



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. Caseworkers must refer to the relevant Asylum Policy 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 API on Article 8 ECHR. If, following consideration, a claim is to be refused, caseworkers 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 where the Politburo and Central Committee of the Communist Party of Vietnam (CPV) decide major policy issues, which are then implemented by the Government. Despite the lack of freedom to organise opposition parties, there is no sign of widespread popular opposition to the regime. 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].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** However, in recent years the CPV has gradually reduced its formal involvement in government operations and allowed the Government to exercise significant discretion in implementing policy.³
- 2.4** The government's human rights record remained unsatisfactory during 2005. Despite improvement during the year, government officials, particularly at the local level, continued to commit serious abuses including police abuse of suspects during arrest, detention and interrogation; arbitrary detention or restriction of the movement of persons for peaceful expression of political and religious views; denial of the right to fair and expeditious trials; and imprisonment of persons for political and religious activities. The Foreign and Commonwealth Office (FCO) in its Human Rights Annual Report 2005 identified some positive recent developments with regard to civil and political rights although it acknowledges that Vietnam's overall human rights record remains poor.⁴
- 2.5** Throughout 2005 the Government did not permit private local human rights organisations to form or operate. The Government generally did not tolerate attempts by organisations or individuals to comment publicly on government human rights practices and used a wide variety of methods to suppress domestic criticism of its human rights policies, including surveillance, limits on freedom of assembly, interference with personal communications, and detention.⁵
- 2.6** However, during 2005 the government took some steps to counter international concern about its human rights record. The government released some religious and political prisoners, officially outlawed forced recantations of faith, and published a white paper defending its record on human rights. Despite these gestures, Vietnam's denial of fundamental rights remained largely unchanged during 2005. Authorities continue to persecute members of independent churches, impose controls over the internet and the press, restrict public gatherings, and imprison people for their religious or political views.⁶
- 2.7** However, in a positive step, since May 2005 the Government has released seven people on the EU's list of prisoners and detainees of concern⁷ (although 21 remain in custody) and continued to engage constructively with other governments on human rights issues, including the ongoing EU-Vietnam Human Rights Dialogue where there has been some progress on issues such as freedom of religion, the central highlands and the death penalty.⁸ Although the ever-present and effective security apparatus prevented much dissent, ordinary people now enjoyed much more personal freedom on a day-to-day level.⁹

3. Main categories of claims

¹ COIS Vietnam Country Report October 2006 (Section 6)

² COIS Vietnam Country Report October 2006 (Section 6)

³ COIS Vietnam Country Report October 2006 (Section 6)

⁴ COIS Vietnam Country Report October 2006 (Section 7)

⁵ COIS Vietnam Country Report October 2006 (Section 7)

⁶ COIS Vietnam Country Report October 2006 (Section 7)

⁷ FCO Human Rights Annual Report 2006 p.118

⁸ FCO Human Rights Annual Report 2006 p.120

⁹ FCO Country Profile November 2006

- 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 API 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 API's, 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 API 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. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)
- 3.5** All APIs 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 relatives involvement with opposition political parties.
- 3.6.2 *Treatment.*** Vietnam is a one party state where the Politburo and Central Committee of the Communist Party of Vietnam (CPV) decide major policy issues. There are no free elections in Vietnam and candidates for election to the National Assembly and local People's Councils must in practice be approved by the CPV. There is, however, an increasing minority of elected representatives who are not CPV members.¹⁰
- 3.6.3** There are no recognised opposition parties or groups in Vietnam. The government prohibited the legal establishment of private, independent organizations, insisting that persons work within established, party-controlled mass organizations, usually under the aegis of the VFF (Vietnam Fatherland Front).¹¹
- 3.8.4** 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.¹²

¹⁰ COIS Vietnam Country Report October 2006 (Section 6)

¹¹ COIS Vietnam Country Report October 2006 (Section 14)

