

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** 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.. The country is led by a triumvirate of CPV General Secretary [Nong Duc Manh], State President [Nguyen Minh Triet] and Prime Minister [Nguyen Tan Dung]. 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 creating and maintaining peace and stability.¹
- 2.2** 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.²
- 2.3** The government's human rights record remained unsatisfactory during 2006. Particular concerns included the restrictions on freedom of expression, freedom of religion, the continued high rate of executions and the situation of minorities in the north and central regions. Legal restrictions on free expression and the internet have increased, and despite constitutional safeguards, there is no free media in Vietnam. The state controls all domestic media and reporting on sensitive issues is not allowed. Foreign journalists face numerous restrictions, and the Vietnamese government occasionally censors foreign publications and websites. Recently, the Vietnamese authorities have given many 'cyber-dissidents' prison sentences for expressing pro-democracy views on the Internet.³
- 2.4** Some government officials, particularly at the local level, continued to commit abuses despite concerted efforts by central authorities to address abuse concerns, especially of religious freedom. Citizens could not change their government, political opposition movements were prohibited and some activists arrested, although several emerging opposition organisations were not completely suppressed. In a few instances, police abused suspects during arrest, detention and interrogation. Security forces generally operated with impunity and there was one credible report of an extrajudicial killing by security forces. Persons were arbitrarily detained for political activities and denied the right to fair and expeditious trials. The government limited privacy rights and freedom of speech, press, assembly, movement and association. It maintained its prohibition of independent human rights organisations.⁴
- 2.5** The government's economic reforms and the rising standard of living continued to reduce CPV and government control over, and intrusion into, daily life. The government also continued to forge greater links with the outside world, with a corresponding change in attitude toward human rights. The US State Department reported in March 2007, that the government had released its sole remaining prisoner recognised as having been incarcerated for reasons connected to his faith, as well as all but two of those widely regarded as political prisoners. Conditions for most religious believers were markedly improved from previous years; in particular, hundreds of Protestant congregations were legalised throughout the country.⁵
- 2.6** In 2006 the US State Department lifted Vietnam's designation as a 'country of particular concern (CPC)' for religious freedom violations (originally designated in 2004).⁶ However, the US Commission on International Religious Freedom (USCIRF) has urged that Vietnam be re-designated. USCIRF acknowledged that positive steps had been taken by the Vietnamese government to address religious freedom concerns during 2005/2006, but concluded that the Vietnamese government had not fully complied with the May 2005

¹ FCO country profile April 2007

² FCO country profile April 2007

³ FCO Human Rights Report 2006

⁴ USSD Country Report 2006 (Introduction)

⁵ USSD Country Report 2006 (Introduction)

⁶ Human Rights Watch report 2007

agreement reached with the United States to improve religious freedom in Vietnam. For example, although the Vietnamese authorities had released prominent prisoners of concern, during 2006 a dozen new arrests had been made and prominent leaders remained under house arrest. Even those recently released remained under intense government surveillance.⁷

- 2.7 The Foreign and Commonwealth Office reported in April 2007 that, although Vietnam is economically one of the poorest countries in the world, 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 over recent decades.⁸

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 Instruction 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 instructions below.

- 3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant 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 Instruction on Assessing the Claim).

- 3.3 If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant 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 or on their individual circumstances.

- 3.4 This guidance is **not** designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the Asylum Instruction on Assessing the Claim)

- 3.5 All Asylum Instructions can be accessed via the IND website at:

<http://www.ind.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.** 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

⁷ USCIRF letter 6.11.06

⁸ FCO Country Profile 12 April 2007 (Human Rights and UK Development Assistance)

