a source of tension with the Catholic Church. There has been a tightening of control over the media in 2008.⁹
- 2.9** The government continued to crack down on dissent in 2008, arresting political activists and causing several dissidents to flee the country. Police sometimes abused suspects during arrest, detention and interrogation. Corruption was a significant problem in the police force and police officers sometimes acted with impunity. Prison conditions were often severe. Individuals were arbitrarily detained for political activities and denied the right to fair and expeditious trials. The government continued to limit citizens' privacy rights and tightened controls over the press and freedom of speech, assembly, movement and association. The government maintained its prohibition of independent human rights organisations. Violence and discrimination against women remained a concern. Trafficking in persons continued to be a significant problem. Some ethnic minority groups suffered societal discrimination.¹⁰
- 2.10** The CPV has stated its wish to tackle the high level of corruption in Vietnam, which it perceives as a threat not only to economic growth but also to the popular legitimacy of the political system. The Prime Minister has declared corruption a top priority, establishing a new anti-corruption agency under his direction. Following a major corruption scandal within the Ministry of Transport in 2006, involving accusations of embezzlement, bribery and nepotism, action by the authorities led to some high-level resignations and a number of

⁵ FCO Country Profile 5.01.09

⁶ FCO Country Profile 5.01.09

⁷ FCO Country Profile 5.01.09

⁸ FCO Annual Human Rights Report 2008

⁹ FCO Annual Human Rights Report 2008

¹⁰ USSD 2008

arrests. The Vice Minister of Transport and a number of officials were imprisoned, although some were released before completing their sentences. In a recent development, two leading journalists were sentenced, along with two police officers, for their role in reporting on the case. One of the journalists was not imprisoned after pleading guilty. The international community expressed its strong concern over the arrests and the signal this gave about the government's commitment to tackle corruption and to improve media freedoms.¹¹

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Vietnam. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the guidance below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on Considering the Asylum Claim).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in section 4 below or on the individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see the Asylum Instructions on 'Considering the Asylum Claim' and 'Assessing Credibility in Asylum and Human Rights Claims'. [Case owners should also refer to the Asylum Instruction on Nationality.]
- 3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at <http://www.ukba.homeoffice.gov.uk/documents/asylumpolicyinstructions/>
- 3.6 Opposition political activists**
- 3.6.1** Most claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of the Vietnamese authorities due to their or a relative's involvement with opposition political parties.
- 3.6.2 *Treatment.*** See 2.5. Vietnam is a one party state in which the Communist Party of Vietnam (CPV) decides all major policy issues, which are then implemented by the government. There are no free elections in Vietnam and candidates for election to the National Assembly and local People's Councils must in practice be approved by the CPV. There is, however, an increasing minority of elected representatives who are not CPV members. Political opposition movements and other political parties are illegal. But despite the lack of freedom

¹¹ FCO Country Profile 5.01.09

to organise opposition parties, there is no sign of widespread popular opposition to the regime.¹²