¹² FCO Country Profile November 2006

- 3.6.5** However, despite the lack of freedom to organise opposition parties, there is no sign of widespread popular opposition to the regime.¹³ Ordinary Vietnamese, particularly those living in major cities, are increasingly free of government intrusion into their daily lives. However, the regime continues to rely on informers, block wardens, and a household registration system to keep tabs on individuals, although this surveillance is now directed mainly at known dissidents rather than the general population.¹⁴
- 3.6.6** There were no reliable estimates of the number of political prisoners held, because the Government usually did not publicise such arrests, rejected the concept of political and religious prisoners, and sometimes conducted closed trials and sentencing sessions.¹⁵
- 3.6.7** The Government claimed that it did not hold any political or religious prisoners and that persons described as political or religious prisoners were 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 2005.¹⁶
- 3.6.8** However, 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.¹⁷
- 3.6.9** **Sufficiency of protection.** As this category of claimants' fear is of ill treatment/persecution by the state authorities they cannot apply to these authorities for protection.
- 3.6.10** **Internal relocation.** As this category of claimants fear is of ill treatment/persecution by the state authorities relocation to a different area of the country to escape this threat is not feasible.
- 3.6.11** **Conclusion.** The Vietnamese authorities may take serious action against individuals involved with opposition political parties/organisations who they believe pose a threat to the state and this treatment may amount to persecution. Where an individual is able to demonstrate that they have taken part in opposition political activities and as a result of these will come to the attention of the authorities and face a serious risk of persecution on account of their activities a grant of asylum will be appropriate.
- 3.7** **Minority ethnic groups**
- 3.7.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the ordinary Vietnamese population and/or the Vietnamese authorities due to their Chinese or Montagnard ethnicity.
- 3.7.2** **Treatment** 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.¹⁸
- 3.7.3** Although the Government was officially opposed to discrimination against ethnic minorities, longstanding societal discrimination against ethnic minorities was widespread during 2005. However, throughout 2005 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. The government also had infrastructure

¹³ FCO Country Profile November 2006

¹⁴ COIS Vietnam Country Report October 2006 (Section 8)

¹⁵ COIS Vietnam Country Report October 2006 (Section 14)

¹⁶ COIS Vietnam Country Report October 2006 (Section 14)

¹⁷ FCO Human Rights Annual Report 2006 p.118

¹⁸ COIS Vietnam Country Report October 2006 (Section 18)

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.¹⁹

- 3.7.4** During 2005 the government continued a programme to begin conducting schools 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.²⁰

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.²¹
- 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.²²
- 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 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.²³
- 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.²⁴

Montagnards

- 3.7.9** Montagnards is the collective term used for a number of ethnic minorities that inhabit the Central Highlands of Vietnam.²⁵ On 10 April 2004, ethnic minorities protested in numerous locations in the Central Highlands provinces of Dak Nong, Dak Lak, and Gia Lai. In some of

¹⁹ COIS Vietnam Country Report October 2006 (Section 18)

²⁰ COIS Vietnam Country Report October 2006 (Section 18)

²¹ COIS Vietnam Country Report October 2006 (Section 18)

²² COIS Vietnam Country Report October 2006 (Section 18)

²³ COIS Vietnam Country Report October 2006 (Section 18)

²⁴ COIS Vietnam Country Report October 2006 (Section 18)

²⁵ COIS Vietnam Country Report October 2006 (Section 18)

the protests, individuals reportedly carried clubs and threw rocks at police officers. In a number of cases, police reportedly responded to these protests by beating and firing upon demonstrators. NGO estimates put the number of protestors killed by police as between 10-12; some international organisations report that the figures may be much higher.²⁶

- 3.7.10** There were numerous reports that groups of Montagnards continued to leave the Central Highlands for Cambodia during 2004 with many claiming ethnic and religious repression in Vietnam. The numbers leaving increased after the 10 April 2004 demonstrations.²⁷
- 3.7.11** The Government continued to impose extra security measures in the Central Highlands, especially after the April 2004 demonstrations, and there were numerous reports of Montagnards seeking to cross into Cambodia being returned to Vietnam by Vietnamese police operating on both sides of the border, sometimes followed by alleged beatings and detentions. However, throughout 2005 the government also continued to implement measures to address the causes of ethnic minority discontent and initiated new measures as well. These included special programs to improve education and health facilities and expand road access, and electrification of rural communities and villages. The government allocated land to ethnic minorities in the Central Highlands through a special programme; however, there were complaints that implementation of these special programs was uneven.²⁸
- 3.7.12** As documented in the FCO Human Rights Annual report 2006 the United Nations High Commissioner for Refugees (UNHCR) found most of the asylum claims from Montagnards who had crossed into Cambodia to be unfounded and, following an agreement with Vietnam and Cambodia in January 2005, the UNHCR has either resettled the Montagnards in third countries or returned them to Vietnam.²⁹
- 3.7.13** 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.³⁰
- 3.7.14** The practice of Protestantism remained a sensitive issue in the Central Highlands provinces. The Government is concerned that some ethnic minority groups operating in this region have been operating a self-styled 'Dega Church,' which reportedly mixes religious practice with political activism and calls for ethnic minority separatism.³¹ (See section 3.8 on minority religious groups)
- 3.7.15** *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.
- 3.7.16** *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.
- 3.7.17** *Conclusion.* Although there is widespread societal discrimination against ethnic minorities in Vietnam and some unofficial restrictions on employment and access to education, this discrimination does not reach the level of persecution. Discrimination on ethnic grounds is

