

RRT RESEARCH RESPONSE

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This response was prepared by the Country Research Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum.

Questions (possibly for 2 experts and for checking against other available sources - e.g. UK and Canada)

Situation of returning Vietnamese

- 1. Are you aware of any monitoring activity by Vietnamese Embassies and Consulates of expatriate Vietnamese and Vietnamese citizens travelling or residing abroad?**
- 2. How are Vietnamese citizens who have been involved in anti-regime activity overseas and who have been critical of the Vietnamese regime treated on return by the Government? Does this also apply to failed asylum seekers, and would the authorities' reaction be any different in these circumstances?**

Situation of returned boat people

- 3. Are you aware of any reports of prosecution of returned asylum seekers by the Vietnamese authorities on the grounds that they sought asylum in Australia?**

Freedom of speech

- 4. What is the current level of press censorship and freedom of speech in Vietnam?**
- 5. What is the nature of the relationship between the press and Government in Vietnam?**
- 6. How are people who have criticised the regime (for example, via internet or distribution of pamphlets) or have expressed anti-regime political views in Vietnam treated by the Government?**

Religious freedom

- 7. How are religious group leaders, who are perceived by the authorities as having become too political, treated by the authorities, e.g. Buddhist leaders, or other religious group leaders e.g. Protestant groups or those in so-called "home-based religions"?**

Political rights and human rights

- 8. Do local authorities at times act arbitrarily at the local level regardless of directions from the central authority?**

RESPONSE

RRT Country Research received a comprehensive response, to all eight of the above questions, from Professor Carlyle A. Thayer of the Australian Defence Force Academy, University of New South Wales (Professor Thayer is presently the C.V. Starr Distinguished Visiting Professor of Southeast Asian Studies, Johns Hopkins University). Professor Thayer is a noted authority on the Socialist Republic of Vietnam and has supplied the RRT with advice on previous occasions on matters relating to political dissidence (for more on this, see the response to Question 6 below). Professor Thayer's advice, in reply to Questions 1-8, is supplied as Attachment 1 (Thayer, Carlyle A. 2005, 'Comments for the Australian Refugee Review Tribunal', Johns Hopkins University, Washington, D.C., 18 March – Attachment 1; Thayer, Carlyle A. 2005, Email to RRT: 'Vietnam – RRT Information Request VNM17238', 18 March – Attachment 2).

Information was also received, following the submission of this Research Response on 24 March 2005, from Professor Ben Kerkvliet (of the Australian National University; or ANU) on 11 April 2005; from Dr Russell Heng (of Singapore's Institute of Southeast Asian Studies; or ISEAS) on 12 April 2005; and from Associate Professor John Gillespie (of Deakin University) on 21 April 2005. The advice received from these three sources is supplied, respectively, as Attachment 28, Attachment 29 and Attachment 30 (Kerkvliet, B. 2005, Email to RRT: 'Vietnam – RRT Information Request VNM17238-VNM17306', 11 April – Attachment 28; Heng, R. 2005, Email to RRT: 'Vietnam – RRT Information Request VNM17238', 12 April – Attachment 29; Gillespie, J. 2005, Email to RRT: 'Vietnam – RRT Information Request VNM17238-VNM17306', 21 April – Attachment 30).

Information, provided by other sources, which may be of relevance to Questions 1-8, follows below.

Situation of returning Vietnamese

1. Are you aware of any monitoring activity by Vietnamese Embassies and Consulates of expatriate Vietnamese and Vietnamese citizens travelling or residing abroad?

The US Department of State's most recent report on human rights practices in Vietnam, *Country Reports on Human Rights Practices for 2004 – Vietnam*, makes no specific reference to the activities of Vietnamese authorities operating abroad but some information provided by the report suggests that domestic Vietnamese authorities are kept well informed of the activities of Vietnamese who are travelling, or living, abroad: the report notes a number of cases in which returning Vietnamese citizens have been mistreated on the basis of the Vietnamese government's awareness of the returnee's dissident activities, both domestically and overseas. For example, the report states that, "[o]n May 14 [2004], a court in Ho Chi Minh City sentenced Nguyen The Hanh to 2 years in prison for having been involved with Vietnamese-American political activist groups during the 2 years he spent outside the country" (see Section 2.b.) Similarly, "US citizen Hoang The Lan was detained by public security officers early on the morning of August 2 [2004]" and "was interrogated over a period of 4 days about his involvement with groups that advocate democracy in Vietnam" (see Section 1.d.). The report also notes that, "[a]lthough the Government no longer required citizens traveling abroad to obtain exit or reentry visas... family members of refugees were unable to obtain passports to reunite abroad" (see Section 2.d.); and that "persons who expressed alternative opinions on religious or political issues were not allowed to travel abroad" (see Section 2.b.) (US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – Vietnam*, 28 February – Attachment 3).

2. How are Vietnamese citizens who have been involved in anti-regime activity overseas and who have been critical of the Vietnamese regime treated on return by the Government? Does this also apply to failed asylum seekers, and would the authorities' reaction be any different in these circumstances?

As noted above, in response to Question 1, the US Department of State's most recent report on human rights practices in Vietnam, *Country Reports on Human Rights Practices for 2004 – Vietnam*, notes a number of instances in which returning Vietnamese citizens have been mistreated by the Vietnamese government as a result of actual or imputed dissident activities and/or beliefs (see Section 2.b.). This would also appear to be the case with regards to failed asylum seekers. The report indicates that “[t]hirteen potential refugees who received UNHCR protection in Phnom Penh”, and who were “independently returned to Vietnam in October”, were “interrogated extensively by authorities upon their return” (see Section 2.d.). The Vietnamese government refused to allow the UNHCR access to the Central Highlands; where UNHCR had hoped “to monitor conditions” and “ensure the safety of returned refugees” (see Section 2.d.). According to the US Department of State, “[t]here 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 beatings and detentions” (see Section 5). Such instances of mistreatment have not been restricted to the Montagnards alone, “[o]n August 29, unregistered Protestant pastor Tran Mai was detained for 8 days after he allegedly committed immigration law violations when he returned to the country through Cambodia” (see Section 2.c.). And June 2004 saw the release of “Pham Van Tuong, a former UBCV monk known as Thich Tri Luc, who had been imprisoned since mid-2002, for the crime of “fleeing abroad or defecting to stay overseas with a view to opposing the people’s administration” (see Section 2.d.; and, for more on this case, see below for the Human Rights Watch report, ‘Vietnam: Buddhist Dissident Forced to Flee’, of 24 June 2004). The US Department of State notes that Vietnam “is not a signatory to the 1951 UN Convention Relating to the Status of Refugees or its 1967 Protocol”; in August 2004, “press reports” suggested that “as many as 100 North Korean refugees had been forcibly returned to China” by the Vietnamese authorities (see Section 2.d.). A pertinent extract follows in detail:

Following the April 10 protests in the Central Highlands a number of Montagnards hid in forests and rubber plantations, and some attempted to flee across the border into Cambodia (see Section 2.b.). Vietnamese police attempted to block these potential refugees and reportedly crossed the border into Cambodia. The UN High Commissioner for Refugees (UNHCR) sought to monitor conditions in the Central Highlands without restriction to ensure the safety of returned refugees. The Government did not allow this access. Thirteen potential refugees who received UNHCR protection in Phnom Penh independently returned to Vietnam in October. According to Vietnamese authorities, the 13 returned safely to their homes. However, newspapers later printed accounts that made it clear that the 13 had been interrogated extensively by authorities upon their return.

On March 12, Pham Van Tuong, a former UBCV monk known as Thich Tri Luc, was convicted by a court in Ho Chi Minh City of “fleeing abroad or defecting to stay overseas with a view to opposing the people’s administration,” and sentenced to 20 months imprisonment, including 19 months time served. Released March 26, he left for another country in June, where he was granted refugee status.

The country is not a signatory to the 1951 UN Convention Relating to the Status of Refugees or its 1967 Protocol. In July, international NGOs and press reports speculated that the Government allowed more than 450 North Koreans illegally present in Vietnam to travel to

South Korea. Reports from similar sources in August stated that as many as 100 North Korean refugees had been forcibly returned to China (Section 2.d.) (US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – Vietnam*, 28 February – Attachment 3).