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.⁹

- 3.6.3** There are no recognised opposition parties or groups in Vietnam. The most recent National Assembly elections, held in 2002, were neither free nor fair, since all candidates were chosen by the CPV's Vietnam Fatherland Front (VFF), an umbrella group that monitored the country's popular organisations.¹⁰
- 3.6.4** The media is considered an official mouthpiece and journalists may not cover sensitive stories. Access to non-state approved sources of information is restricted and a number of 'cyber-dissidents' have been imprisoned for expressing opinions (unwelcome to the government) on the internet or by e-mail.¹¹
- 3.6.5** However, despite the lack of freedom to organise opposition parties, there is no sign of widespread popular opposition to the regime.¹² The government's economic reforms and the rising standard of living continued to reduce CPV and government control over, and intrusion into, daily life. The Ministry of Public Security (MPS) controls internal security and maintains a system of household registration and block wardens to monitor the population, concentrating on those suspected of engaging, or likely to engage, in unauthorised political activities, but this system became less pervasive in most citizens' daily lives in 2006.¹³
- 3.6.6** According to the FCO Human Rights Annual Report 2006, since May 2005, the Vietnamese Government has released seven people on the EU's list of prisoners and detainees of concern but, as of August 2006, 21 remained in custody.
- 3.6.7** The US State reported in March 2007 that, while it is difficult to ascertain reliable statistics of political and religious prisoners, the government had released its sole remaining religious prisoner and all but two of those widely regarded as political prisoners. However, there were also a number of reports in 2006 of arbitrary government arrests and temporary detention of those deemed a threat or a potential embarrassment to the government. In general the government did not hesitate to arbitrarily detain those whom they deemed a threat to government and Communist Party control. Religious and political activists were also subject to varying degrees of informal detention in their residences. The government claimed that it did not hold any political prisoners but in the past such persons were usually convicted of violating national security laws or general criminal laws. As with the general prison population, the Government did not allow access by humanitarian organisations to political prisoners during 2006.¹⁴
- 3.6.8** **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.
- 3.6.9** **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.
- 3.6.10** **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.

⁹ FCO Country Profile 12 April 2007 (Elections)

¹⁰ USSD Country Report 2006 (Introduction)

¹¹ FCO Country Profile April 2007 (Human Rights)

¹² FCO Country Profile April 2007 (Political System)

¹³ USSD Country Report 2006 (Introduction and Section 1(d))

¹⁴ USSD Country Report 2006 (Introduction, Sections 1(d), 2(d))

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*** Almost one in six of the Vietnamese population comes from a minority ethnic group and these groups are disproportionately concentrated in the poorer and more remote parts of the country. Many ethnic minority people do not speak Vietnamese, especially in the more remote mountainous areas, and thus remain outside the economic and social mainstream.¹⁵
- 3.7.3** Although the Government was officially opposed to discrimination against ethnic minorities, longstanding societal discrimination against ethnic minorities remained a problem in 2006. However, throughout 2006 the government continued to implement policies to narrow the gap in the standard of living by granting preferential treatment to domestic and foreign companies that invested in highland areas, which are heavily populated with ethnic minorities. The government also had infrastructure development programmes that targeted poor, largely ethnic minority areas and established agricultural extension programmes for remote rural areas. The government ran special schools for ethnic minorities in many provinces, including subsidised boarding schools at the high-school and middle-school levels, and it offered special admission and preparatory programs as well as scholarships and preferential admissions at the university level.¹⁶
- 3.7.4** During 2006 the government continued a programme to conduct classes in some local ethnic minority languages up to the fifth grade. The government worked with local officials to develop a local language curriculum. The government appeared to implement this programme more comprehensively in the Central Highlands than in the mountainous northern and north-western provinces. The government broadcast radio and television programming in ethnic minority languages in some areas. The government also instructed ethnic Kinh officials to learn the language of the locality in which they worked; however, implementation was not widespread. 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.¹⁷

Chinese (Hoa)

- 3.7.5** The once sizeable ethnic Chinese or Hoa community was depleted after many left Vietnam when the Government closed down private businesses in the south in 1978. The 1989 census counted 962,000 Chinese, but the figure is now estimated to be more than 1.5 million. The Chinese business community remains vibrant, particularly in and around Ho Chi Minh City. There is a high rate of intermarriage, with 30% of Chinese marrying a non-Chinese partner.¹⁸
- 3.7.6** 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.¹⁹
- 3.7.7** The political, economic, and cultural status of the ethnic Chinese living in Vietnam has progressively improved since the early 1980s. Efforts to reform and liberalise the economy

¹⁵ COI Vietnam Country Report December 2006 (Section 18)

¹⁶ USSD Country Report 2006

¹⁷ USSD Country Report 2006

¹⁸ COI Vietnam Country Report December 2006 (Economist Intelligence Unit Country Profile 2006)

¹⁹ COI Vietnam Country Report December 2006 (Section 18) (Minorities at Risk Project)

have allowed the Chinese to reassert their dominant role in the economic arena. The Chinese in Ho Chi Minh City, the country's economic centre, reportedly now control up to 50% of local commercial activities. Hanoi has supported the economic efforts of the ethnic Chinese in part to improve the country's economy but also as an avenue to promote foreign investment. The ethnic Chinese appear to be a bridge between the Hanoi government and overseas Chinese investors in China, Taiwan, Hong Kong, and Singapore.²⁰