- 3.6.3** For a brief period in 2006, the government of Vietnam—prior to entering the World Trade Organisation and normalising trade relations with the United States—tolerated a budding civil society. Opposition political parties, independent trade unions, underground newspapers, and Vietnam’s first independent human rights organisation publicly emerged. The most well-known effort was by activists who formed a pro-democracy group, Block 8406, whose membership swelled into the thousands through an online petition.¹³ A wide array of people signed two appeals in 2006; the “Appeal for Freedom of Political Association” on 6 April 2006 and the “2006 Manifesto on Freedom and Democracy of Vietnam” on 8 April 2006 (also known as the 2006 Democracy Manifesto). At the same time, activists launched an unsanctioned newspaper, Tu Do Ngon Luan (“Free Expression”) and a number of reporters and bloggers formed an underground media group called the Free Journalists Association of Vietnam.¹⁴
- 3.6.4** However, the government’s tolerance of peaceful dissent proved to be short-lived. In the weeks leading up to Vietnam’s hosting of a major international conference in Hanoi in November 2006, the Asia Pacific Economic Cooperation (APEC) summit, the Vietnamese government launched a fresh crackdown on civil society, harassing and arresting democracy advocates, labour activists, human rights defenders, opposition party members and cyber-dissidents. The government also placed a number of activists under house arrest to prevent them from speaking to the international press corps covering the APEC summit. Dozens of activists, including eight independent trade union advocates, were sentenced to prison in 2006-2007 on dubious national security charges.¹⁵
- 3.6.5** The most recent elections to select members of the National Assembly were held in May 2007. The elections were neither free nor fair, since all candidates were chosen and vetted by the CPV’s Vietnam Fatherland Front (VFF). Despite the CPV’s early announcement that a greater number of “independent” candidates (those not linked to a certain organisation or group) would run in the elections, the ratio of independents was only slightly higher than that of the 2002 election. The CPV approved 30 “self-nominated” candidates, who did not have official government backing but were given the opportunity to run for office. There were credible reports that party officials pressured many self-nominated candidates to withdraw or found such candidates “ineligible” to run. Additionally, international observers reported that the number of ballots cast in the election was improbably high.¹⁶
- 3.6.6** In 2008 the government continued to restrict public debate and criticism severely. No public challenge to the legitimacy of the one party state was permitted. However, there were some instances of unsanctioned letters, including some former senior party members, which circulated publicly. The government continued to crack down on the small opposition political groupings established in 2006, and members of these groups faced arrests and arbitrary detentions. The government used decrees, ordinance and measures to detain activists for the peaceful expression of opposing political views. During 2008 authorities arrested several individuals for violating Article 88, which prohibits the “distribution of propaganda against the state”. Those charged with violating Article 88 were typically sentenced to terms of up to five years in prison. While several activists received reduced prison sentences after they appealed, others had their original sentences reaffirmed during appeals. In August and September 2008 the government arrested at least 13 activists, most connected with the political movement Block 8406 and briefly detained at least a dozen others. On 7 November, land protester and Block 8406 member Le Thi Kim Thu was sentenced to 18 months’ imprisonment for “disturbing public order”. Several of the approximately 30 activists arrested in the government crackdown in 2006/2007 were

¹² FCO Country Profile 5.01.09

¹³ Human Rights Watch ‘Not Yet a Workers Paradise’ 4.05.09

¹⁴ Human Rights Watch ‘Not Yet a Workers Paradise’ 4.05.09

¹⁵ Human Rights Watch “Vietnam: Fledgling Democracy Movement Under Threat”. 10.05.06

¹⁶ USSD 2008

convicted during 2008. Others remained under investigation and under administrative detention without being formally charged.¹⁷

- 3.6.7** There were no precise estimates of the number of political prisoners. The government claimed it held no political prisoners, only lawbreakers. The government held at least 35 political detainees at the end of 2008, although some international observers claimed the number ranged into the hundreds. Several political dissidents affiliated with outlawed political organisations, including Block 8406, the People's Democratic Party, People's Action Party, Free Vietnam Organisation, Democratic Party of Vietnam, UWFO and other remained in prison or under house arrest in various locations.¹⁸
- 3.6.8** The government or its agents did not commit any politically motivated killings in 2008. Police commonly physically mistreated suspects during arrest or detention. Prison conditions could be severe but generally did not threaten the lives of prisoners. Family members of several political dissidents reported improved living conditions at Xuan Loc Prison in Dong Nai Province. Foreign diplomats observed Spartan but clean living areas and generally acceptable labour conditions during a visit to the prison. Family members of one activist claim medical treatment was inadequate.¹⁹
- 3.6.9** **Sufficiency of protection.** As this category of claimants' fear is of ill-treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.6.10** **Internal relocation.** As this category of claimants' fear is of ill-treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.
- 3.6.11** **Conclusion.** The Vietnamese authorities may take serious action against individuals involved with opposition political parties/organisations who they believe pose a threat to the state and this treatment may amount to persecution. Where an individual is able to demonstrate that they have taken part in opposition political activities and as a result of these will come to the attention of the authorities, and face a serious risk of persecution on account of their activities, a grant of asylum will be appropriate.
- 3.7** **Minority ethnic groups**
- 3.7.1** Some claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of the ordinary Vietnamese population and/or the Vietnamese authorities due to their Chinese or Montagnard ethnicity.
- 3.7.2** **Treatment** A sixth of the population belongs to one of the approximately 53 ethnic minorities.²⁰ Although the Government officially prohibits discrimination against ethnic minorities, longstanding societal discrimination against ethnic minorities persisted in 2008. Despite the country's significant economic growth, ethnic minority communities benefited little from improved economic conditions. Government officials monitored certain highland minorities closely, particularly several ethnic groups in the Central Highlands, because of concern that the form of Protestant religion they practised encouraged ethnic minority separatism.²¹ Human Rights Watch reported that some local officials restrict access of ethnic and religious minorities to schooling and jobs. Minorities generally have little input on development projects that affect their livelihoods and communities.²²
- 3.7.3** The government continued to address the causes of ethnic minority discontent through special programmes to improve education and health facilities and to expand road access