As noted above, June 2004 saw the release of the Vietnamese Buddhist dissident, Thich Tri Luc. A Human Rights Watch publication, 'Vietnam: Buddhist Dissident Forced to Flee', of 24 June 2004, provides background on this pertinent case. According to this report, "Thich Tri Luc, whose secular name is Pham Van Tuong, was" repeatedly imprisoned and harassed by Vietnamese government authorities, as a consequence of his involvement in campaigns of religious freedom, from 1992 until he fled the country for Cambodia; where "he was granted refugee status by the United Nations High Commissioner for Refugees (UNHCR) in June 2002. On July 25, 2002, he was abducted by Cambodian and Vietnamese agents and forcibly returned to Vietnam." For a comprehensive account of the event surrounding this case, see Attachment 4 (Human Rights Watch 2004, 'Vietnam: Buddhist Dissident Forced to Flee', 23 June 2004 http://hrw.org/english/docs/2004/06/23/vietna8943_txt.htm – Accessed 21 March 2005 – Attachment 4).

Since 2003, Human Rights Watch has produced regular reports documenting the aforementioned mistreatment of those members of the Montagnard community who have returned, or been returned, to Vietnam after seeking asylum in Cambodia. A report published in January of this year states that "[f]irst-hand accounts from Montagnards who have voluntarily returned to Vietnam since 2001 indicate that Vietnamese authorities treat returnees with intense suspicion". Section II of the report, 'Recent Arrests and Harassment', provides an extensive overview of these first-hand accounts, and the manner in which some returnees "are placed under police surveillance and even house arrest upon return, or regularly summoned to the police station for questioning about their activities"; while Section III, 'Torture and Abuse in Detention and Police Custody', provides information on the manner in which some returnees, along with other persons suspected of political dissidence, are subjected to torture and abuse by Vietnamese security forces (Human Rights Watch 2005, 'Vietnam: Torture, Arrests of Montagnard Christians', January <http://hrw.org/backgrounder/asia/vietnam0105/vietnam0105.pdf> – Accessed 15 March 2005 – Attachment 5; for an indication of the ongoing nature of this situation, see: Human Rights Watch 2003, 'Vietnam: New Documents Reveal Escalating Repression', April <http://www.hrw.org/backgrounder/asia/vietnam/montagnards/> – Accessed 23 April 2003 – Attachment 6).

On 26 January 2005, UNHCR announced that it had "signed an agreement with Viet Nam and Cambodia...specifying that returnees to Viet Nam will not be prosecuted or face discrimination". The agreement is specific to "some 750 Montagnards" presently "staying in temporary sites under the protection of UNHCR" in Cambodia. Relevant extracts follow in detail:

The agreement, a memorandum of understanding, was signed in Hanoi on Tuesday after two days of talks between the three parties involved. The aim was to find a solution for some 750 Montagnards, an ethnic minority group from Viet Nam's Central Highlands, who had crossed into Cambodia and are staying in temporary sites under the protection of UNHCR.

"We decided that this agreement would focus on this group of refugees only and would not necessarily apply to members of the Montagnard minority who may flee Viet Nam in the future," UNHCR's Director of International Protection, Erika Feller, said after the signing ceremony in Hanoi.

...The agreement calls for an expeditious resettlement for those Montagnards who wish to be resettled to third countries, and a quick return to Viet Nam for those who volunteer to be repatriated.

...In November 2004, the UN refugee agency said it was concerned that a growing number of Montagnards had crossed into Cambodia under the mistaken impression UNHCR could help them get back their confiscated lands. Once it had been made clear the refugee agency could not help them with their land grievances, some asylum seekers said they wanted to return to Viet Nam. Others who had already been recognised as refugees overwhelmingly rejected resettlement ('UNHCR signs agreement with Viet Nam, Cambodia on Montagnards' 2005, UNHCR website, 26 January <http://www.unhcr.ch/> – Accessed 21 March 2005 – Attachment 7).

In 2004, the Research Directorate of the Immigration and Refugee Board of Canada produced two reports on the available information addressing the situation of asylum seekers who have returned to Vietnam. These are supplied as Attachment 8 (VNM41980.E of 4 February 2004) and Attachment 9 (VNM42934.E of 9 September 2004). The principal instances noted in these reports are those addressed above: the return, and prosecution, of the Buddhist dissident Thich Tri Luc; and the return and mistreatment of members of Vietnam's restive Montagnard community (Immigration and Refugee Board of Canada 2004, VNM41980.E – *Vietnam: Consequences for a Vietnamese citizen who returns to Vietnam without having previously received official permission to leave the country (2003)*, 4 February – Attachment 8; Immigration and Refugee Board of Canada 2004, *Vietnam: Further to VNM41980.E of 4 February 2004 on the treatment of Vietnamese returnees, especially those who are failed refugees, who have left the country without permission or who lived abroad and whose work contracts have expired (2002-August 2004)*, 9 September – Attachment 9).

Information published by the US Department of State indicates that all persons who return to, or visit, Vietnam from another country figure as persons of interest for Vietnam's state security apparatus as a matter of course; as do Vietnamese persons whose relatives have been granted asylum overseas. According to the US Department of State's most recent report on human rights practices in Vietnam, the "Government generally encouraged visitation by [emigrants], but sometimes monitored them carefully"; "[f]oreign passport holders by law must register to stay in private homes; and local authorities at times refused to allow foreign visitors to stay with friends and family"; and "[a]lthough the Government no longer required citizens traveling abroad to obtain exit or reentry visas...family members of refugees were unable to obtain passports to reunite abroad" (see Section 2.d.). The report indicates that the Vietnamese authorities employ "a system of household registration and block wardens" for monitoring persons "whom they [regard] as having dissenting views, or whom they [suspect] of involvement in unauthorized political or religious activities" (see Section 1.f.). Relevant extracts follow in detail:

Internal security primarily is the responsibility of the Ministry of Public Security (MPS); however, in some remote areas, the military is the primary government agency and provides infrastructure and all 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 maintained a system of household registration and block wardens to monitor the population, concentrating on those suspected of engaging, or being likely to engage in, unauthorized political activities; however, this system has become less pervasive in its intrusion into most citizens' daily lives. While the civilian authorities generally maintained effective control of the security forces, there were reports that elements

of the security forces acted independent of government authority. Members of the public security forces committed numerous human rights abuses (Introduction).

...The Constitution provides for the right to privacy of home and correspondence; however, the Government restricted this right significantly. Household registration and block warden systems existed for the surveillance of all citizens, but usually did not intrude on most citizens. The authorities focused on persons whom they regarded as having dissenting views, or whom they suspected of involvement in unauthorized political or religious activities (Section 1.f.).

...The Government opened and censored targeted persons' mail, confiscated packages and letters, and monitored telephone conversations, electronic mail, and facsimile transmissions. The Government cut the telephone lines and interrupted the cellular phone service of a number of religious and political activists and some of their family members (Section 1.f.).

...Foreign passport holders by law must register to stay in private homes; and local authorities at times refused to allow foreign visitors to stay with friends and family. Citizens are also required to register with local police when they stay overnight in any location outside of their own homes; the Government appeared to have enforced these requirements more strictly in some districts of the Central and Northwest Highlands (Section 2.d.).

...Although the Government no longer required citizens traveling abroad to obtain exit or reentry visas, the Government sometimes refused to issue passports. The Government did not allow some persons who publicly or privately expressed critical opinions on religious or political issues to travel abroad.

Citizens' access to passports sometimes was constrained by factors such as bribery and corruption. Refugee and immigrant visa applicants sometimes encountered local officials who arbitrarily delayed or denied passports based on personal animosities, on the officials' perception that an applicant did not meet program criteria, or to extort a bribe. Unlike in previous years, there were no reports that Protestant pastors who had served time in reeducation camps were denied passports. Some family members of ethnic minorities granted refugee status abroad were reissued household registration papers with the missing member removed. In other cases family members of refugees were unable to obtain passports to reunite abroad (Section 2.d.).