- 3.7.8** While the Chinese remained underrepresented in the political arena, all restrictions on their participation were officially lifted in the mid-1990s. The ethnic Chinese are referred to as Vietnamese citizens who possess the same rights and duties guaranteed to all citizens. In the cultural arena, Government and private efforts have been undertaken to promote the use of Mandarin in schools and the development of a Chinese curriculum.²¹

Montagnards

- 3.7.9** Montagnards is the collective term used for a number of ethnic minorities that inhabit the Central Highlands of Vietnam.²²
- 3.7.10** Following the 2004 unrest, hundreds of Montagnards sought asylum in Cambodia. The UNHCR rejected most of their asylum claims as unfounded, and following an agreement with Vietnam and Cambodia in January 2005, has either resettled the Montagnards in third countries or returned them to Vietnam. The UNHCR, supported by the EU and the US, has since sent a series of missions to the Central highlands to investigate the welfare of the returnees. The UNHCR found that the returnees have been well-treated and given positive assistance to restart their lives. After hearing allegations of intimidation and abuse from some returnees, the EU pressed Vietnam and UNHCR to investigate. However, the EU did not conclude that intimidation or abuse of returnees was widespread.²³
- 3.7.11** A delegation from the UNHCR visited the Central Highlands in late April 2006, the most recent of 12 monitoring missions, to determine whether ethnic minority people who had returned from Cambodia were being properly treated. A total of 750 people fled into Cambodia in 2004, after anti-government disturbances broke out across the region, complaining of religious persecution and discrimination. Of those that fled, most were resettled in other countries, and 218 returned to Vietnam. The UNHCR stated that the returnees were neither punished nor maltreated, and had received support and assistance for re-integration.²⁴
- 3.7.12** During 2006, 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 nations. Government officials continued to monitor some highland minorities closely, particularly several ethnic groups in the Central Highlands, because of concern that the form of Protestant religion they were practising encouraged ethnic minority separatism.²⁵
- 3.7.13** *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.
- 3.7.14** *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.
- 3.7.15** *Conclusion.* Although there is widespread societal discrimination against ethnic minorities in Vietnam and some unofficial restrictions on employment and access to education, this

²⁰ COI Vietnam Country Report December 2006 (Section 18) (Minorities at Risk Project)

²¹ COI Vietnam Country Report December 2006 (Section 18) (Minorities at Risk Project)

²² COI Vietnam Country Report December 2006 (Section 18) (EIU Country Profile 2006)

²³ FCO Human Rights Report 2006

²⁴ EIU Country Report

²⁵ USSD Country Report 2006 (Section 5)

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.

3.7.16 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. Although Vietnam's constitution guarantees freedom of religion and individuals are generally permitted to worship without restriction, during 2006 the Government restricted religious freedom to a significant degree. However, it continued to relax restrictions, and participation in religious activities continued to grow significantly.²⁶ While individuals, by and large, enjoy freedom of religion in Vietnam, there are restrictions on non-authorized religious groups. Non-recognized 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 positive steps forward, a 2004 Ordinance on Belief & Religion sets out a legal framework for official recognition of religious groups, while restrictions on some Protestant groups have been eased.²⁷

3.8.3 The Vietnamese Government officially recognises the following six religions: Buddhism - 10 to 40 million adherents, Catholicism - 6 to 8 million adherents, Protestantism - 0.5 to 1.6 million adherents, Muslims - 65,000 adherents, Hoa Hao -1.3 to 3 million adherents, Cao Dai - 2.4 to 4 millions adherents.²⁸

3.8.4 On 18 June 2004 the Government issued an Ordinance on Religion which took effect on 15 November 2004.²⁹ The ordinance reiterates citizens' right to freedom of belief, religion, and freedom not to follow a religion, and it states that violation of these freedoms is prohibited. It advises, however, that 'abuse' of freedom of belief or religion 'to undermine the country's peace, independence, and unity' is illegal and warns that religious activities must be suspended if they negatively affect the cultural traditions of the nation. The ordinance also reiterates the principle of government control and oversight of religious organisations, specifying that religious groups must be recognised by the Government and must seek approval from authorities for many activities, including the training of clergy, construction of religious facilities, preaching outside a specifically recognised facility, and evangelising. Many activities, including promotion and transfer of clergy and annual activities of religious groups appear to be held under the new ordinance to the lower standard of 'registration' with the Government, rather than approval.³⁰

