



OPERATIONAL GUIDANCE NOTE

VIETNAM

CONTENTS

1. Introduction	1.1 – 1.3
2. Country assessment	2.1 – 2.2
Actors of protection	2.3
Internal relocation	2.4
Country guidance caselaw	2.5
3. Main categories of claims	3.1 – 3.4
Opposition political activists	3.6
Minority ethnic groups	3.7
Minority religious groups	3.8
Victims of trafficking	3.9
Prison Conditions	3.10
4. Discretionary Leave	4.1 – 4.2
Minors claiming in their own right	4.3
Medical treatment	4.4
5. Returns	5.1 – 5.3

1. Introduction

- 1.1** This document provides UK Border Agency case owners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Vietnam, 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** Case owners must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and case owners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. 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.

2. Country assessment

2.1 Case owners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

2.2 An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohrdreport.com/wp-content/uploads/2011/02/Cm-8339.pdf>

2.3 Actors of protection

2.3.1 Case owners must refer to the Asylum Policy Instruction on 'considering the protection (asylum) claim' and 'assessing credibility'. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so, or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by, for example, operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection

2.3.2 Internal security is the responsibility of the Ministry of Public Security (MPS); however, in some remote areas, the military is the primary government agency and performs public safety functions, including maintaining public order in the event of civil unrest. The MPS controls the police, a special national security investigative agency, and other internal security units. It also maintains a system of household registration and block wardens to monitor the population. While this system is less intrusive than in the past, it continues to be used to monitor those suspected of engaging or likely to engage in, unauthorised political activities. Credible reports suggest that local police used "contract thugs" and "citizen brigades" to harass and beat political activists and others, including religious worshippers, perceived as "undesirable" or a "threat" to public security.¹

2.3.3 Police organisations exist at the provincial, district, and local levels and are subject

¹ USSD Human Rights Report: [Vietnam 2011](#) section 1D

to the authority of people's committees at each level. At the commune level, it is common for guard forces made up of residents to assist the police. The police are generally effective at maintaining public order, but police capabilities, especially investigative, are generally very low. Police training and resources are inadequate. The government cooperated with several foreign governments in a program for provincial police and prison management officials to improve the professionalism of security forces during 2011.²

- 2.3.4** There is no clear or effective mechanism for pursuing a civil action to redress or remedy abuses committed by authorities. Civil suits are heard by administrative courts, civil courts, and criminal courts, all of which follow the same procedures as in criminal cases and are adjudicated by members of the same body of judges and lay assessors. All three levels were subject to the same problems of corruption, lack of independence, and inexperience.³
- 2.3.5** By law a citizen seeking to press a complaint regarding a human rights violation by a civil servant is required first to petition the officer accused of committing the violation for permission to refer the complaint to the administrative courts. If a petition is refused, the citizen may refer it to the officer's superior. If the officer or his superior agrees to allow the complaint to be heard, the matter is taken up by the administrative courts. If the administrative courts agree that the case should be pursued, it is referred either to the civil courts for suits involving physical injury seeking redress of less than 20 percent of health-care costs resulting from the alleged abuse, or to the criminal courts for redress of more than 20 percent of such costs. In practice this elaborate system of referral and permission ensures that citizens have little effective recourse to civil or criminal judicial procedures to remedy human rights abuses, and few legal experts have experience with the system. In August (2010) the government issued new regulations limiting the number of government agencies that could receive a complaint and restricting each complaint to only one signatory. The new regulation restricted the common practice of individuals, particularly land-rights petitioners, from sending joint complaints to numerous federal agencies.⁴
- 2.3.6** The law provides for criminal penalties for official corruption; however, the government does not always implement the law effectively, and officials sometimes engage in corrupt practices with impunity. Corruption continues to be a major problem. The government has persisted in efforts to fight corruption, including publicising budgets of different levels of government and continuing to streamline government inspection measures. Cases of government officials accused of corruption are occasionally widely publicised.⁵
- 2.3.7** The anticorruption law allows citizens to complain openly about inefficient government, administrative procedures, corruption, and economic policy. In regular Internet chats with high-level government leaders, citizens asked pointed questions about anticorruption efforts. However, the government continues to consider public political criticism a crime unless the criticism is controlled by the authorities. Attempts to organise those with complaints to facilitate action are considered proscribed political activities and subject to arrest. Senior government and party leaders have travelled to many provinces, reportedly to try to resolve citizen complaints. Corruption related to land use is widely publicised in the press,

² USSD Human Rights Report: [Vietnam 2011](#) section 1D

³ USSD Human Rights Report: [Vietnam 2011](#) section 1E

⁴ USSD Human Rights Report: [Vietnam 2011](#) section 1E

⁵ USSD Human Rights Report: [Vietnam 2011](#) section 4

apparently in an officially orchestrated effort to bring pressure on local officials to reduce abuses.⁶

2.3.8 Corruption among police remains a significant problem at all levels, and members of the police sometimes act with impunity. Internal police oversight structures exist, but are subject to political influence.⁷

2.3.9 The Supreme People's Court in Hanoi is the highest court and exercises civil and criminal jurisdiction over all lower courts. The Supreme Court may also conduct trials of the first instance in certain cases. There are People's Courts in each province and city which exercise jurisdiction in the first and second instance. Military courts hear cases involving members of the People's Army and cases involving national security. In 1993 legislation was adopted on the establishment of economic courts to consider business disputes. The observance of the law by ministries, government offices and all citizens is the concern of the People's Organs of Control, under a Supreme People's Organ of Control. The Chief Justice of the Supreme People's Court and the Chief Procurator of the Supreme People's Organ of Control are elected by the National Assembly, on the recommendation of the President.⁸