...The Government generally permitted citizens who had emigrated abroad to return to visit. Officially, the Government considers anyone born in the country to be a citizen, even if they have acquired another country's citizenship, unless a formal renunciation of citizenship has been approved by the President. However, in practice, the Government usually treated overseas Vietnamese as citizens of their adopted country. Emigrants were not permitted to use Vietnamese passports after they acquired other citizenship. The Government generally encouraged visitation by such persons, but sometimes monitored them carefully (Section 2.d.) (US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – Vietnam*, 28 February – Attachment 3).

Alternatively, there have been numerous reports in the media of returning Vietnamese, former "boat people", being well received in instances where the returnees' wealth and/or skills are desired by the Vietnamese government for the benefit of the economy. For example, a report published in July 2004, by Canada's globeandmail.com, states that "former boat people from Vietnam who fled the Communist government 25 years ago are now returning home by the planeload". According to this report "[t]hese viet kieu – overseas Vietnamese – are considered so important to the country's intellectual and material wealth that the Communist government passed a landmark resolution this year, luring them back with

promises of bureaucratic changes, property rights and even Vietnamese language classes”. The report continues:

Last year, more than 360,000 viet kieu (21,000 of them from Canada) visited the country, a 27-fold increase in eight years. Some come to visit relatives, while others buy homes and start businesses. Nearly 1,000 ventures in Ho Chi Minh City are now owned by viet kieu, as the country works to change its image and establish the country as the next southeast Asian powerhouse.

“There is no doubt viet kieu figure very prominently now, especially in the south. They hold key positions in companies here and are driving the government to change,” observes a diplomat based in Ho Chi Minh City. “The business opportunities are so great. They are pumping a lot of money into social causes as well. They’ve been boat people and they now have a strong desire to help their own country” (Jiménez, Marina 2004, “The one who went back...”, globeandmail.com, 6 July – Attachment 10).

Another such report, published by the *International Herald Tribune*, makes specific mention of Viet Kieu returning to Vietnam from Australia. Relevant extracts follow in detail:

When 600 overseas Vietnamese landed at Ho Chi Minh City’s airport on Jan. 23, they were welcomed by an official delegation and a phalanx of eager young volunteers who insisted on carrying their bags for them.

It was a far cry from the way most of them left the country in the 1970s, on leaky boats and being cursed as traitors by the government in Hanoi.

This time, the returnees, who were visiting Vietnam from the United States, Canada and Australia for the Tet Lunar New Year holidays, were met by a delegation from the government’s Committee for Overseas Vietnamese, led by the director, Nguyen Chon Trung.

Now that overseas Vietnamese, or Viet Kieu as they are known, are returning with money, Vietnam’s Communist government cannot do enough to make them feel welcome.

...”It’s just like people used to say in the old days. Sometimes some bad luck brings on some good luck,” said Nguyen Ngoc My, a Viet Kieu businessman whose bad luck caused him to flee to Australia in 1978.

...My, the Viet Kieu who returned from Australia, is also chairman of the Overseas Vietnamese Business Club. Recently, he took a group of 36 Viet Kieu investors on a tour through 15 provinces and three cities. They were feted by the local authorities eager for their business acumen and their foreign currency.

Despite that warm welcome, My said he had seen many Viet Kieu investors burned by greedy local partners and stifled by rules and regulations.

My was an early returnee. He learned the construction business under the tutelage of the U.S. Navy but landed 10 months in one of Vietnam’s notorious re-education camps after the war.

After building a successful construction business in Australia he was invited on a trade delegation to Vietnam in 1992. He returned a few years later to set up the first of his many companies.

These days he is involved in construction, entertainment, vocational training and information technology. He said that some Viet Kieu communities in France, Germany, Australia and the United States still harbored suspicions about the government in Hanoi.

“Maybe some have misunderstood the government’s policy because so many have the knowledge and experience of before ‘75 in their head,” he said in a reference to the end of the Vietnam war. “Even I, before I came back here, I thought a different way.”

Now, he says, the opportunities are too good to miss (Bainbridge, Bill 2005, ‘Once cursed, Vietnamese welcomed home’, *International Herald Tribune*, 18 March <http://www.iht.com/articles/2005/03/17/news/viet.html> – Accessed 24 March 2005 – Attachment 11).

There have been reports of the Vietnamese government refusing to accept the return of “boat people” who are recognised as refugees and who are unwilling to be returned to the SRV. According to a June 2004 *Japan Times* report, the Japanese government has recently been unsuccessful in its attempts to have the Vietnamese government accept the return of a number of “boat people”: “because of their status as former boat people, the Vietnamese government has refused to take them back”. *The Japan Times* reports that “[a] senior official of the [Japanese] Justice Ministry’s Immigration Bureau” has stated that the Vietnamese government “does not usually accept people who have been recognized as refugees overseas and are unwilling to return to Vietnam”. The report notes that the all the “boat people” in question “have served time in Japanese prisons for murder, theft and other serious crimes”; but this fact is not reported in such a way as to suggest that it is related to the Vietnamese government’s decision in this matter. The report is supplied as Attachment 12 (‘Detainees stage hunger strike’ 2004, *Japan Times*, 11 June – Attachment 12).

For information on the treatment of returning, or returned, asylum seekers in less recent times, in particular the period 1989–1997, see *Research Response VNM16000*, of 20 June 2003, which is supplied as Attachment 13 (RRT Country Research 2003, *Research Response VNM16000*, 20 June – Attachment 13).

Situation of returned boat people

3. Are you aware of any reports of prosecution of returned asylum seekers by the Vietnamese authorities on the grounds that they sought asylum in Australia?

The sources consulted could provide no reports of returned asylum seekers being prosecuted by Vietnamese authorities on the grounds that they sought asylum in Australia. Nonetheless, the following information may prove of relevance.

On 16 March 2005, UNHCR advised RRT Country Research that “due to the current staffing constraints of UNHCR in Vietnam, UNHCR is currently not in a position to monitor the human rights situation of the country”. This advice was tendered in response to an RRT Country Research enquiry as to whether, or not, UNHCR was aware of any instances (other than the well publicized instances of the Montagnards of the Central Highlands; and the UBCV monk known as Thich Tri Luc) in which Vietnamese asylum seekers have, upon return to Vietnam, been mistreated by the Vietnamese authorities. Unable to comment on these matters at this time, UNHCR recommended Amnesty International’s most recent reports on these and related issues (a number of these Amnesty International reports are addressed in response to Question 6). UNHCR’s Email of 16 March 2005 is supplied as Attachment 14 (UNHCR 2005, Email to RRT: ‘RRT Information Request VNM17238 – returned Vietnamese asylum seekers’, 16 March – Attachment 14; RRT Country Research

2005, Email to UNHCR: ‘RRT Information Request VNM17238 – returned Vietnamese asylum seekers’, 14 March – Attachment 15).