¹⁷ USSD 2008

¹⁸ USSD 2008

¹⁹ USSD 2008

²⁰ Vietnam COI Report June 2009

²¹ USSD 2008

²² Human Rights Watch Report 2009

and electrification of rural communities and villages. The government allocated land to ethnic minorities in the Central Highlands through a special programme, but there were complaints that these special programmes were implemented unevenly.²³

- 3.7.4** The government broadcast radio and television programs in ethnic minority languages in some areas. The government also instructed majority ethnic Kinh officials to learn the language of the locality in which they worked. Provincial governments continued initiatives designed to increase employment, reduce the income gap between ethnic minorities and ethnic Kinh, and make officials sensitive and receptive to ethnic minority culture and traditions. The government granted preferential treatment to domestic and foreign companies that invested in highland areas, which are heavily populated with ethnic minorities. The government also maintained infrastructure development programs that targeted poor, largely ethnic minority areas and established agricultural extension programmes for remote rural areas.²⁴

Chinese (Hoa)

- 3.7.5** The Chinese are well integrated into Vietnamese society. There is no history of persistent protest or rebellion and there is little support for such activities. Furthermore, the government of Vietnam does not actively discriminate against or repress ethnic Chinese. The Chinese are reportedly dispersed across the country, although there are reported to be up to half a million Chinese residing in Ho Chi Minh City. The political, economic, and cultural status of the ethnic Chinese living in Vietnam has progressively improved since the early 1980s. Hanoi has supported the economic efforts of the ethnic Chinese. In the mid-1990s all restrictions on their participation in the political sphere were officially lifted. They possess the same rights as other Vietnamese citizens.²⁵

Montagnards

- 3.7.6** Montagnards is the collective term used for a number of ethnic minorities that inhabit the Central Highlands of Vietnam.²⁶ In 2004 thousands of Montagnard people protested against government policies in three provinces of the Central Highlands following which hundreds of Montagnards attempted to seek asylum in Cambodia. In 2008 the government continued to honour a tripartite Memorandum of Understanding between Vietnam, Cambodia and UNHCR, signed in January 2005, to facilitate the return from Cambodia of all ethnic Vietnamese who did not qualify for third country resettlement. Local government authorities observed but did not hinder fact finding and monitoring visits by UNHCR and foreign diplomatic mission representatives to the Central Highlands. The UNHCR has stated there was 'no perceptible evidence of mistreatment' of any of the ethnic minority individuals it monitored in the Central Highlands. Some members of ethnic minority groups continued to flee to Cambodia and Thailand reportedly to seek greater economic opportunity or shortcuts to immigration to other countries. The flow of ethnic minorities into Cambodia stopped mid 2008, possibly because almost all new arrivals were determined by the UNHCR to be economic migrants rather than refugees.²⁷
- 3.7.7** Human rights groups have accused the government of arresting more than 350 Montagnards since 2001, and giving long prison terms for protesting against land seizures and demanding greater religious freedom.²⁸ In April 2008 a fresh wave of demonstrations in the Central Highlands resulted in dozens of reported arrests and detentions of individuals suspected of organising the protests. Local observers reported the demonstrations were prompted by ethnic minority groups protesting local land use policies.²⁹

²³ USSD 2008

²⁴ USSD 2008

²⁵ Vietnam COI Report June 2009

²⁶ Vietnam COI Report June 2009

²⁷ Vietnam COI Report June 2009

²⁸ Freedom House: Freedom in the World 2008

²⁹ Vietnam COI Report June 2009

3.7.8 Sufficiency of protection. As this category of claimants' fear is of ill-treatment/persecution by the state authorities they cannot apply to these authorities for protection.