2.3.10 The shortage of adequately trained lawyers and judges continued during 2011. The law provides for the independence of lawyers and lay assessors, but in practice they are not. The Communist Party of Vietnam (CPV) controls the courts at all levels via its effective control over judicial appointments and other mechanisms, and frequently by determining verdicts. Political influence, endemic corruption and inefficiency continued to strongly distort the judicial system during 2011. The majority of judges are members of the CPV, and chosen partly for their political views. The influence of the CPV is particularly notable in high-profile cases and cases where the individual is charged with challenging or harming the party or the state.⁹ Credible reports continue that the authorities exert pressure on defence lawyers not to take religious or democracy activists facing trial as clients. Human rights lawyers were restricted, harassed, arrested, disbarred and in some cases detained for representing political activists.¹⁰

2.3.11 There was no noticeable improvement in the human rights situation in Vietnam during 2011. Changes to the political elite announced at the Communist Party Congress in January 2011 did not lead to greater respect for civil or political rights. Human rights defenders continued to face severe sanctions from the authorities for non-violent activities. This included the arrest and imprisonment of bloggers, journalists and peaceful political activists, mostly under Vietnam's national security laws. At the end of 2011, there were 56 detainees on the European Union's local list of persons of concern, an increase of 12 compared with 2010.¹¹

2.4 Internal relocation.

2.4.1 Case owners must refer to the Asylum Policy Instructions on both internal relocation and Gender Issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be

⁶ USSD Human Rights Report: [Vietnam 2011](#) section 4

⁷ USSD Human Rights Report: [Vietnam 2011](#) section 4

⁸ COIS Report [Vietnam 20 April 2012](#) (para 10.02)

⁹ USSD Human Rights Report: [Vietnam 2011](#) section 1E

¹⁰ USSD Human Rights Report: [Vietnam 2011](#) section 1E

¹¹ Foreign & Commonwealth Office: [Human Rights & Democracy \(Vietnam\) 2011](#)

relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted, and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm, and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned, including any gender issues, should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

- 2.4.2** 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.
- 2.4.3** The constitution provides for freedom of movement within the country, foreign travel, emigration, and repatriation; however, the government imposed some limits on freedom of movement for certain individuals. For example, several political dissidents, amnestied with probation or under house arrest, were subject to official restrictions on their movements. The government generally cooperated with the UNHCR and other humanitarian organisations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.¹²
- 2.4.4** A government restriction regarding travel to certain areas remains in effect. It requires citizens and resident foreigners to obtain a permit to visit border areas, defence facilities, industrial zones involved in national defence, areas of "national strategic storage," and "works of extreme importance for political, economic, cultural, and social purposes." The 2007 Law on Residence was not broadly implemented, and migration from rural areas to cities continued unabated. However, moving without permission hampered persons seeking legal residence permits, public education, and health-care benefits. Citizens also were required to register with local police when staying overnight in any location outside of their own homes; the government appeared to enforce these requirements more strictly in some districts of the Central and Northern Highlands.¹³
- 2.4.5** It may be practical for applicants who have a well-founded fear of persecution in one area to relocate to other parts of Vietnam where they would not have a well-founded fear and, taking into account their personal circumstances, it would not be unduly harsh to expect them to do so.

2.5 Country guidance caselaw

¹² USSD Human Rights Report: [Vietnam 2011](#) section 2D

¹³ USSD Human Rights Report: [Vietnam 2011](#) section 2D

Supreme Court: RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

VP (Palliative AIDS treatment - return permissible) Vietnam [2004] UKIAT 00267

(Palliative AIDS treatment - return permissible) In this appeal the Tribunal dismissed an appeal brought by a 19 year old Vietnamese citizen suffering from advanced AIDS. It was found that the anti-retroviral treatment that the appellant receives in the UK has extended his life expectancy from a few months to 3 years - if this were stopped any benefits of the treatment would be lost in a few months. The Tribunal held that there is one centre for AIDS sufferers in Vietnam which offers palliative care only - following N the Tribunal found this sufficient.

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Vietnam. 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 instructions 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 their 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 Policy Instruction on considering the protection (asylum) claim and assessing credibility).
- 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 does not qualify for asylum or Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed below, or on their individual circumstances.
- 3.4** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

3.5 Credibility

3.5.1 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 Policy Instruction on considering the protection (asylum) claim and assessing credibility. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Opposition political activists

3.6.1 Applicants may make an asylum and/or human rights claim based on ill treatment amounting to persecution at the hands of the Vietnamese authorities due to their, or a relatives, involvement with opposition political parties.

3.6.2 Treatment: Vietnam is not an electoral democracy. The Communist Party of Vietnam (CPV), the sole legal political party, controls politics and the government and its Central Committee is the top decision-making body. The National Assembly, whose 500 members are elected to five-year terms, generally follows CPV dictates. The Vietnam Fatherland Front, an arm of the CPV, vets all candidates. The president, elected by the National Assembly for a five-year term, appoints the prime minister, who is confirmed by the legislature.¹⁴ The Vietnamese government does not tolerate political dissent or criticism of the Communist Party's role. Opposition political parties are illegal and dissidents expressing opinions about multi-party democracy risk imprisonment.¹⁵

3.6.3 The constitution does not provide for the right of citizens to change their government peacefully, and citizens could not freely choose and change the laws and officials that govern them.¹⁶ Political opposition movements and other political parties are illegal. The government continues to restrict public debate and criticism severely. No public challenge to the legitimacy of the one-party state is permitted; however, there were instances of unsanctioned letters critical of government policy from private citizens, including some former senior party members. 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.¹⁷