²⁶ USSD Country Report 2006 (Section 2)

²⁷ FCO Human Rights Report 2006

²⁸ COI Vietnam Country Report December 2006 (Section 17) (International Religious Freedom Report 2006)

²⁹ COI Vietnam Country Report December 2006 (Section 17) (Asia News)

³⁰ COI Vietnam Country Report December 2006 (Section 17) (IRFR 2006)

- 3.8.5** The 2005 government framework on religion maintained overall government control of religious organisations in 2006 and kept in place significant limitations on education, medical and charitable work by religious groups. The government continued to use the recognition and registration processes to monitor and limit the activities of church organizations. The government officially recognised Buddhist, Roman Catholic, Protestant, Hoa Hao, Cao Dai, and Muslim religious organisations (although some unofficial organisations within some of these groups are not recognised, for example, the UBCV, an illegal Buddhist group). To obtain recognition a group must obtain government approval of its charter and leadership. Official approval was required for the registration of new congregations and places of worship, ordination of clerics, establishment of religious teaching institutions, and entry of students into those institutions. Officially recognised religious organisations were able to operate with increasing ease through most of the country and followers of these religious bodies were usually able to worship without government harassment even if their local congregation was not registered.³¹
- 3.8.6** In 2006 official oversight of recognised religions and their registered sub-congregations, as well as problems faced by followers of non-recognised religions or unregistered sub-congregations of recognised religions, continued to vary widely from locality to locality, often as a result of ignorance of national policy or varying local interpretations of the policy's intent. In general, central level efforts to co-ordinate proper implementation of the government's religious framework reduced the frequency and intensity of religious freedom violations. Nevertheless, activities of non-recognised and unregistered religious groups remained technically illegal, and these groups occasionally experienced harassment. The level of harassment declined in comparison with previous years, and the vast majority of unregistered churches and temples were allowed to operate without interference.³²

Catholics

- 3.8.7** Up to 8 million people in Vietnam are Roman Catholic. Catholics live throughout the country, but the largest concentrations remain in the southern provinces around Ho Chi Minh City and in the provinces southeast of Hanoi.³³
- 3.8.8** The Catholic Church reported continued easing of government control over church assignment of new clergy, and, during 2005-2006, many new priests were ordained, including fifty-seven ordained in a ceremony conducted by a visiting Vatican Cardinal in November 2005. The Government maintained a veto power over Vatican appointments of bishops; however, in practice it has sought to co-operate with the Church in nominations for appointment. The Catholic Church operated 6 seminaries in the country with over 800 students enrolled, as well as a new special training programme for 'older' students. All students must be approved by local authorities, both for enrolling in seminary and again prior to their ordination as priests. The Church believed that the number of students being ordained was insufficient to support the growing Catholic population and indicated it would like to open additional seminaries and enroll new classes more frequently.³⁴
- 3.8.9** Although the government technically maintained veto power over Vatican appointments of Catholic bishops, it continued to ease restrictions on the Roman Catholic Church in 2006 and did not veto any candidates submitted by the Church for bishoprics. During 2006 a new bishop was appointed for the newly created Ba RiaVung Tau Diocese. The government reduced restrictions on the size and frequency of entering classes for Catholic seminaries. The Ho Chi Minh City government continued to facilitate certain charitable activities of the Catholic Church in combating HIV/AIDS. A number of Catholic clergy reported continued easing of government control over activities in certain dioceses during 2006. In many places government officials allowed the Catholic Church to conduct religious education

³¹ USSD Country Report 2006 (Section 2 (c))

³² USSD Country Report 2006 (Section 2 (c))

³³ COI Vietnam Country Report December 2006 (Section 17) (IRFR 2006)

³⁴ COI Vietnam Country Report December 2006 (Section 17) (IRFR 2006)

classes and some charitable activities. The government continued low level discussions to normalise diplomatic relations with the Vatican.³⁵