3.7.9 Internal relocation. This category of applicants' fear is of ill-treatment/persecution by the state authorities. This does not mean that case owners should automatically presume that internal relocation is not an option. As Lord Bingham observed in Januzi ([2006] UKHL 5):

"The more closely the persecution in question is linked to the state, and the greater the control of the state over those acting or purporting to act on its behalf, the more likely (other things being equal) that a victim of persecution in one place will be similarly vulnerable in another place within the state. The converse may also be true. All must depend on a fair assessment of the relevant facts."

Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

3.7.10 Conclusion. Although societal discrimination against ethnic minorities persists in Vietnam including some unofficial restrictions on employment and access to education, this discrimination does not generally reach the level of persecution. Discrimination on ethnic grounds is illegal in Vietnam and the Government has established programmes to address the social and economic inequalities faced by many ethnic minorities. Therefore the majority of claimants in this category are unlikely to qualify for asylum or Humanitarian Protection.

3.7.11 However, members of minority ethnic groups who are involved in anti-government activities and/or who are associated with opposition political parties or minority religious groups may come to the adverse attention of the authorities and may face persecution. (See sections 3.6 and 3.8) Where an individual is able to demonstrate that they have taken part in opposition political activities or anti-government protests and as a result of these will come to the attention of the authorities and face a serious risk of persecution on account of their activities a grant of asylum will be appropriate.

3.8 Minority religious groups

3.8.1 Some claimants will apply for asylum or make a human rights claim based on ill-treatment amounting to persecution at the hands of Vietnamese authorities due to their religious beliefs.

3.8.2 Treatment. More than half of Vietnam's population is Buddhist, 8 to 10% Roman Catholic, Cao Dai organisations 1.5 to 3%, the primary Hoa Hao organisation 1.5 to 4%, Protestant 0.5 to 2% and Muslim less than 0.1%. Most other citizens consider themselves non-religious. While individuals, by and large, enjoy freedom of religion in Vietnam, there are restrictions on non-authorised religious groups. Non-recognised Protestant groups, particularly in the Northern and Central Highlands regions, have faced severe restrictions and – at times - repression. The leaders of the breakaway Unified Buddhist Church of Vietnam remain under de facto house arrest. In November 2006 the US removed Vietnam from its list of Countries of Particular Concern on religious freedom.³⁰ The government deepened implementation of its 2004 Ordinance on Belief & Religion in 2008.³¹ However,

³⁰ FCO Country Profile 5.01.09

³¹ US State International Religious Freedom Report 2008 (IRFR)

tensions have continued between the authorities and religious groups. Religious figures remain on the EU's list of prisoners of concern.³²

- 3.8.3** In general restrictions on the organised activities of religious groups were enforced less strictly in 2008 than in previous years and participation in religious activities continued to grow significantly. Religious groups encountered the greatest restrictions when they engaged in activities that the government perceived as political activism or a challenge to its rule,³³ particularly the self-styled "Dega Church" in the Central Highlands, the unrecognised Unified Buddhist Church of Vietnam (UBCV) and one unrecognised faction of the Hoa Hao Buddhists. The government maintained a prominent role overseeing recognised religions. Official oversight of religious groups varied widely from locality to locality, often as a result of ignorance of national policy or varying local interpretations of the policy's intent. Although the approval process for registration was sometimes slow, new congregations were registered throughout the country during 2008 but less so in the northern region and Northwest Highlands. Members of unregistered and unrecognised religious groups occasionally experienced harassment.³⁴

Catholics

- 3.8.4** There are an estimated 8 million Catholics in the country, although government statistics place the number at 5.9 million. Catholics live throughout the country, but the largest concentrations remain in the southern provinces around Ho Chi Minh City, in parts of the Central Highlands and in the provinces southeast of Hanoi. Catholicism has revived in recent years with newly rebuilt or renovated churches and growing numbers of people who want to be religious workers.³⁵
- 3.8.5** In 2008, the Catholic Church continued to ease restrictions on assignment of new clergy. The Church discussed establishing additional Catholic seminaries with the government and expanded its pastoral works programme. The government maintained its regular dialogue with the Vatican on a range of issues. A number of Catholic clergy reported a continued easing of government control over activities in certain dioceses outside of Hanoi. Local officials informally discouraged some clergy from travelling domestically, even within their own provinces, especially when travel to ethnic minority areas was involved.³⁶ In October/November 2008 human rights groups documented intimidation and harassment against Catholics in Hanoi and other areas, including in September 2008 a violent crackdown on peaceful mass protests in Hanoi about land ownership.³⁷