The “current staffing constraints of UNHCR in Vietnam” may prove of relevance to the issues broached by Question 3 insofar as such constraints have, in previous years, been cited by a number of sources as evidence of the alleged limitations of UNHCR’s ability to effectively monitor the treatment of returnees (most notably, in regard to large scale repatriation initiatives, such as the Comprehensive Plan of Action or CPA). For example, in May of 1993, a report published by the Asian Human Rights Commission (AHRC) alleged that, at that time, UNHCR conducted “individual monitoring for less than 15 people” per week. Similarly, Human Rights Watch’s ‘World Report’ for 1995 observed that UNHCR “maintained a small staff in Vietnam to monitor the treatment of returned boat people, who [then] number[ed] over 60,000”. Human Rights Watch also stated, at this time, that “[i]n at least one case...an asylum-seeker deported from Hong Kong may have been arrested for political reasons” (the Vietnamese authorities claimed that the returnee in question, “Nguyen Van Kha”, was arrested for criminal acts “committed prior to his departure from Vietnam in 1990”). A later Human Rights Watch report, published in March 1997, voiced the continued concerns of Human Rights Watch as to the effectiveness of UNHCR monitoring of returnees. At this time Human Rights Watch recommended that, “[t]o address concerns among NGOs and Vietnamese asylum seekers regarding the effectiveness of the UNHCR’s protection of returnees, the agency should establish an independent evaluation team to monitor the activity and performance of its monitors in Vietnam”. A 1996 report published by (what appears to be) a US servicemen’s association website, has claimed that UNHCR’s monitoring limitations have allowed Vietnamese authorities to systematically target certain returnees. According to this publication, Vietnam’s “Public Security Police Unit [has reported] the successes of [a] campaign” in which “it had identified 79 political suspects among the 1,432 boat people repatriated to Hai Phong between November 1, 1994 and June 15, 1995” (the *bona fides* of this website, and its publications, are uncertain, but the article is supplied, nonetheless, as Attachment 19) (Thomas, Joe 1993, ‘The Unfinished Agenda of the Vietnamese’, Asian Human Rights Commission (AHRC) website, 5 May <http://www.ahrchk.net/hrsolid/mainfile.php/1993vol03no02/2052/?print=yes> – Accessed 22 March 2005 – Attachment 16; Human Rights Watch 1995, ‘Human Rights Watch World Report 1995: Vietnam’ <http://www.hrw.org/reports/1995/WR95/ASIA-09.htm> – Accessed 22 March 2005 – Attachment 17; ‘Hong Kong: Abuses against Vietnamese asylum seekers in the final days of the Comprehensive Plan of Action’ 1997, Human Rights Watch website, Volume 9, No. 2, March <http://www.hrw.org/reports/1997/hngkng2/Hongkong.htm> – Accessed 19 June 2003 – Attachment 18; ‘Vietnamese boat people in Southeast Asia and Hong Kong: UNHCR’s failures in the Comprehensive Plan of Action’ 1996, Special Forces List website, 8 June <http://teamhouse.tni.net/UNHCR.htm> – Accessed 18 June 2003 – Attachment 19).

The claims of this latter article aside, the facts surrounding the alleged limitations of UNHCR’s capabilities, with regard to monitoring, do not appear to be in dispute. Sources which consider UNHCR to have effectively accomplished its monitoring role quote similar figures while drawing alternative conclusions. For example, in one such article, published in the *ISIL Year Book of International Humanitarian and Refugee Law*, the author notes, as ample basis for UNHCR to be “convinced that the Vietnamese authorities were not vindictive”, the fact that by “the middle of 1999, UNHCR’s seven Vietnamese speaking monitors had individually interviewed more than forty per cent of the 110,000 returnees, an exercise which one diplomat described as ‘stunning’”. The relevant extract follows in detail:

In order to verify that the returnees were not persecuted by Vietnam and also to follow-up their integration, UNHCR undertook what was described as “the most intensive evaluation of any return movement in its history.” During 1975-2000 UNHCR spent \$113 million including \$71 million for the return of the screened out of which \$35 million was a reintegration cash grant and another \$14 million to start about 600 small community projects. In 1989, Goran Rosen, who served long as UN refugee agency’s international staff member in Vietnam, checked out a Malaysian news headline “Lured Back to a very Bleak Future” and found the report untrue. In the middle of 1999, UNHCR’s seven Vietnamese speaking monitors had individually interviewed more than forty per cent of the 110,000 returnees, an exercise which one diplomat described as “stunning”. UNHCR was convinced that the Vietnamese authorities were not vindictive. Demonstrating its real sense of commitment to the satisfactory resolution of the Boat people problem UNHCR continued to monitor the fate of the Boat people repatriated back to Vietnam, even though other pressing refugee problems in Bosnia and elsewhere demanded its greater attention (Chetty, A. Lakshmana 2001, ‘Resolution Of The Problem Of Boat People: The Case For A Global Initiative’, *ISIL Year Book of International Humanitarian and Refugee Law*, source: World Legal Information Institute website <http://www.worldlii.org/int/journals/ISILYBIHRL/2001/8.html> – Accessed 22 March 2005 – Attachment 20).

UNHCR has acknowledged, for its own part, that the task of monitoring returned Vietnamese asylum seekers has proven “challenging”. Nonetheless, in its *State of the World’s Refugees 2000* report, UNHCR displays confidence in its findings; stating that “the great majority of requests from returnees dealt with matters of economic assistance and that ‘monitoring has revealed no indication that returnees have been persecuted’”. The relevant extract follows in detail:

During the eight-year period of the Comprehensive Plan of Action, more than 109,000 Vietnamese returned home. To assist them in their reintegration, UNHCR offered each returnee a cash grant of between US\$240 and US\$360, which was paid in instalments by the government’s Ministry of Labour, War Invalids, and Social Affairs. UNHCR also spent more than US\$6 million on 300 micro-projects around the country, focusing on water, education, and community infrastructure. In the area of employment and job development, UNHCR looked to the European Community International Programme which made more than 56,000 loans of between US\$300 and US\$20,000 to returnees and local residents alike. The loans greatly facilitated the development of small businesses and 88 per cent were repaid.

Although 80 per cent of the returnees went primarily to eight coastal provinces, they returned to all of Viet Nam’s 53 provinces from north to south. To make UNHCR’s monitoring responsibilities even more challenging, an estimated 25 per cent of returnees moved at least once after returning from the camps, mostly to cities and towns to look for work. UNHCR officials monitoring the reintegration of the returnees reported that the great majority of requests from returnees dealt with matters of economic assistance and that ‘monitoring has revealed no indication that returnees have been persecuted’ (UNHCR 2000, *State of the World’s Refugees 2000*, Chapter 4: ‘Flight from Indochina’ <http://www.unhcr.ch/pubs/sowr2000/ch04.pdf> – Accessed 22 March 2005 – Attachment 21).

In April 2002, UNHCR published a report, *Reintegration programmes for refugees in South-East Asia*, which put forward an extensive assessment of its monitoring operations in Vietnam during the time of, and the years following, the CPA (see ‘Viet Nam’, pp.31-43). The report also comments on the manner in which UNHCR “phased down its operations in Viet Nam [during] the...two years [when] the last remaining CPA cases were repatriated”; to the point where UNHCR “now maintains a three-person office in Ha Noi”. The relevant extract follows in detail:

Phase-out

137. UNHCR has phased down its operations in Viet Nam over the past two years since the last remaining CPA cases were repatriated, and now maintains a three-person office in Ha Noi. The staff currently handles protection cases and responds to other refugee or returnee matters as they emerge. The staff also conduct various workshops for government officials concerning refugee-related matters and works to promote human rights and refugee migration legislation. It is also important to note that by maintaining its office in Ha Noi, UNHCR is well positioned to respond to new situations that may arise, particularly the many thousand cases of Vietnamese of Chinese descent who are currently residing in southern China.

138. UNHCR's phase out strategy was greatly facilitated by the ability and willingness of the Vietnamese government to assume responsibility for the returnees. In this sense, it is important to note that the SRV government and the VWU have articulated that returnees are no longer thought of as individuals eligible for special services based on their returnee status. Rather, they are considered Vietnamese citizens who, like everyone else, may be eligible for social assistance provided they meet the required criteria. For example, the government operates several national poverty reduction programs aimed at providing assistance for the poorer members of society. In the case of the national credit programs, people in a particular commune must collectively decide who is most in need of such projects. In several cases, returnees who had applied for such loans reported the community had chosen others who were much poorer. Though this may raise questions concerning the degree to which people in local communities may discriminate against returnees in the future, I think it has more to do with local people's collective sense of fairness (Ballard, Brett 2002, *Reintegration programmes for refugees in South-East Asia*, UNHCR website, April, p.41 <http://www.unhcr.ch/cgi-bin/texis/vtx/home/+VwwBmBe6CMpwwwwwwwwwwwwhFqo20I0E2gltFqoGn5nwGqrAFqo20I0E2glcFqyVonBDwMaGnB1GDnn5aZ2aGnB1GDnmMzmAwwwwwwDzmxwwwwww/opendoc.pdf><http://www.unhcr.ch> – Accessed 22 March 2005 – Attachment 22).