3.6.4 Human Rights Watch reported that 2011 saw a steady stream of political trials and

¹⁴ Freedom House Report Country Report; Vietnam 2011

<http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8164>

¹⁵ COIS Report [Vietnam 20 April 2012](#) (para 14.01)

¹⁶ USSD Human Rights Report: [Vietnam 2011](#) section 3

¹⁷ COIS Report [Vietnam 20 April 2012](#) (para 14.01)

arrests, possibly spurred by government concerns regarding events in the pro-democracy movement 'Arab Spring'. The 11th Vietnam Communist Party Congress in January 2011 and the stage-managed National Assembly election in May determined the leadership of the party and government for the next five years.¹⁸ Members of Bloc 8406, a political activist group that calls for the creation of a multiparty state, continued to face harassment and imprisonment. The group is accused of 'abusing' freedom and democratic rights to violate state interests.¹⁹ The internal human rights NGO, Vietnam Human Rights Network (VHRN) has reported many instances of political activists and bloggers being beaten by the police, arrested, detained and imprisoned, often for long periods of time.²⁰

See also: **Actors of protection (section 2.3 above)**
 Internal relocation (section 2.4 above)
 Caselaw (section 2.5 above)

3.6.6 Conclusion: The Supreme Court held in *RT (Zimbabwe)* that the rationale of the decision in *HJ (Iran)* extends to the holding of political opinions. An individual should not be expected to modify or deny their political belief, or the lack of one, in order to avoid persecution.

3.6.7 The Vietnamese authorities 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. The country evidence does not show that, as a general matter, those with no political opinion would be put in situations where they are required to demonstrate loyalty to the government (see *RT (Zimbabwe)* in section 2.5) above). Where an individual is able to demonstrate that they have taken part in opposition political activities or will otherwise be perceived as being involved in opposition politics, and as a result of that would come to the adverse attention of the authorities, they would 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 applicants may make an asylum and/or 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 membership of a minority ethnic group.

3.7.2 Treatment: Ethnic minorities and indigenous people comprise approximately 14% of the population of Vietnam. They continue to face difficulty, and activists from minority communities continue to be jailed. During 2010 – 2011, statistics continued to show that ethnic minorities were disproportionately represented among Vietnam's poor. Women from ethnic minorities have some of the country's highest maternal mortality rates.²¹

3.7.3 Although the government officially prohibits discrimination against ethnic minorities, longstanding societal discrimination against ethnic minorities persisted during 2011. Despite the country's significant economic growth, some ethnic minority

¹⁸ Human Rights Watch: [Vietnam 2012](#)

¹⁹ COIS Report [Vietnam 20 April 2012](#) (para 14.08)

²⁰ Vietnam Human Rights Network: [VHRN Latest News: See multiple entries](#)

²¹ COIS Report [Vietnam 20 April 2012](#) (para 19.04)

communities benefited little from improved economic conditions. In certain areas, including the Northwest Highlands, Central Highlands, and portions of the Mekong Delta, ethnic minority groups comprise the majority of the population.²² The government continued to address the causes of ethnic minority discontent through special programs to improve education and health facilities and expand road access and electrification of rural communities and villages.²³

3.7.4 The government maintained a program to conduct classes in some local ethnic minority languages in elementary and secondary schools. The government worked with local officials to develop local language curricula, but it appeared to implement this program more comprehensively in the Central Highlands and the Mekong Delta than in the mountainous northern and north-western provinces. Ethnic minorities were not required to pay regular school fees, and the government operated special schools for ethnic minorities in many provinces, including subsidised boarding schools at the middle- and high-school levels. The government offered special admission and preparatory programs as well as scholarships and preferential admissions at the university level. There were also a few government-subsidised technical and vocational schools for ethnic minorities. Nonetheless, there were credible cases of discrimination against Christian ethnic minorities, although the law provides for universal education for children regardless of religion or ethnicity.²⁴

Chinese (Hoa)

3.7.5 The Chinese are generally well integrated into Vietnamese society, and believed to be the largest ethnic group in Vietnam. Their numbers are disputed, but estimated at between 1 and 2 million. The Hoa people are officially recognised by the government, but other groups of Chinese, i.e. the San Diu and the Ngai, are not.²⁵

3.7.6 The Chinese are reportedly dispersed across the country, although they are concentrated in the southern region of Vietnam, with many residing in and round Ho Chi Minh City. They speak Mandarin and other Chinese dialects, but many are also likely to speak Vietnamese. Those in the south of the country, and around Ho Chi Minh City speak primarily Cantonese.²⁶ Referred to as the Hoa in Vietnamese, the Chinese are Buddhists and physically distinguishable from the Vietnamese, who are referred to as the Kinh. There is limited information available about the cultural characteristics of the Chinese Vietnamese. However, they are likely to share similar cultural characteristics with the Kinh, because of the long period of Chinese Han dynasty domination of Vietnam.²⁷

3.7.7 There is some societal discrimination against ethnic minorities in Vietnam, but ethnic Chinese comprise the majority ethnic group in many of the areas in which they live.²⁸

Montagnards

3.7.8 'Montagnards' is the collective term used for a number of different ethnic minorities

²² USSD Human Rights Report: [Vietnam 2011](#) section 6

²³ USSD Human Rights Report: [Vietnam 2011](#) section 6

²⁴ USSD Human Rights Report: [Vietnam 2011](#) section 6

²⁵ COIS Report [Vietnam 20 April 2012](#) (para 19.11)

²⁶ COIS Report [Vietnam 20 April 2012](#) (para 19.11)

²⁷ Minority Rights Group International: [World Directory of Minorities and Indigenous Peoples - Vietnam](#) accessed 20/07/2012