Protestants

- 3.8.6** The two officially recognised Protestant churches are the Southern Evangelical Church of Vietnam (SECV) and the smaller Evangelical Church of Vietnam North (ECVN). The Grace Baptist Church and the United World Mission are also officially recognised. A growing number of other Protestant denominations are also present. Estimates of the number of Protestants ranged from government figures of 610,000 to claims by churches of more than 1.6 million. There are estimates that the growth of Protestant believers has been as much as 600 percent over the past decade. Some new converts belong to unregistered evangelical house churches. Based on adherents' estimates, two-thirds of Protestants are members of ethnic minorities, including minority groups in the Northwest Highlands, and in the Central Highlands.³⁸

³² FCO Annual Human Rights Report 27.03.09

³³ USSD 2008

³⁴ IRFR 2008

³⁵ IRFR 2008

³⁶ IRFR 2008

³⁷ Vietnam COI Report June 2009

³⁸ Vietnam COI Report June 2009

- 3.8.7** In 2005 the government issued the 'Instruction on Some Tasks Regarding Protestantism' which calls on authorities to facilitate the requests of recognised Protestant denominations to construct churches, train and appoint pastors and also to help unrecognised denominations register.³⁹ During 2008 the government continued to ease restrictions on most religious groups. Much of the change came from stronger implementation of significant revisions to the legal framework on religion in 2004 and 2005 and a more positive government attitude toward Protestant groups. Many recognised and unrecognised religious groups, especially Protestant groups in the Central and Northwest Highlands, reported that the situation for their practitioners continued to improve overall. In addition, the central Government continued to actively train, inform and encourage provincial and local authorities to comply with regulations under the legal framework. Most SECV congregations and meeting places in the Central Highlands were able to register their activities with local officials and allowed to operate without significant harassment.⁴⁰
- 3.8.8** In certain cases recognised and unrecognised Protestant groups were able to overcome local harassment or to overturn negative local decisions after they appealed to higher-level authorities. There were reports that local officials in rural communities continued to discourage conversion to Protestantism. In a number of isolated instances, local officials repressed Protestant believers in some parts of the Central and Northwest Highlands and other areas by forcing church gatherings to cease, closing house churches, and pressuring individuals to renounce their religious beliefs, often unsuccessfully. In some instances, the local officials involved were reprimanded or fired. Reports of attempted forced renunciations continued to decrease. The government remained concerned that some ethnic minority groups in the Central Highlands were operating a self-styled 'Dega Church' which reportedly mixes religious practice with political activism and calls for ethnic minority separatism.⁴¹
- 3.8.9** **Sufficiency of protection.** As this category of claimants' fear is of ill-treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.8.10** **Internal relocation.** As this category of claimants fear is of ill-treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.
- 3.8.11** **Conclusion.** Although there are some restrictions on religious freedom and the Vietnamese authorities seek to control religious groups, the treatment individual members of officially registered religious groups suffer on account of these restrictions does not generally amount to persecution. The majority of claimants from this category of claim are therefore unlikely to qualify for asylum or Humanitarian Protection.
- 3.8.12** Members of unregistered religious groups usually face more difficulties than members of registered communities and may face intimidation and harassment. The levels of ill-treatment suffered will vary depending on region and the attitude of local officials and in the majority of cases this will not amount to persecution. Therefore a grant of asylum or Humanitarian Protection will not be appropriate. However, in particular cases, for example those involving ethnic minorities belonging to unregistered Protestant groups, the level of ill-treatment may amount to persecution and therefore in these cases a grant of asylum may be appropriate.
- 3.9** **Prison conditions**
- 3.9.1** Claimants may claim that they cannot return to Vietnam due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Vietnam are so poor as to amount to torture or inhuman treatment or punishment.