Freedom of speech

- 4. What is the current level of press censorship and freedom of speech in Vietnam?**
- 5. What is the nature of the relationship between the press and Government in Vietnam?**

According to the US Department of State's most recent report on human rights practices in Vietnam, *Country Reports on Human Rights Practices for 2004 – Vietnam*, the Vietnamese "Constitution provides for freedom of speech and freedom of the press"; nonetheless, "the Government significantly restricted these freedoms in practice, particularly with respect to political and religious speech" (see Section 2.a.). The report notes that the "Government generally required religious publishing to be done through one government-owned religious publishing house; however, some religious groups were able to print their own materials or import them, subject to government approval" (see Section 2.c.). Relevant extracts follow in detail:

The Constitution provides for freedom of speech and freedom of the press; however, the Government significantly restricted these freedoms in practice, particularly with respect to political and religious speech. Both the Constitution and the Criminal Code include broad national security and anti-defamation provisions that the Government used to restrict severely such freedoms (Section 2.a.).

...The Government continued to prohibit speech that questioned the role of the CPV, criticized individual government leaders, promoted pluralism or multiparty democracy, or questioned the Government's policies on sensitive matters such as human rights or the border agreement with China. The line between what constituted private speech and public speech in those areas continued to be arbitrary. On December 30, scientists Tran Van Luong and Nguyen Thi Minh Hoan were sentenced to 21 and 8 months in prison respectively, for having written essays critical of government economic policies. On July 29, democracy activist Dr. Nguyen Dan Que was sentenced to 30 months' imprisonment for posting an essay on the Internet that called for less government censorship. On July 9 and July 14, respectively, activists Tran Khue and Pham Que Duong were each sentenced to 19 months' imprisonment including time served after petitioning the Government for democratic reforms, the establishment of an anti-corruption body, and publication of the country's border treaties with China. In November 2003, democracy activist and former revolutionary Tran Dung Tien was sentenced to 10 months' imprisonment including time served after signing a letter that criticized the arrest of Duong and Khue. Tran Khue, Pham Que Duong, and Tran Dung Tien had all completed their prison sentences and were free at year's end. In December 2003, journalist Nguyen Vu Binh was convicted of "spying" after he had criticized the country's border agreement with China and sent testimony on human rights issues in the country to a foreign government. Binh was sentenced to 7 years' imprisonment and 3 years' house arrest. The sentence was upheld on appeal on May 5. In June 2003, Dr. Pham Hong Son was also convicted of "spying," and sentenced to 13 years' imprisonment and 3 years' house arrest, later reduced on appeal to 5 years' imprisonment, after translating an Internet article titled "What is Democracy." In December 2002, activist Nguyen Khac Toan was sentenced to 12 years' imprisonment for "spying" after disseminating the writings of other democracy activists.

On June 12, the Government reduced by 5 years the prison sentence imposed on Catholic priest Thaddeus Nguyen Van Ly, but added a 5-year administrative detention order to be served after his release. Father Ly originally was sentenced to 15 years' imprisonment in 2001 for "damaging national unity," but the sentence stood at 5 years, after the June reduction and a similar reduction in 2003. In 2001, Father Ly had submitted written testimony critical of the Government to the U.S. Commission on International Religious Freedom and frequently spoke out for political pluralism and complete religious freedom. In September 2003, the Ho Chi Minh City People's Court sentenced Father Ly's niece, Nguyen Thi Hoa, and two nephews, Nguyen Truc Cuong and Nguyen Vu Viet, to sentences ranging from 3 to 5 years' imprisonment for communicating information on his activities to foreign journalists. In November 2003, the Ho Chi Minh Court of Appeals reduced the sentences of the three siblings to time-served.

The Government restricted persons who belonged to unofficial religious groups from speaking publicly about their beliefs (see Section 2.c.) (Section 2.a.) (US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – Vietnam*, 28 February – Attachment 3).

Further to this, the US Department of State reports that "[t]he CPV, the Government, and the party-controlled mass organizations controlled all print and electronic media"; that access to foreign news sources was restricted; and that "[f]oreign journalists must be approved by the Foreign Ministry's Press Center and must be based in Hanoi". Relevant extracts follow in detail:

The CPV, the Government, and the party-controlled mass organizations controlled all print and electronic media.

Published reports on high-level government corruption and mismanagement became more common in recent years. Domestic papers reported extensively on the corruption trial of former Ministry of Agriculture official La Thi Kim Oanh and the subsequent dismissal of the Minister of Agriculture.

In September, the Government unexpectedly blocked press access to the first 2 days of the Asia-Europe People's Forum, an international conference on globalization and democracy.

Foreign journalists must be approved by the Foreign Ministry's Press Center and must be based in Hanoi. The number of foreign staff allowed was limited, and local staff who worked for foreign media were required to be registered with the Foreign Ministry. The Government can withhold or withdraw registration. The Press Center monitored journalists' activities and decided on a case-by-case basis whether to approve interview, photograph, film, or travel requests, all of which in principle must be submitted 5 days in advance. The Press Center refused requests by foreign journalist to travel to the Central Highlands in the immediate aftermath of the April 10 protests in the region. By law, foreign journalists are required to address all questions to government agencies through the Foreign Ministry, although it appeared that this procedure often was ignored in practice. Foreign journalists generally received visas valid for 6 months. During the year, at least two foreign journalists were threatened with nonrenewal of their visas as a result of their reporting.

The Government generally required religious publishing to be done through one government-owned religious publishing house; however, some religious groups were able to print their own materials or import them, subject to government approval (see Section 2.c.).

Foreign-language editions of some banned books, such as Duong Thu Huong's "Memories of a Pure Spring," were sold openly by street peddlers, and Bao Ninh's previously banned book, "Sorrow of War," was available in bookstores in Vietnamese-language editions.

Foreign-language periodicals were widely available in cities; however, the Government occasionally censored articles about the country. The Government sometimes delayed availability of a foreign periodical because of sensitive articles. The Government generally did not limit access to international radio, except to Radio Free Asia and the Far East Broadcasting Corporation, which it continued to jam. The Government also jammed the broadcasts of Radio Sweden, but this appeared to be directed at the Far East Broadcasting Corporation, which used a similar frequency.

The law limits access to satellite television to top officials, foreigners, luxury hotels, and the press; however, the law was not enforced uniformly and an increasing number of persons in urban and some rural areas had access to uncensored television footage via home satellite equipment or cable. Cable television, including foreign-origin channels, was available to subscribers living in urban areas, although the Government blocked Vietnamese subscribers from receiving certain news channels, including CNN and the BBC (Section 2.a.) (US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – Vietnam*, 28 February – Attachment 3).

In April 2004, Freedom House published an assessment of the state of political and religious freedom in Vietnam, authored by the noted Southeast Asia analyst Professor Zachary Abuza, as part of its *Countries at the Crossroads 2004* report. In this assessment, Abuza states that, "[a]lthough freedom of expression is constitutionally protected [in Vietnam], the state controls all media, print and broadcast, and tolerates no independent media". "The Vietnamese government no longer engages in direct censorship of its media, but it is actively engaged in indirect censorship"; and this, according to Abuza, is efficacious to the degree that "[o]pposition figures and social critics" have no "access to the official media" or any other

“legal forum in which they can articulate their views”. Abuza states that dissidents can only make their views known via “samizdat publications and the internet”; and that “[t]hose who try to express their views freely are often thrown in jail”. Nonetheless, while Abuza makes it clear that such treatment is typically applied to any person publishing views which are confrontational toward the establishment, persons advocating more limited platforms of civic reform are, in some instances, allowed a voice. According to Abuza, “single-issue organizations, registered and deemed politically non-threatening”, are allowed to “operate in a complex web of arbitrary administrative rulings and contradictory regulations”. Relevant extracts follow in detail:

...One of the genuine bright spots in Vietnam’s political development has been the slow but steady development of civic associations. Most are small and single-issue organizations, registered and deemed politically non-threatening. They operate in a complex web of arbitrary administrative rulings and contradictory regulations (p.7).

...Although freedom of expression is constitutionally protected, the state controls all media, print and broadcast, and tolerates no independent media. There have been periods in which there was considerable media and literary freedom, but these have been relatively brief and ultimately always met with a harsh government crackdown. The party’s official position on the media remains driven by the tenets of socialist realism: The purpose of the media and the arts is to serve the party and people. The Vietnamese government no longer engages in direct censorship of its media, but it is actively engaged in indirect censorship. For example, editors of the various media, all state employees, meet on a regular basis with party propaganda officials and receive criticism and directives on their coverage. This leads to a tendency to engage in self-censorship.