²⁸ USSD Human Rights Report: [Vietnam 2011](#) section 6

that inhabit the Central Highlands of Vietnam. The government has increased the level of repression of indigenous minorities from the Central Highland provinces. It is reported by Human Rights Watch that special 'political security' units conduct operations with provincial police to capture, detain and interrogate people identified as political activists or leaders of unregistered house churches.²⁹

- 3.7.9** During the last decade, the Vietnamese government has launched a series of crackdowns on Montagnards in the Central Highlands, often in response to mass public protests calling for the return of confiscated land and greater religious freedom. The demonstrations have been fuelled by Montagnards' growing anger and desperation over the steady loss of their farm land to agricultural plantations and lowland Vietnamese (Kinh) settlers, along with tightened restrictions on independent house churches.³⁰
- 3.7.10** Since 2001, more than 350 Montagnards have been sentenced to long prison sentences on vaguely-defined national security charges for their involvement in public protests and unregistered house churches considered subversive by the government, or for trying to flee to Cambodia to seek asylum. They include Dega church activists as well as Montagnard Christians who do not describe themselves as followers of Dega Protestantism, including pastors, house church leaders, and land rights activists. Charges brought against them include undermining national solidarity (Penal Code article 87) or disrupting security (article 89).³¹
- 3.7.11** During 2011, the government monitored certain Highland minorities closely, particularly several ethnic minorities in the Central and Northwest Highlands, where it continued to be concerned that the religion practised by those populations encouraged ethnic minority separatism. The authorities arrested and convicted several individuals connected to overseas separatist organisations and sentenced them to lengthy prison terms during 2011.³²
- 3.7.12** The NGO VHRN has drawn attention to a large number of incidents of harassment and ill-treatment of ethnic minorities, particularly those in the Central and Northwest Highlands.³³ Additionally, another NGO, the Unrepresented Nations and People's Organisation (UNPO) have reported in detail on the human rights situation and general treatment of ethnic minorities in the country.³⁴

See also: [Actors of protection \(section 2.3 above\)](#)
[Internal relocation \(section 2.4 above\)](#)
[Caselaw \(section 2.5 above\)](#)

3.7.12 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 economical inequalities faced by

²⁹ COIS Report [Vietnam 20 April 2012](#) (para 19.15)

³⁰ Human Rights Watch; Montagnard Christians in Vietnam March 2011
<http://www.hrw.org/sites/default/files/reports/vietnam0311Web.pdf>

³¹ Human Rights Watch; Montagnard Christians in Vietnam March 2011
<http://www.hrw.org/sites/default/files/reports/vietnam0311Web.pdf>

³² USSD Human Rights Report: [Vietnam 2011](#)

³³ Vietnam Human Rights Network: [VHRN Latest News: See multiple entries](#)

³⁴ Unrepresented Nations & People's Organisation: [Persecution of Indigenous People in Vietnam & Laos](#)

many ethnic minorities. Therefore the majority of claimants in this category are unlikely to qualify for asylum or Humanitarian Protection.

3.7.13 However, members of minority ethnic groups who are involved in anti-government activities and/or who are associated with opposition political or minority religious groups may come to the adverse attention of the authorities and may face persecution. Where individuals are 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 applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the Vietnamese authorities due to their religious beliefs.

3.8.2 Treatment. Most estimates suggest more than half of the population of Vietnam is at least nominally Buddhist. The Roman Catholic Church constitutes 7 percent. Several Cao Dai organisations constitute 2.5 to 4 percent, the primary Hoa Hao organisation 1.5 to 3 percent, Protestants 1 to 2 percent, and Muslims less than 0.1 percent of the population. Most other citizens consider themselves nonreligious, although some practice traditional beliefs such as animism and veneration of ancestors and national heroes.³⁵

3.8.3 Religious freedom remains restricted. The 2004 Ordinance on Religion and Belief is the primary document governing religious practice. It asserts the right of citizens to freedom of belief and religion, but specifically warns that the “abuse” of freedom of belief or religion to “undermine the country’s peace, independence and unity” is illegal, and such religious activities must be suspended if they “negatively affect the cultural traditions of the nation” in Article 8(2).³⁶

3.8.4 The constitution provides for freedom of worship; however, government restrictions on the organised activities of many religious groups continued. The government generally respected the religious freedom of most registered religious groups, but some registered and unregistered groups reported abuses during 2011. Reports of abuses of religious freedom remained at a consistent level during 2011, compared with the previous year. Some religious believers continued to experience harassment or repression, particularly those without legal sanction. In many cases, the authorities forced church gatherings to cease, closed unregistered house churches, and pressured individuals to renounce their religious beliefs.³⁷

3.8.5 The practice of forced renunciations of faith was officially banned by Decree 22 in 2004. However, there continue to be reports of forced renunciations of faith, which specifically target ethnic minorities. These are not isolated cases, but are sanctioned by central government to impede the growth of Protestantism in the northwest provinces, and independent religious activity in the Central Highlands. The government continues to harass, threaten, detain and sentence lawyers and

³⁵ USSD Religious Freedom Report: [Vietnam 2010](#)

³⁶ USCIRF Annual Report: [Vietnam 2012](#)

³⁷ USCIRF Annual Report: [Vietnam 2012](#)

human rights defenders who have assisted religious communities or religious freedom advocates in cases against the state.³⁸

- 3.8.6** The US Commission on International Religious Freedom Annual Report included Vietnam on its list of “countries of particular concern”. It stated that the Vietnamese government continues to control all religious communities, restrict and penalise independent religious practise severely, and repress individuals and groups viewed as challenging its authority.³⁹