²⁶ COIS Vietnam Country Report October 2006 (Section 18)

²⁷ COIS Vietnam Country Report October 2006 (Section 18)

²⁸ COIS Vietnam Country Report October 2006 (Section 18)

²⁹ FCO Human Rights Annual Report 2006 p.119

³⁰ COIS Vietnam Country Report October 2006 (Section 18)

³¹ COIS Vietnam Country Report October 2006 (Section 17)

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.

3.7.18 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. Vietnam's constitution guarantees freedom of religion and individuals are generally permitted to worship without restriction. However, throughout 2005 the Government continued to significantly restrict those publicly organised activities of religious groups that were not recognised by the Government or that it declared to be at variance with state laws and policies.³²

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.³³

3.8.4 On 18 June 2004 the Government issued an Ordinance on Religion which took effect on 15 November 2004.³⁴ 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.³⁵

3.8.5 It was reported by the NGO Forum 18 that despite these legal provisions government harassment of religious communities has continued.³⁶

Catholics

3.8.6 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.³⁷ While the Catholic Church hierarchy

³² FCO Human Rights Annual Report 2005 p.119 & COIS Vietnam Country Report October 2006 (Section 17)

³³ COIS Vietnam Country Report October 2006 (Section 17)

³⁴ COIS Vietnam Country Report October 2006 (Section 17)

³⁵ COIS Vietnam Country Report October 2006 (Section 17)

³⁶ COIS Vietnam Country Report October 2006 (Section 17)

³⁷ COIS Vietnam Country Report October 2006 (Section 17)

remained somewhat frustrated by government restrictions, a number of clergy reported continued easing of government control over church activities during 2005.³⁸

- 3.8.7** 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 operates 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 believes that the number of students being ordained is insufficient to support the growing Catholic population and has indicated it would like to open additional seminaries and enroll new classes more frequently.³⁹
- 3.8.8** In some areas in 2005, 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. In Ho Chi Minh City the Catholic Church is involved in running HIV/AIDS hospices and treatment centres, and providing counselling to young persons. Charitable activities by the Catholic Church are much more restricted in northern Vietnam.⁴⁰

Protestants

- 3.8.9** 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).⁴¹
- 3.8.10** The FCO Human Rights Annual Report 2006 stated that the Vietnamese Government remains suspicious of Protestantism, viewing it as foreign, and in the Central Highlands region, equating it with separatism. The Government permits official Protestant churches, with restrictions, in northern and southern Vietnam and there has been a slow loosening of restrictions on unlicensed groups. However, continued local harassment is reported in some areas, particularly the northern uplands.⁴²
- 3.8.11** The practice of Protestantism remained a sensitive issue in the Central Highlands provinces. The Government is concerned that some ethnic minority groups operating in this region have been operating a self-styled 'Dega Church,' which reportedly mixes religious practice with political activism and calls 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.⁴³

³⁸ COIS Vietnam Country Report October 2006 (Section 17)

³⁹ COIS Vietnam Country Report October 2006 (Section 17)

⁴⁰ COIS Vietnam Country Report October 2006 (Section 17)

⁴¹ COIS Vietnam Country Report October 2006 (Section 17)

⁴² FCO Human Rights Annual Report 2006 p.119

⁴³ COIS Vietnam Country Report October 2006 (Section 17)