The party and state own all media organs and thus control the budgets for all media, giving them additional leverage. Foreign publications are still subject to direct censorship if they are critical of the Vietnamese government, and some foreign journalists have not been able to renew their visas. The Vietnamese government has been studying the use of libel laws in Singapore and elsewhere. Opposition figures and social critics are not given access to the official media and have no legal forum in which they can articulate their views. As such, they rely on samizdat publications and the internet. Those who try to express their views freely are often thrown in jail. Of late, the government has been very harsh with those who post critical views or articles on the internet. At the time of writing, there were a number of “cyber-dissidents” on trial or recently handed sentences of up to 13 years for using the internet for political purposes. Under Article 80 of the Vietnamese Criminal Code, one can be prosecuted for sending information critical of the Vietnamese government via the internet. Additional internet regulations that the government is considering are requiring Vietnam-based Web sites to obtain licenses and seek approval for any content change (p.14-15) (Abuza, Zachary 2004, *Countries at the Crossroads*, ‘Vietnam’, April <http://www.freedomhouse.org/research/crossroads/2004/Vietnam2004.pdf> – Accessed 17 March 2005 – Attachment 23).

6. How are people who have criticised the regime (for example, via internet or distribution of pamphlets) or have expressed anti-regime political views in Vietnam treated by the Government?

According to the US Department of State’s most recent report on human rights practices in Vietnam, *Country Reports on Human Rights Practices for 2004 – Vietnam*, the Vietnamese authorities “continued to imprison persons for the peaceful expression of dissenting religious

and political views”. The report states that “no reliable estimates of the number of political prisoners because the Government usually did not publicize such arrests”; but it is noted that, in 2004, there “were at least 9 prisoners known to be held for political reasons and 22 prisoners reportedly held for religious reasons”. The relevant extract follows in detail:

The Government continued to imprison persons for the peaceful expression of dissenting religious and political views. On July 29, democracy activist Dr. Nguyen Dan Que was convicted of “abusing democratic freedoms to infringe upon the interests of the State” and sentenced to 30 months’ imprisonment. In December 2003, journalist Nguyen Vu Binh was convicted of “spying.” In June 2003, Dr. Pham Hong Son was convicted under the same charge. In 2002, activist Nguyen Khac Toan was sentenced to 12 years’ imprisonment for spying. Diplomats and foreign journalists were refused permission to attend these trials (see Section 2.a.).

There were no reliable estimates of the number of political prisoners because the Government usually did not publicize such arrests, rejected the concept of political and religious prisoners, and sometimes conducted closed trials and sentencing sessions. There were at least 9 prisoners known to be held for political reasons and 22 prisoners reportedly held for religious reasons. Some sources had much higher estimates. Among those imprisoned were political activists Dr. Nguyen Dan Que, Pham Hong Son, Nguyen Vu Binh, Nguyen Dinh Huy (who reportedly was suffering from Parkinson’s disease), Nguyen Khac Toan, human rights activist Tran Van Luong, scientist and writer Tran Van Luong, Nguyen Minh Thi Hoan, and religious persons Father Nguyen Van Ly, Thich Thien Minh, Bui Tan Nha, Nguyen Thien Phung, Hoang Trong Dung, Vang Chin Sang, Vang Mi Ly, Ly Xin Quang, and Ly Chin Seng (Section 1.e.) (US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – Vietnam*, 28 February – Attachment 3).

Professor Zachary Abuza’s April 2004 Freedom House report states that “[a]dvocates of political reform are systematically persecuted”; and that “[p]olitical prisoners are subject to harsh prison conditions that include long periods of solitary confinement and severe labor conditions, as well as deprivation of adequate amounts of food and medical care”. Abuza notes that “dissidents, including the religious leaders, are currently held under administrative detention, while only a handful are ever brought to trial”; and that such prisoners are frequently beaten as part of the interrogation process. Relevant extracts follow in detail (for Abuza’s assessment of the situation of pamphleteers and Internet dissidents, see the response to Question 4):

The Vietnamese government became aware that high-profile court cases of political dissidents tend to generate international media attention and invite foreign pressure and interference, and so-called administrative detention generates far less media attention and criticism by foreign governments. Most dissidents, including the religious leaders, are currently held under administrative detention, while only a handful are ever brought to trial. These are generally younger dissidents who have no great international profiles (p.3).

...According to Article 71 of the constitution, torture is illegal. However, torture is not codified as a specific offence in the Penal Code. Political prisoners are subject to harsh prison conditions that include long periods of solitary confinement and severe labor conditions, as well as deprivation of adequate amounts of food and medical care. Nearly every released prisoner returns to society with chronic health problems. However, there are no reports of physical torture of defendants or political prisoners beyond beatings, which are frequent during interrogations and while prisoners are in custody (p.3-4).

...The Vietnamese constitution endorses the principle of equality under the law, yet a major obstacle for proponents of political reform in Vietnam is the inclusion of Article 2 in the

constitution, which enshrines the primacy of the VCP. Many dissidents contend that this article alone puts the party and its members on a different legal footing. Those whose ideology or political opinion is counter to the regime's, or whose religious affiliation transcends what the state deems the lawful bounds of worship, have their rights stripped (p.9) (Abuza, Zachary 2004, *Countries at the Crossroads*, 'Vietnam', April <http://www.freedomhouse.org/research/crossroads/2004/Vietnam2004.pdf> – Accessed 17 March 2005 – Attachment 23).

In November 2003 Amnesty International published an extensive report on the state of “human rights in cyberspace for people in Viet Nam”. In this report, Amnesty International voiced its concern for the manner in which “individuals have been arrested for, *inter alia*, exchanging e-mails with contacts in the Vietnamese diaspora, posting articles critical of the government on the Internet, and expressing dissenting opinions”. According to this report, “the relative ease with which dissenting voices can be traced in cyberspace, combined with the absence of privacy protection, has increased their risk of arrest and prosecution”; “the trials of cyber-dissidents fall short of international standards”; and “government critics are especially vulnerable to the deficiencies of the system”. The report considers eight instances in which such cyber-dissidents have been arrested and prosecuted (see Attachment 24, pp.6-15). An extract, addressing the means by which the “Vietnamese authorities” exert “state-control” over the Internet, follows in detail:

The Vietnamese authorities' attempts at state-control of the Internet: monitoring e-mails, websites and on-line forums; website blocking; information content control; ISP self-censorship; and restrictive measures aimed at Internet cafés are informed by their desire to balance opportunities for economic progress while protecting the political *status quo*. In addition to control measures and restrictions, some of the Internet-related laws encourage providers and users to report to the authorities on suspected abuses of the Internet. In October 2003, an official Vietnamese report indicated that a Special Police Task Force was to be set up under the Ministry of Public Security to “handle violations of regulations and crimes relating to the Internet”. Such crimes would include, *inter alia*, “distributing harmful material” (Amnesty International 2003, ‘Socialist Republic of Viet Nam: Freedom of expression under threat in cyberspace’, AI Index: ASA 41/037/2003, November, p.15 [http://web.amnesty.org/library/pdf/ASA410372003ENGLISH/\\$File/ASA4103703.pdf](http://web.amnesty.org/library/pdf/ASA410372003ENGLISH/$File/ASA4103703.pdf) – Accessed 21 March 2005 – Attachment 24).