Catholics

- 3.8.7** Although government statistics indicate there are 6.28 million Catholics, other estimates place the number at eight million. Catholics live throughout the country, with the largest concentrations in the 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 a growing number of persons who want to be religious workers. Three archbishops, 44 bishops, and nearly 4,000 priests oversaw 26 dioceses. There are more than 10,000 places of worship including six seminaries and two clergy training centres. The number preparing for the priesthood had grown by more than 50 percent over the period between 2005 and 2010 and totalled 1,500, according to the Vatican.⁴⁰
- 3.8.8** The government does not permit religious instruction in public schools; however, it permitted clergy to teach at universities in subjects in which they are qualified. Catholic religious education, on weekends or evenings, is permitted in most areas and has increased in recent years. Religious groups are not permitted to operate independent schools beyond preschool and kindergarten. In some areas, especially in the south, Catholic priests and nuns operated kindergartens, orphanages, vocational training centres, and clinics and engaged in a variety of other humanitarian projects. Operating without a legal basis, however, created some difficulties for the church.⁴¹
- 3.8.9** Although the Catholic Church is officially recognised by the government of Vietnam, there are many incidents of harassment, ill-treatment and severe repression reported. The NGO VHRN (not a specifically Christian NGO) reports a large number of incidents perpetrated by State authorities against Catholics.⁴² In January 2010, Vietnamese Catholic groups reported that priests and believers in the area of Dong Chiem had been attacked on their way to pray; similar sporadic attacks were reported throughout the year.⁴³ During 2011 – 2012, disputes continued over land ownership between local authorities and the Catholic Church, in many cases involving excessive and unnecessary force by security officials against protestors.⁴⁴
- 3.8.10** The authorities continued arresting Catholic Ha Mon Montagnard activists throughout 2011. At least 15 Catholics affiliated with Redemptorist Catholic churches in Hanoi and Ho Chi Minh City were arrested in July, August and September 2011. Father Nguyen Van Ly was returned to prison after a period of medical parole; he has suffered a series of strokes in prison and there are serious

³⁸ USCIRF Annual Report: [Vietnam 2012](#)

³⁹ COIS Report [Vietnam 20 April 2012](#) (para 18.05)

⁴⁰ USSD International Religious Freedom: [Vietnam 2010](#)

⁴¹ COIS Report [Vietnam 20 April 2012](#) (para 18.42)

⁴² Vietnam Human Rights Network: [VHRN Latest News: See multiple entries](#)

⁴³ Freedom House Country Report; Vietnam 2011

<http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8164>

⁴⁴ Amnesty International: [Annual Report 2012: Viet Nam](#)

concerns for his health.⁴⁵ A number of Catholics have been arrested and imprisoned during the past year, particularly those accused of criticising the government, or of being allied to Fr. Nguyen Van Ly.⁴⁶

Protestants

- 3.8.11** The two largest officially recognised Protestant churches are the Southern Evangelical Church of Vietnam (SECV) and the smaller Evangelical Church of Vietnam North (ECVN). The Vietnam Baptist Convention (Grace Southern Baptist), United World Mission Church, Vietnam Mennonite Church, Vietnam Presbyterian Church, Vietnam Baptist Society (Southern Baptist), Vietnam Seventh-day Adventist Church, and Vietnam Christian Fellowship also are officially recognized. Other Protestant denominations also are present, including the Assemblies of God (officially registered) as well as the United Methodist Church and others registered locally but not registered on the national level.⁴⁷
- 3.8.12** Estimates of the number of Protestants ranged from government figures of one million to claims by churches of over two million, with the strongest recent growth occurring from 1996 to 2000. 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 (H'mong, Dzao, Thai, and others) and in the Central Highlands (Ede, Jarai, Sedang, and M'nong, among others).⁴⁸
- 3.8.13** During the last decade, Protestant churches in the Central Highlands have grown rapidly among the Montagnard minority ethnic groups. Mass protests and aggressive police crackdowns have occurred, with arbitrary arrests, imprisonment and torture leading to forced renunciations of faith. Many of these Christians have fled the country to Cambodia and other countries, where many have been recognised as refugees.⁴⁹
- 3.8.14** Reports of abuses of Protestants continued during 2011 and 2012. Members of the congregations of the Mennonite Church,⁵⁰ the United Presbyterian Church, the Good News Mission Church, the Full Gospel Church and others all reported disruption to services, harassment, detention and physical abuse of members, and in some cases, were refused permission to register their churches locally, as the church was not recognised nationally. Some churches have been forcibly closed or demolished.⁵¹ Others reported forced renunciations of faith under duress, fines and imprisonment.^{52 53}
- 3.8.15** Conditions of religious freedom have not improved, according to many reports. Religious freedom often depends on geographic location, ethnicity, relationships between religious leaders and provincial officials, or perceived 'political' activity. Also, lingering property disputes over buildings and facilities previously confiscated by the Communist government have resulted in church demotions, confiscation of

⁴⁵ Human Rights Watch: [World Report 2012: Vietnam](#)

⁴⁶ Human Rights Watch: [Vietnam: Free Catholic Activists](#)

⁴⁷ COIS Report [Vietnam 20 April 2012](#) (para 18.46)

⁴⁸ USSD International Religious Freedom: [Vietnam 2010](#)

⁴⁹ Human Rights Watch: [Montagnard Christians in Vietnam](#) 30 March 2011

⁵⁰ VHRN: [Pastor jailed](#)

⁵¹ VHRN: [Officials destroy two new church buildings](#)

⁵² USSD International Religious Freedom: [Vietnam 2010](#)

⁵³ VHRN: [Vietnam jails 8 Hmong](#)

property, detentions and violence.⁵⁴

See also: [Actors of protection \(section 2.3 above\)](#)
[Internal relocation \(section 2.4 above\)](#)
[Caselaw \(section 2.5 above\)](#)

3.8.16 Conclusion: Although there are 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, in general, amount to persecution. The majority of applicants from this category of claim are therefore unlikely to qualify for asylum or Humanitarian Protection. However, in some instances, Catholics, including priests, Catholic activists and Catholics from ethnic minorities have faced treatment that does amount to persecution. Applications should be considered on a case by case basis, since the majority of Vietnamese Catholics are not generally at risk of treatment amounting to persecution.