Protestants

- 3.8.10** The two officially recognised Protestant churches are the Southern Evangelical Church of Vietnam (SECV), recognised in 2001, and the smaller Evangelical Church of Vietnam North (ECVN), recognized since 1963. The SECV had affiliated churches in all of the southern provinces of the country. There are estimates that the growth of Protestant believers has been as much as 600 percent over the past decade, despite continued government restrictions on proselytizing activities. Some of these persons belong to unregistered evangelical house churches. Based on believers' estimates, two-thirds of Protestants are members of ethnic minorities, including Hmong, Thai, and other ethnic minorities (an estimated 200,000 followers) in the Northwest Highlands, and some 350,000 members of ethnic minority groups of the Central Highlands (Ede, Jarai, Bahnar, and Koho, among others).³⁶
- 3.8.11** The FCO Human Rights Annual Report 2006 stated that the Vietnamese Government remained suspicious of Protestantism, viewing it as foreign, and in the Central Highlands region, equating it with separatism. The Government permitted official Protestant churches, with restrictions, in northern and southern Vietnam and there had been a slow loosening of restrictions on unlicensed groups. However, continued local harassment was reported in some areas, particularly the northern uplands.³⁷
- 3.8.12** The practice of Protestantism remained a sensitive issue in the Central Highlands provinces. The Government was concerned that some ethnic minority groups operating in this region had been operating a self-styled 'Dega Church,' which reportedly mixed religious practice with political activism and called for ethnic minority separatism. Religious contacts from the Central and Northwest Highlands reported that attempted forced renunciations continued to decrease. Nonetheless, several incidents were reported during 2005-2006. According to a number of credible sources, on several occasions local officials in several north-western villages attempted to convince or force H'mong Protestants to recant their faith. Local authorities also encouraged clan elders to pressure members of their extended families to cease practicing Christianity and to return to traditional practices.³⁸
- 3.8.13** On 4 February 2005 the prime minister issued the 'Instruction on Some Tasks Regarding Protestantism.' The instruction called upon authorities to facilitate the requests of recognised Protestant denominations to construct churches and train and appoint pastors. Further, the instruction directed authorities to help unrecognised denominations register their congregations with authorities so that they could practice openly and move towards fulfilling the criteria required for full recognition. Addressing the Central and Northwest Highlands, the instruction guided authorities to help groups of Protestant believers register their religious activities and practice in homes or 'suitable locations,' even if they did not meet the criteria to establish an official congregation. The instruction allowed unregistered 'house churches' to operate so long as they were 'committed to follow regulations' and are not affiliated with separatist political movements.³⁹
- 3.8.14** Under the 2004 ordinance, participation in religious activities throughout the country continued to grow, and Protestant believers in the Central Highlands reported significant improvements in their situation. Furthermore, the Government began to promote registration of Protestant house churches in the Northwest Highlands region, but progress was slow and the Government stated that only six previously unregistered northern congregations were allowed to register their activities during the reporting period. Despite several confirmed reports of police harassment and beatings of unregistered believers

³⁵ USSD Country Report 2006 (Section 2 (c))

³⁶ COI Vietnam Country Report December 2006 (Section 17) (IRFR 2006)

³⁷ FCO Human Rights Annual Report 2006 p.119

³⁸ COI Vietnam Country Report December 2006 (Section 17) (IRFR 2006)

³⁹ COI Vietnam Country Report December 2006 (Section 17) (IRFR 2006)

belonging to unrecognised religions, Protestants across the north reported improvement in most officials' attitude towards their religion, and in general Protestants were allowed to gather for worship without significant harassment.⁴⁰

- 3.8.15** In 2006 official oversight of recognised religions and problems faced by followers of non-recognised religions or unregistered congregations continued to vary widely from locality to locality, often as a result of ignorance of national policy or varying local interpretations. In general, proper implementation of the government's religious framework reduced the frequency and intensity of religious freedom violations but non-recognised and unregistered groups occasionally experienced harassment. The level of harassment declined in comparison to previous years. At least 29 Protestant churches affiliated with the government recognised Evangelical Church of Vietnam North were granted registration in the Northwest Highlands during 2006 as part of a pilot programme to accelerate registrations in the region.⁴¹
- 3.8.16** In Ho Chi Minh City, local officials demolished a portion of Mennonite Pastor Nguyen Hong Quang's home that was built without proper zoning approval. Government officials reportedly also discouraged Quang from participating in a December registration briefing sponsored by the government with other Protestant groups, and refused to accept most registration applications from his group. However, there were no reports of police interference with other Protestant activities in Ho Chi Minh City. Reports of harassment of Protestant groups in the Northwest Highlands continued to decline. With the exception of around 20 congregations in Kak Lak Province that faced limits on the size of gatherings, church leaders reported that SECV affiliated Protestant groups in the Central Highlands that the government closed in 2001 had resumed operations, and a growing number, fewer than 80, were officially recognised. More than 1,000 unregistered Protestant congregations among ethnic minority groups in the northern region and the Northwest Highlands, the Hmong in particular, formally began registration proceedings with local authorities. There were few credible allegations of forced renunciations during 2006.⁴²
- 3.8.17 *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.
- 3.8.18 *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.
- 3.8.19 *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 generally amount to persecution. The majority of claimants from this category of claim are therefore unlikely to qualify for asylum or Humanitarian Protection.
- 3.8.20** Members of unregistered religious groups face more difficulties than members of registered communities and individuals 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 some cases, in particular cases 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