In June 2003 Amnesty International published translations of “two Directives issued by the Politburo of the Communist Party of Viet Nam in early 2003”. The first of these voices the regime's claim that there exists “a conspiracy to try to overthrow the socialist government in Viet Nam”; and that this conspiracy is at work “[t]hrough such means as mass media, especially radio, television, the internet, various information offices of embassies, so-called press conferences, visits, contacts, seminars” and religions which “push forth illegal missionary work”. The second document is a statement on the arrest of a number of alleged dissidents (several of the cases addressed in this statement are considered in Amnesty International's aforementioned November 2003, ‘Socialist Republic of Viet Nam: Freedom of expression under threat in cyberspace’). The latter Directive makes specific mention of Australia in such a way as to suggest that the Party considers Australia to be host to dangerous dissident networks. The relevant extract follows in detail:

On 28/12/2002, public security forces in District 5, Ho Chi Minh City, caught Pham Que Duong and his wife, Do Thi Cu, in the act of carrying many anti-government materials from Ha Noi to Ho Chi Minh city to meet Tran Khue, one of the ring leaders of the group opposing our regime. Among the documents confiscated were papers revealing efforts to unite all opposing groups under the name of an “Anti-corruption Association”, with the help of the

overseas reactionaries to establish six representative offices in the US, Canada, Russia, Eastern Europe, Europe, Asia and Australia, and four representatives inside the country. Evidence captured has shown that Pham Que Duong, Tran Khue and some others have cooperated closely with leaders of reactionary forces in France and the United States etc., conspiring to establish a party called “Democracy Movement” but presenting itself in public as a movement to fight corruption so as to unite in order to destroy our regime (Amnesty International 2003, ‘Socialist Republic of Viet Nam: Two official Directives relating to anti-government activities’, AI Index: ASA 41/018/2003, June [http://web.amnesty.org/library/pdf/ASA410182003ENGLISH/\\$File/ASA4101803.pdf](http://web.amnesty.org/library/pdf/ASA410182003ENGLISH/$File/ASA4101803.pdf) – Accessed 21 March 2005 – Attachment 25).

In late 2003, RRT Country Research investigated the absence of reportage on the organisation “Resistance Force”. Advice on this matter, and the possible existence, in Vietnam, of small resistance groups generally, was sourced, at this time, from the Department of Foreign Affairs and Trade (DFAT) and from Professor Carl Thayer, of the Australian Defence Force Academy, University of New South Wales. *Research Response VNM16307*, of 2 December 2003, is supplied as Attachment 26 (RRT Country Research 2003, *Research Response VNM16307*, 2 December – Attachment 26).

Religious freedom

7. How are religious group leaders, who are perceived by the authorities as having become too political, treated by the authorities, eg Buddhist leaders, or other religious group leaders eg Protestant groups or those in so-called “home-based religions”?

As noted above, in response to Question 6, The US Department of State’s most recent report on human rights practices in Vietnam, *Country Reports on Human Rights Practices for 2004 – Vietnam*, indicates that an uncertain number of religious group leaders have been arrested as dissidents. The report further indicates that certain religious groups – in particular: unregistered Protestant churches, like the Hmong; Buddhist organisations like the Unified Buddhist Church of Vietnam (UBCV); and the Hoa Hao and Cao Dai religions – are subject to mistreatment by the Vietnamese authorities. Relevant extracts follow in detail:

The Constitution and government decrees provide for freedom of worship; however, the Government continued to restrict significantly organized activities of religious groups that it declared to be at variance with state laws and policies.

According to credible reports, the police arbitrarily detained persons based upon their religious beliefs and practice, particularly among ethnic minority groups in the Central and Northwest Highlands. In 2003 and 2002, there were also reports that two Protestants in those areas were beaten and killed for reasons connected to their faith (see Section 1.a.) (Section 2.c.).

...The Government still requires religious groups to be registered and used this process to control and monitor church organizations. The Government officially recognizes Buddhist, Roman Catholic, Protestant, Hoa Hao, Cao Dai, and Muslim religious organizations. To obtain official recognition, a group must obtain government approval of its leadership and the overall scope of its activities. Official approval is required for the opening of new places of worship, the ordination of clerics, the establishment of religious teaching institutions, and the entry of students into those institutions. The Government’s approval process was slow and non-transparent. Annual activities by congregations had to be registered with authorities, and activities not on this annual calendar required explicit government approval. Officially recognized religious organizations were able to operate with varying degrees of freedom

throughout the country, and followers of these religious bodies were usually able to worship without government harassment, except in some isolated provinces (Section 2.c.).

...In addition to officially recognized religious denominations, numerous unrecognized denominations operated in the country, including independent Buddhists, Baptists, Mennonites, Jehovah's Witnesses, Mormons, Baha'i, independent Cao Dai and Hoa Hao groups, independent Sunni Muslims, and ethnic Cham Hindus. Some unrecognized Protestant, Buddhist, and Hoa Hao religious bodies have requested unsuccessfully official recognition of their organizations in recent years. Activities of unregistered religious groups were considered illegal by the authorities, and these groups sometimes experienced harassment. Many unregistered churches and temples, especially those in urban areas or belonging to traditional Hindu and Muslim groups, were allowed to operate without interference. The Government actively discouraged contacts between the illegal UBCV and its foreign supporters, and between unofficial Protestant organizations, such as the underground house churches, and their foreign supporters, although such contacts continued. Police routinely questioned some persons who held alternative religious or political views, such as UBCV monks and certain Catholic priests (Section 2.c.).

...On October 11, police in Ho Chi Minh City disrupted an unregistered private bible study seminar and detained 2 unofficial Protestant pastors and 17 ethnic Hmong house church leaders from the Northwest Highlands. The 17 Hmong were held overnight and then returned to the Northwest Highlands. Local officials reportedly interrogated and beat some of the pastors upon their return.

On June 8, in Ho Chi Minh City, Mennonite house church leader Nguyen Hong Quang was detained. On November 12, he was sentenced to 3 years' imprisonment. Five of his followers were sentenced to between 9 months and 2 years in prison. Quang and his followers apparently were convicted as a result of an incident in March in which several of his followers confronted and scuffled with plainclothes police officers monitoring his residence. However, some observers connected Quang's arrest to his broader social activism. During Quang's detention, his wife continued to operate their unauthorized church, but repeatedly was harassed by police. One of Quang's followers, Le Thi Hong Lien, reportedly suffers from mental illness. She was placed in the prison infirmary, but the prison did not appear to be able to provide her with appropriate care and treatment.

The international NGO Human Rights Watch reported that security forces in Kontum Province demolished the chapel of Mennonite Pastor Nguyen Cong Chinh twice during the year. Authorities reportedly based their actions on the fact that Chinh had purchased under a false name the land on which the chapel was built. Other observers noted that at least one other unregistered Protestant church operates a short distance away from Chinh's, but suffered no harassment.

In July and August, authorities reportedly detained without charge over 100 Hmong Protestants--choosing 1 member from each Protestant family--in at least 5 different communes in Sapa District, Lao Cai Province. The authorities attempted to force the detainees to renounce Protestantism, releasing them only when they promised to do so. In March, police in Kon Tum Province reportedly harassed Protestant believers at a house church, seized Bibles, and fined the church organizer. Also that month elsewhere in Kon Tum, police reportedly detained an unregistered ethnic Gia Rai Protestant pastor three different times, beating him and attempting to force him to renounce his faith on each occasion. In 2003, there were several reports of local officials in Dak Lak and Gia Lai Provinces in the Central Highlands forcing ethnic minority Protestants to renounce their faith.

In some cases, particularly involving Hmong Protestants, when authorities prosecuted persons who had organized unauthorized religious services, they used provisions of the Penal Code

that allow for jail terms of up to 3 years for “abusing freedom of speech, press, or religion,” and terms of up to 2 years for “causing public disorder.” The Penal Code establishes penalties ranging from 2 to 15 years’ imprisonment for “attempting to undermine national unity” by promoting “division between religious believers and nonbelievers.” Unlike in previous years, there were no reports that officials fabricated evidence.

In December 2003, authorities arrested Hmong house church leaders Vang Chin Sang, Vang Mi Ly, Ly Xin Quang, Ly Chin Seng, and Ly Xin Vang from Giap Trung village, Ha Giang Province, for leading “gatherings that caused public disorder” after organizing unauthorized religious services on four Sundays and two Thursdays in October and November 2003. The five Protestants were later sentenced to prison terms ranging from 26 to 36 months.

Government officials denied allegations that Protestant house churches were destroyed or disbanded on the basis that the churches were unregistered and therefore illegal. In September 2003, police reportedly destroyed a small Protestant house church in Ho Chi Minh City.