3.8.17 Members of unregistered religious groups generally face more difficulties than members of registered communities, and members may face intimidation and harassment. The levels of ill-treatment suffered will vary depending on region, ethnicity, 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 some cases involving ethnic minorities belonging to unregistered Protestant churches, the level of ill-treatment may amount to persecution, particularly where the applicant is also perceived to be politically active against the government. In these cases a grant of asylum may be appropriate, depending on the individual circumstances and profile of the applicant.

3.9 Victims of trafficking

3.9.1 Some victims of trafficking may claim asylum on the grounds that they fear ill-treatment or other reprisals from traffickers on their return to Vietnam.

3.9.2 Treatment. Vietnam is a source and, to a lesser extent, a destination country for men, women, and children subjected to sex trafficking and conditions of forced labour. Vietnamese women and children subjected to forced prostitution throughout Asia are often misled by fraudulent labour opportunities and sold to brothels on the borders of Cambodia, China, and Laos, with some eventually sent to third countries, including Thailand and Malaysia. Some Vietnamese women are forced into prostitution in Thailand, Malaysia, Singapore, and in Europe.⁵⁵

3.9.3 In both sex trafficking and labour trafficking, debt bondage, confiscation of identity and travel documents, and threats of deportation are commonly utilised to intimidate victims. Some Vietnamese women moving to China, Taiwan, Hong Kong, Macau, and increasingly to South Korea as part of internationally brokered marriages are subsequently subjected to conditions of forced labour (including as domestic servants), forced prostitution, or both.⁵⁶

⁵⁴ USCIRF: Annual Report: [Vietnam 2012](#)

⁵⁵ US State Department Trafficking in persons report: [Vietnam 2012](#)

⁵⁶ US State Department Trafficking in persons report: [Vietnam 2012](#)

- 3.9.4** The Government of Vietnam does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. During the year, the government passed new anti-trafficking legislation, complementing the previous year's new five-year national action plan on trafficking. Nevertheless, while a number of structural reforms have been carried out during the past two years, progress in providing protection and rehabilitation to victims of trafficking has been slow. However, during 2011, the government drafted new victim identification procedures, and also used existing laws to criminally prosecute some labour trafficking offenders.⁵⁷
- 3.9.5** The Vietnamese government continued its law enforcement efforts to combat trafficking. New legislation came into effect in January 2012, although criminal penalties for the newly enumerated trafficking offences have not yet been established. The government has not issued guidance on implementing this legislation, and to date, most prosecutions of offenders take place under articles 119 and 120 of the Penal Code. This has led to some trafficking cases being criminally prosecuted as human smugglers, rather than traffickers.⁵⁸
- 3.9.6** While the Vietnamese government demonstrated some efforts in addressing transnational sex trafficking, it demonstrated overall inadequate law enforcement efforts to combat all forms of human trafficking during 2011, including labour trafficking. Authorities did not report any investigations or prosecutions of cases of internal trafficking. The Supreme People's Procuracy reported that between 1 December 2010 and November 30 2011, Vietnamese authorities prosecuted 153 cases of trafficking and related offences, the same number of cases as reported the previous year. The government reported having convicted seven trafficking offenders and sentencing them to prison terms ranging from four to eighteen years. However, no details were provided to substantiate these claims. The government acknowledged that there must be further implementing regulations, agency guidelines, or amendments to the Criminal Code to ensure that perpetrators are held criminally accountable for all trafficking crimes.⁵⁹
- 3.9.7** Many NGOs suggested trafficking-related corruption continued to occur at the local level, where officials at border crossings and checkpoints took bribes to look the other way. The government reported only two criminal convictions of officials for trafficking related complicity during the year. Government and NGO sources report that lack of financial resources, inadequately trained personnel, cumbersome mechanisms for interagency cooperation, poorly coordinated enforcement of existing legal instruments across the country, and the current legal structure that is ill-suited to supporting the identification and prosecution of trafficking cases remain obstacles to greater progress in the country's anti-trafficking efforts.⁶⁰
- 3.9.8** The Vietnamese government sustained some efforts to protect victims of transnational sex trafficking and outlined additional victim protection plans in its new anti-trafficking law, though it did not make sufficient efforts during the year to identify or protect victims of labour trafficking or internal trafficking.⁶¹ Border guards and police at the district and provincial levels received limited training about identification of trafficking victims and handling of cases, which in some cases improved some officers' ability to monitor and investigate trafficking cases, but the

⁵⁷ US State Department Trafficking in persons report: [Vietnam 2012](#)

⁵⁸ US State Department Trafficking in persons report: [Vietnam 2012](#)

⁵⁹ US State Department Trafficking in persons report: [Vietnam 2012](#)

⁶⁰ US State Department Trafficking in persons report: [Vietnam 2012](#)

⁶¹ US State Department Trafficking in persons report: [Vietnam 2012](#)

lack of adequate training reportedly led to poor investigations and techniques that were harmful to some victims.⁶²