³⁹ Vietnam COI Report June 2009

⁴⁰ USSD 2008

⁴¹ USSD 2008

- 3.9.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.9.3 *Consideration.*** It was reported that, in 2008, although prison conditions could be severe, they generally did not threaten the lives of prisoners. Overcrowding, insufficient diet, lack of clean drinking water and poor sanitation remained serious problems in many prisons. Prisoners had access to basic health care, with additional medical services available at district or provincial level hospitals. Prisoners generally were required to work but received no wages. Prisoners reportedly were sometimes moved to solitary confinement, where they were deprived of reading and writing materials, for periods of up to several months. The Government did not allow the International Committee of the Red Cross (ICRC) or non-government organisations to visit prisons in 2008.⁴²
- 3.9.4** Vietnam has one of the highest execution rates in the world. Official statistics are a state secret but the government has said that approximately 100 people were sentenced to death in 2007; with about half of the sentences carried out. In the Penal Code 29 offences carry the death penalty, including financial crimes such as corruption and embezzlement, also drugs offences, which probably constitute the majority of cases. Amnesty International estimated that 83 death sentences were handed down for drug trafficking offences alone in 2008.⁴³
- 3.9.5 *Conclusion.*** Whilst prison conditions in Vietnam are poor with overcrowding, insufficient diet, and poor sanitation being a particular problem, conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Vietnam a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.
- 4. Discretionary Leave**
- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instruction on Article 8 ECHR.
- 4.2** With particular reference to Vietnam the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instruction on Discretionary Leave and the Asylum Instruction on Article 8 ECHR.

⁴² USSD 2008

⁴³ FCO Annual Human Rights Report 2008

4.3 Minors claiming in their own right

- 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care or support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care or support arrangements in place.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care or support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instruction.

4.4 Medical treatment

- 4.4.1** Claimants may claim they cannot return to Vietnam due to a lack of specific medical treatment. See Asylum Instruction “ECHR” and IDI Ch.1 Sect. 10 on Medical Treatment which set out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** Vietnam’s health indices have improved substantially in recent years, although it has had to face relatively new health problems and rising incidences of non-communicable and lifestyle-related diseases. Vietnam’s health system retains its socialist basis, with the state health system playing a key role in health service provision. In the face of economic difficulties, the government decided to increase the number of beneficiaries of free medical charges for poor households. Health insurance for the poor was adopted several years ago but access to free healthcare for those groups has remained modest.⁴⁴
- 4.4.3** Services are delivered by both private providers and an extensive public network of village health workers, commune health stations, polyclinics, district hospitals, district preventive health centres, provincial hospitals and regional, central and specialist hospitals. Planning and management of the public network involves the national Ministry of Health, provincial departments of health and district health offices, which are responsible for village health workers and commune health stations. There are 156 public hospitals and 49 private hospitals. Central-level public hospitals are overcrowded, largely due to patients bypassing lower levels of care. Quality standards are acknowledged to need improvement. There are health disparities between urban and rural, rich and poor, and different geographical areas.⁴⁵

HIV/AIDS

- 4.4.4** The website of the World Health Organisation (WHO) states that 260,000 people were living with HIV in 2005. Approximately 42,000 people living with HIV in 2006 were in need of antiretroviral treatment, but only 8,500 had access to it and it is projected that the number in need of the treatment will increase rapidly in the next few years. Widespread stigma and discrimination against people living with HIV, including from the health care setting, prevent patients from accessing prevention and treatment, but the government has demonstrated an increasing interest in confronting this problem.⁴⁶

Tuberculosis (TB)

- 4.4.5** TB remains a major public health problem; Vietnam ranks 13th of the 22 countries with the highest TB burden. Although TB has been a national priority for more than 10 years and targets have been met for the last few years, new cases have been recorded for the last five years.⁴⁷

⁴⁴ Vietnam COI Report June 2009

⁴⁵ Vietnam COI Report June 2009

⁴⁶ Vietnam COI Report June 2009

⁴⁷ Vietnam COI Report June 2009

4.4.6 Caselaw

[2004] UKIAT 00267 VP (Vietnam) Heard 12 July 2004, Promulgated 23 September 2004 The IAT found that despite the appellant suffering from 'end stage AIDS' with a life expectancy of a few months and there being very limited treatment for HIV/AIDS in Vietnam there is at least one dedicated centre available on return for this appellant, where palliative treatment can be had and in line with the case of N [2003] EWCA Civ 1369 the appellant's appeal was dismissed.

- 4.4.7** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in Asylum Instruction "ECHR" and IDI Ch. 1 Sect. 10 on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

Vietnamese nationals may return voluntarily to any region of Vietnam at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the UK Border Agency by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Those wishing to avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

6. List of source documents

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9 June 2009