⁴⁰ COI Vietnam Country Report December 2006 (Section 17) (IRFR 2006)

⁴¹ USSD Country Report 2006 (Section 2 (c))

⁴² USSD Country Report 2006 (Section 2 (c))

- 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.
- 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.** Although prison conditions could be severe during 2006, they generally did not threaten the lives of prisoners. Overcrowding, insufficient diet, 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. Diplomatic observers reported Spartan but generally acceptable conditions. 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 2006.⁴³
- 3.9.4** During 2006 the central government and provincial councils amnestied 5,851 prisoners in two groups. In addition, 12,516 provincial inmates had their sentences reduced. Several high profile prisoners benefited from these amnesties, including political and religious activists.⁴⁴
- 3.9.5** Vietnam is believed to have one of the highest execution rates in the world. Official statistics are a state secret, but reports suggest that there are between 100 and 125 executions per year (most for drug-related offences). A recent fall in the number of executions reported in the local media cannot be confirmed. Vietnam has stated publicly that it intends to restrict and eventually abolish the death penalty. The government has recently voiced plans to further reduce the number of crimes attracting the death penalty but continues to impose the death penalty for economic offences.⁴⁵
- 3.9.6** **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

⁴³ USSD Country Report 2006 (Section 1 (c))

⁴⁴ USSD Country Report 2006 (Section 1 (d))

⁴⁵ FCO Human Rights Report 2006

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.

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** Healthcare provision in Vietnam is relatively good, as measured by such indicators as life expectancy, infant mortality and the number of doctors per head of population. However, in the late 1980s a number of factors began adversely to affect the quality of healthcare. By 2002 government spending on healthcare amounted to just 1.5% of GDP, and more than two-thirds of healthcare spending was privately funded.⁴⁶
- 4.4.3** Although the number of doctors rose by over 50% between 1995 and 2003, the numbers of nurses and midwives stagnated during the 1990s, rising again only in recent years. There is particular concern about the health of people living in the poorer provinces, where malnutrition, although falling, is still common. However, Vietnam's health indicators have improved in recent decades. According to the UNDP, the infant mortality rate slowed to 30 (per 1,000 live births) from 55 in 1970, and life expectancy has risen to around 69 years from around 50 in 1970-75.⁴⁷

HIV/AIDS

- 4.4.5** The website of the World Health Organisation (WHO) states that the cumulative number of reported HIV cases as of 2003 is around 75,000. However, reported figures significantly understate the scale of the problem, and it is estimated that at least 150,000 people are infected by HIV.⁴⁸
- 4.4.6** There was no evidence of official discrimination against persons with HIV/AIDS, but there was substantial widespread societal discrimination against persons with HIV/AIDS. There were multiple credible reports that persons with HIV/AIDS lost jobs or suffered from discrimination in the workplace or in finding housing. In a few cases children of persons with HIV/AIDS were barred from schools.⁴⁹

Tuberculosis (TB)

- 4.4.7** The website of the WHO notes that Vietnam is considered to be among the countries worldwide with the highest burden of TB, but its programme is now considered to be one of

⁴⁶ COI Vietnam Country Report December 2006 (Section 24) (EUI Country Profile 2006)

⁴⁷ COI Vietnam Country Report December 2006 (Section 24) (EUI Country Profile 2006)

⁴⁸ COI Vietnam Country Report December 2006 (Section 24) (WHO accessed 11.09.06)

⁴⁹ USSD Country Report 2006 (Section 5)

the best with treatment success rates at more than 90%. There are more than 130,000 new TB patients on average every year.⁵⁰

4.4.8 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 appellants appeal was dismissed.

4.4.9 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

5.1 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, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

5.2 Vietnamese nationals may return voluntarily to any region of Vietnam at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Vietnam. The programme was established in 2001, 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 the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

6. List of source documents

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⁵⁰ COI Vietnam Country Report December 2006 (Section 24) (WHO accessed 11.09.06)

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