3.9.9 The government's Vietnamese Women's Union (VWU), in partnership with NGOs, continued to operate three trafficking shelters in Vietnam's largest urban areas, which provided counselling and vocational training to female sex trafficking victims. The VWU and border guards also operate smaller shelters that provide temporary assistance to migrants in need of assistance at some of the most heavily used crossing points. The government, however, lacks the resources and technical expertise to adequately support shelters, and as a result, in many areas shelters are rudimentary, underfunded, and lack appropriately trained personnel. Trafficking victims also are inappropriately housed at times in MOLISA shelters co-located with those of drug users' rehabilitation and reintegration of individuals leaving prostitution. There are no shelters or services specifically dedicated to assisting male victims of trafficking or victims of labour trafficking.⁶³

3.9.10 The government reportedly encourages victims to assist in the prosecution of their traffickers, though Vietnam generally does not provide police-assisted witness protection to victims of crime. There were no data on the number of victims involved in prosecutions during 2010 or 2011. Victims are often reluctant to participate in investigations or trials due to social stigma, particularly as it relates to prostitution, fear of retribution in their local communities, and lack of incentives for participation. Vietnamese law does have provisions to protect trafficking victims from facing criminal charges for actions taken as a direct consequence of being trafficked. There are no legal alternatives for the removal of foreign victims to countries where they face retribution or hardship.⁶⁴

See also: **[Actors of protection](#) (section 2.3 above)**
 [Internal relocation](#) (section 2.4 above)
 [Caselaw](#) (section 2.5 above)

3.9.11 Conclusion: When considering applications under this category, case owners must always refer to the Asylum Instruction on 'Victims of Trafficking'. That a person has been trafficked is not, in itself, a ground for refugee status. However, some trafficked women have been able to establish a 1951 Convention reason (such as a membership of a particular social group) and may have valid claims to refugee status. Forced recruitment of women for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence and/or abuse and may amount to persecution. Trafficked women may face serious repercussions upon their return to their home country, such as reprisals or retaliation from trafficking rings or individuals, or discrimination from their community and families and there may be a risk of being re-trafficked. Each case should be considered on its individual merits and in the context of the country on which it is based.

3.9.12 Where a victim of trafficking has agreed to give evidence as part of a criminal prosecution, consideration should be given to whether this is likely to affect the basis of the asylum claim (for example by increasing the risk of retribution) and therefore whether the decision should be postponed until after the trial is concluded. The impact of the applicant's evidence at the trial on the likelihood of future risk can then be assessed. It may be necessary to liaise with the police in this situation.

⁶² COIS Report [Vietnam 20 April 2012](#) (para 24.11)

⁶³ US State Department Trafficking in persons report: [Vietnam 2012](#)

⁶⁴ US State Department Trafficking in persons report: [Vietnam 2012](#)

3.9.13 Support and protection from governmental and non-governmental sources in Vietnam are generally available to victims of trafficking. Internal relocation will often also be a viable option for applicants who fear reprisals from traffickers upon return to the country. Cases in which sufficiency of protection is clearly available and/or internal relocation is a reasonable option are likely to fail. Still, applications from those who have been trafficked and who are able to demonstrate that the treatment they will face on return amounts to torture, inhuman or degrading treatment must be considered in the context of the individual circumstances of each claim. In individual cases, sufficiency of protection by the state authorities may not be available, and in such cases where internal relocation is also not possible, a grant of Humanitarian Protection may be appropriate.

3.10 Prison conditions

3.10.1 Applicants 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.

3.10.2 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 asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

3.10.3 Consideration: Prison conditions are austere but generally not life threatening. Overcrowding, insufficient diet, lack of clean drinking water, and poor sanitation remained serious problems during 2011. Prisoners generally were required to work but received no wages. Prisoners sometimes were placed in solitary confinement, where they were deprived of reading and writing materials for periods of up to several months. Family members made credible claims that prisoners received benefits by paying bribes to prison officials or undertaking hunger strikes. Prisoners had access to basic health care, with additional medical services available at district or provincial hospitals. However, in many cases officials prevented family members from providing medication to prisoners.⁶⁵

3.10.4 There were no precise estimates of the number of political prisoners. The government reportedly held more than 100 political detainees at year's end, although some international observers claimed there were even more. Diplomatic sources reported the existence of four re-education centres in the country holding approximately 4000 prisoners. Political prisoners are typically sent to specially designated prisons, and generally held separately from non-political prisoners.⁶⁶

3.10.5 The total number of prisoners and detainees is not publicly available. Pre-trial detainees are held separately from convicted prisoners. Juveniles are held separately from adults in prison, but on rare occasions are held with adults in detention for short periods of time due to lack of space. Men and women are held separately. Political prisoners are sent to specially designated prisons that also held other regular criminals, but in most cases political prisoners are kept separate

⁶⁵ USSD Human Rights Report: [Vietnam 2011](#) section 1C

⁶⁶ USSD Human Rights Report: [Vietnam 2011](#) section 1E

from non-political prisoners. Some high-profile political prisoners are kept in complete isolation from all other prisoners. While prison sentences are often extremely lengthy, prisoners are not forced to serve beyond the maximum sentence for their charged offence.⁶⁷

3.10.6 Prisoners were limited to one 30-minute family visit a month, and family members were generally permitted to give supplemental food and bedding to prisoners during 2011. Prisoners did not have the right to manifest their religious beliefs or practices in public. Roman Catholic priest Thaddeus Nguyen Van Ly (released in March 2010 but re-arrested in July 2011) was allowed to keep the Bible given to him by a visiting foreign delegation, but in general prisoners were denied access to religious books and scriptures. Prisoners were allowed to submit complaints to prison management and judicial authorities, but their complaints were routinely ignored.⁶⁸

3.10.7 The authorities allowed foreign diplomats to make one limited prison visit and meet with a prominent prisoner. The press was permitted limited visits to prisons, but state control of the media restricted reporting on living conditions. In the past the International Committee of the Red Cross was permitted to visit prisons, but no such visits occurred during the year (2011).⁶⁹

3.10.8 The use of the death penalty is frequent in Vietnam; capital punishment is applied for 22 offences, including a number of economic crimes, drug trafficking, and illegal production of foods and medicines. The death penalty was reformed in May 2000, in order for death sentences to be commuted to life imprisonment for pregnant women and mothers of children under 3 years old.⁷⁰

3.10.9 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 applicants can demonstrate a real risk of imprisonment on return to Vietnam a grant of Humanitarian Protection will not generally be appropriate.