- 3.8.12** On 4 February 2005 the prime minister issued the 'Instruction on Some Tasks Regarding Protestantism.' The instruction calls upon authorities to facilitate the requests of recognised Protestant denominations to construct churches and train and appoint pastors. Further, the instruction directs authorities to help unrecognised denominations register their congregations with authorities so that they can practice openly and move towards fulfilling the criteria required for full recognition. Addressing the Central and Northwest Highlands, the instruction guides authorities to help groups of Protestant believers register their religious activities and practice in homes or 'suitable locations,' even if they do not meet the criteria to establish an official congregation. The instruction allows unregistered 'house churches' to operate so long as they are 'committed to follow regulations' and are not affiliated with separatist political movements.⁴⁴
- 3.8.13** The 2005 'Instruction on Protestantism' promulgated by the prime minister directs officials to assist unrecognised Protestant denominations in registering their activities so that they can practice openly. 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 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.⁴⁵
- 3.8.14** The constitutional right of freedom of belief and religion is interpreted and enforced unevenly. In some areas, local officials allow relatively wide latitude to believers; in other provinces, members of non-recognised religious groups sometimes undergo significant harassment or repression and are subject to the whims and prejudices of local officials. This was true particularly for Protestants in the Central and Northwest Highlands. Subsequent to the issuance of the new legal framework governing religion 16 new churches were opened in the Central Highlands in 2005 and local and, in some areas, provincial authorities were engaged in discussions with religious leaders about registering house churches or recognising new official congregations.⁴⁶
- 3.8.15** *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.
- 3.8.16** *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.
- 3.8.17** *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.
- 3.8.18** Members of unregistered religious groups face more difficulties than members of registered communities and individuals may face intimidation and serious 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-

⁴⁴ COIS Vietnam Country Report October 2006 (Section 17)

⁴⁵ COIS Vietnam Country Report October 2006 (Section 17)

⁴⁶ COIS Vietnam Country Report October 2006 (Section 17)

treatment may amount to persecution and therefore in these cases a grant of asylum may be appropriate.

3.9 Prison conditions

- 3.9.1** Claimants may claim that they cannot return to Vietnam due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in the Vietnam are so poor as to amount to torture or inhuman treatment or punishment.
- 3.11.2** 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.
- 3.9.2** **Consideration.** Although prison conditions were reportedly often harsh during 2005, they generally did not threaten the lives of prisoners. Overcrowding, insufficient diet, and poor sanitation remained serious problems in many prisons although most prisoners had access to basic health care. Visits by selected diplomatic observers during 2005 revealed spartan but generally acceptable conditions in at least two prisons.⁴⁷
- 3.9.3** During 2005 prisoners, including those held for political reasons, were reportedly moved arbitrarily to solitary confinement, where they were deprived of reading and writing materials, for periods of up to several months.⁴⁸
- 3.9.5** Although political and religious prisoners were often held under harsh conditions, there was no evidence to suggest their conditions were significantly different than those for the regular prison population. In some instances they received better treatment, including better rations and access to care packages from home, than those in the general prison populations. However, during 2005 the Government did not allow the International Committee of the Red Cross ISRC, non-government organisations or diplomatic observers to visit prisons.⁴⁹
- 3.9.6** It was reported that over 25,000 prisoners were released and given an amnesty in 2005 including a number of high profile political and religious activists. Most amnesties coincided with important events such as Tet, the Lunar New Year (2 February 2005), the 30th anniversary of the end of the Vietnam War on 30 April 2005 and Vietnam National Day on the 2 September 2005.⁵⁰
- 3.9.7** **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.

⁴⁷ COIS Vietnam Country Report October 2006 (Section 12)

⁴⁸ COIS Vietnam Country Report October 2006 (Section 12)

⁴⁹ COIS Vietnam Country Report October 2006 (Section 12)

⁵⁰ COIS Vietnam Country Report October 2006 (Section 12)

(See API 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 API on Article 8 ECHR.

4.2 With particular reference to Vietnam the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave and the API 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 of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

4.4.1 Claimants 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 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.⁵¹

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 1970-75.⁵²

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.⁵³

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

⁵¹ COIS Vietnam Country Report October 2006 (Section 24)

⁵² COIS Vietnam Country Report October 2006 (Section 24)

⁵³ COIS Vietnam Country Report October 2006 (Section 24)

discrimination in the workplace or in finding housing. In a few cases children of persons with HIV/AIDS were barred from schools.⁵⁴

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 the best with treatment success rates at more than 90%. There are more than 130,000 new TB patients on average every year.⁵⁵

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 caseworker considers that the circumstances of the individual claimant 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** 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 Organisation 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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⁵⁴ COIS Vietnam Country Report October 2006 (Section 24)

⁵⁵ COIS Vietnam Country Report October 2006 (Section 24)

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