3.10.10 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 Instructions 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 Instructions on Article 8 ECHR.

4.2 With particular reference to Vietnam the types of claim which may raise the issue of

⁶⁷ USSD Human Rights Report: [Vietnam 2011](#) section 1C

⁶⁸ USSD Human Rights Report: [Vietnam 2011](#) section 1C

⁶⁹ USSD Human Rights Report: [Vietnam 2011](#) section 1C

⁷⁰ COIS Report [Vietnam 20 April 2012](#) (para 13.01)

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 Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.

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 (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Vietnam. Those who cannot be returned 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 Instructions.

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to Vietnam due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 Vietnam's health system retains its socialist basis, with the state health system playing a key role in health service provision. Services are delivered by both private providers and an extensive public network of village health workers, commune health stations, inter-communal polyclinics, district hospitals, district preventive health centres, provincial hospitals, and regional, central and specialist hospitals.⁷¹

4.4.3 The 1056 public hospitals provide 17.24 beds per 10 000 residents and deliver most inpatient care; the 49 private hospitals provide only 0.48 beds per 10 000 residents. Evidence on quality standards is limited, but widely acknowledged to need improvement. Inequities are evident in the inpatient admission rate and the average length of hospital stay, both of which are nearly twice as high for the highest quintile compared with the lowest. A significant volume of outpatient services are provided by private hospitals and the 30 000 private general practitioner clinics. There is a serious imbalance in the distribution of private practitioners, with a higher concentration in areas with higher living standards.⁷²

4.4.4 The national health insurance scheme currently covers approximately 60% of the population. There are about 35 million Vietnamese who are uninsured and at high risk of falling into poverty if they encounter major medical bills. The 53 million who are insured can, in principle, benefit from their health insurance. However, a recent national survey showed that 65% of respondents experienced corruption at local health services and 70% of the medical staff interviewed admitted asking patients to pay bribes. Due to endemic corruption, access to healthcare for poorer Vietnamese remains limited.⁷³

⁷¹ COIS Report [Vietnam 20 April 2012](#) (para 25.03)

⁷² COIS Report [Vietnam 20 April 2012](#) (para 25.03)

⁷³ COIS Report [Vietnam 20 April 2012](#) (para 25.04)

- 4.4.5** HIV treatment, care and support needs in Vietnam are increasing rapidly. By 2009 there were 14 centres providing anti-retroviral therapy (ART) under Global Fund Round 6 activities. These 14 centres, plus an additional centre, provide voluntary testing and counselling, information, and educational services. There is no provision for ART in any prisons, and only a few provide tuberculosis treatment.⁷⁴ It was reported that in 2010, 31,000 individuals were receiving ART. There were 1200 HIV+ pregnant women receiving ART to prevent transmission to their unborn children.⁷⁵ Treatment for tuberculosis is generally available, but the disease is prevalent in Vietnam, with 30,000 people dying from the disease every year. It has been declared a national health problem by the Deputy Prime Minister Nguyen Thien Nhan. He has acknowledged however, that plans to eliminate the disease by 2020 would need to be revised to 2030, due to the world-wide economic downturn.⁷⁶
- 4.4.6** The country has disability benefits for persons with mental disorders, and treatments for epilepsy and schizophrenia are freely and routinely available. Primary care is provided for maintenance and rehabilitation. Traditional medicines are routinely used for most mental health treatment. Community based mental health care is increasingly integrated into the primary care system, for diagnosis and management of treatment. Effective psychosocial rehabilitation is still to develop, and proper integration of different facilities is lacking. There is a lack of treatment interventions other than medication, and a large proportion of psychiatric medications must be paid for out of pocket. Public health information and preventative measures are reportedly lacking.⁷⁷ Out of the 64 provinces and cities in the country, 47 have a psychiatric department in a general hospital and 29 have a psychiatric hospital. However, the level of services and access fall as one moves from province to district to community.⁷⁸
- 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 applicant and the situation in the country reach the threshold detailed in the IDI 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

- 5.1** There is no policy which precludes the enforced return to Vietnam of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return, such as the difficulty or otherwise of obtaining a travel document, should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 5.3** Vietnamese nationals may return voluntarily to any region of Vietnam at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes

⁷⁴ COIS Report [Vietnam 20 April 2012](#) (para 25.14)

⁷⁵ COIS Report [Vietnam 20 April 2012](#) (para 25.15)

⁷⁶ Asia News Network: [TB declared national health problem in Vietnam](#)

⁷⁷ BMC Health Services Research: [Mental health priorities in Vietnam](#) accessed 25 July 2012

⁷⁸ COIS Report [Vietnam 20 April 2012](#) (paras 25.19 – 20)

their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Border Agency, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.

- 5.4** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Vietnam. 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. Vietnamese nationals wishing to avail themselves of this opportunity for assisted return to Vietnam should be put in contact with Refugee Action Details can be found on Refugee Action's web site at:

www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx

Country Specific Litigation Team
Strategy & Intelligence Directorate
UK Border Agency
14 August 2012