The Government continued to harass members of the banned UBCV and prevented them from conducting independent religious activities, particularly outside their pagodas. In September 2003, UBCV leaders met in Binh Dinh in what church members characterized as a de facto re-establishment of the UBCV structure and leadership. Security authorities intercepted several UBCV leaders leaving the meeting and returned them to their respective pagodas. During the year, several UBCV leaders, including Thich Huyen Quang and Thich Quang Do, remained confined to their pagodas and had restrictions on their ability to travel and meet with followers. In November, Thich Quang Do attempted to travel to Quy Nhon Province to visit Thich Huyen Quang, who was hospitalized at that time. Thich Quang Do was blocked from doing so and was returned to his pagoda in Ho Chi Minh City under police escort. However, foreign ambassadors were able to meet with Patriarch Thich Huyen Quang in April and November, and a visiting foreign official met with Thich Quang Do in November (Section 2.c.).

...Unregistered Cao Dai sects also were restricted. In August, authorities arrested Hong Thien Hank, leader of the small To Dinh Tan Chieu Minh sect in Tien Giang Province. The Government claimed that Hank had engaged in illegal religious activities, printed and distributed religious information without permission, and defrauded believers (Section 2.c.) (US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – Vietnam*, 28 February – Attachment 3).

In September 2004, the US Department of State’s *International Religious Freedom Report for 2004 – Vietnam* stated that, “[l]ike other citizens, religious persons who travel abroad sometimes are questioned about their activities upon their return and required to surrender their passports”. The report goes on to detail an instance in which this practice affected two “house church pastors”. According to this report, such practices are, however, “becoming more infrequent”; the report states that “even many leaders of underground Protestant churches reported in 2002 and 2003 that they were not questioned”. The relevant extract follows in detail:

Like other citizens, religious persons who travel abroad sometimes are questioned about their activities upon their return and required to surrender their passports. However, this practice appears to be becoming more infrequent, and even many leaders of underground Protestant churches reported in 2002 and 2003 that they were not questioned. In January, Vietnamese house church pastors Tran Dinh Ai and Ho Hieu Ha, who had recently emigrated abroad, were refused re-entry to the country. Catholic bishops face no restrictions on international travel, including to Rome, and many nuns have also been able to go abroad for study and conferences. The Government also allowed many Catholic bishops and priests to travel freely

within their dioceses and allowed greater, but sometimes restricted, freedom for domestic travel outside of these areas, particularly in many ethnic areas (US Department of State 2004, *International Religious Freedom Report for 2004 – Vietnam*, 15 September – Attachment 27).

The aforementioned Human Rights Watch report of January 2005, which addresses the treatment of Vietnam's Montagnard community, provides an extensive account of the manner in which the marginalization of this predominantly Christian community has been manifest in the repression of the group's, intimately linked, religious and political freedoms (see Section V, 'Religious Persecution'; and Section VI, 'New Refugee Flow'). The report states that "Human Rights Watch continues to receive new reports of officials forcing Montagnard villagers to renounce Christianity and cease all political or religious activities"; and that "Vietnam's ongoing crackdown on Montagnards in the Central Highlands has generated a steady flow of refugees into Cambodia since 2001"; with "[a] fresh wave of asylum seekers crossed the border to Ratanakiri province in the months following the April 2004 demonstrations" (Human Rights Watch 2005, 'Vietnam: Torture, Arrests of Montagnard Christians', January <http://hrw.org/backgrounder/asia/vietnam0105/vietnam0105.pdf> – Accessed 15 March 2005 – Attachment 5)

Professor Zachary Abuza's April 2004 Freedom House report argues that the Vietnamese government "sees religion as a primary way for foreigners to continue interfering in Vietnam's internal affairs, whether through direct control of church organization and scripture or by proselytizing". Outspoken religious leaders are, as a consequence, treated as political dissidents (for more on this see the response to Question 6). Extracts, addressing the question of religious freedom in Vietnam in the general sense, follow below.

Vietnam's 1992 constitution does not guarantee "freedom of religion" in the fullest sense, but "the freedom to believe or not believe in a religious faith" (Article 70). However, the same article warns that "no one can violate the freedom of faith or exploit it in a way that is at variance with the law and state policies."

There are more religious worshipers in Vietnam today than ever before; of the country's 86 million people, 80 percent are nominally Buddhist, more than 8 million are Catholic, nearly 3.5 million belong to the Cao Dai and Hoa Hao sects, and 800,000 people in the northwest and Central Highlands are Protestants (p.5).

...It sees religion as a primary way for foreigners to continue interfering in Vietnam's internal affairs, whether through direct control of church organization and scripture or by proselytizing (p.6) (Abuza, Zachary 2004, *Countries at the Crossroads*, 'Vietnam', April <http://www.freedomhouse.org/research/crossroads/2004/Vietnam2004.pdf> – Accessed 17 March 2005 – Attachment 23).

Political rights and human rights

8. Do local authorities at times act arbitrarily at the local level regardless of directions from the central authority?

The US Department of State's most recent report on human rights practices in Vietnam, *Country Reports on Human Rights Practices for 2004 – Vietnam*, indicates that, in Vietnam, local authorities, and security forces in particular, are known to exercise their powers independently of government directions. For instance, the report states that, while "[t]here were no politically motivated killings by the Government or its agents"; "there were reports

of killings by security forces”. Furthermore, the report indicates that laws regulating detention are such that local authorities, such as security forces and judges, are granted a great deal of latitude with regard to the judicial process. Relevant extracts follow in detail:

There were no politically motivated killings by the Government or its agents; however, there were reports of killings by security forces.

On April 10, ethnic minorities protested in numerous locations in the Central Highlands provinces of Dak Nong, Dak Lak, and Gia Lai. In some of the protests, individuals carried clubs and threw rocks at police officers. In a number of cases, police reportedly responded to by beating and firing upon demonstrators. The Government reported the deaths of three protestors, all at the hands of other demonstrators. Reports from inside the country and from nongovernmental organizations (NGOs) monitoring the situation from abroad suggested that many protestors were killed by police, or fled into the jungle where some died from their wounds, afraid to seek medical treatment. Credible estimates put the number of protestors killed by police at least in double digits; some international organizations report that the figures may be much higher (see Section 2.b.).

Police in the Northwest Highlands reportedly beat to death Protestant believers Vang Seo Giao in July 2003 and Mua Bua Senh in 2002. Also in 2003, police in Nam Dinh Province beat to death Tran Minh Duc, who had been detained following a domestic dispute. No action was taken against officials involved in these killings. Authorities continued to investigate three other deaths in custody from 2002, including: The case of three police officers in Quang Nam Province who reportedly killed Nguyen Ngoc Chau while questioning him on murder charges; the case of two police officers in Vinh Phuc Province charged in the death of Khong Van Thoi; and the case of two prison guards in Hai Duong Province charged with manslaughter in the killing of prison inmate Pham Van Dung (Section 1.a.).

...After a suspect is detained, a decision to initiate a formal criminal investigation must be issued by a judge within 9 days, or the suspect must be released. Under amendments to the Criminal Code which took effect in July, this investigative period may last from 3 months for “less serious” offenses (those that may result in less than 3 years’ imprisonment) to 16 months for “exceptionally serious” offenses (those that may result in over 15 years’ imprisonment, life imprisonment, or capital punishment) and an additional 4 months for national security cases. The amended code further permits the Procuracy an additional 2 months at the end of the investigation to consider whether they want to prosecute the detained, or return the case to the police for additional investigation. There is no legal limit on the time that a judge’s panel (a body consisting of at least one judge and two lay assessors) has to rule on a case (see Section 1.e.) (Section 1.d.).

...Forced entry into homes is not permitted without orders from the Procuracy; however, in practice, security forces seldom followed these procedures but rather asked permission to enter homes, with an implied threat for failure to cooperate. Some individuals refused to cooperate with such “requests.” In urban areas, police generally left when faced with noncompliance. In October 2003, security officers entered without permission a house in Gia Lai Province where a foreign diplomat was conducting a consular interview. The security officers later blocked the consular officer from entering residences in Dak Lak Province (Section 1.f.) (US Department of State 2005, *Country Reports on Human Rights Practices for 2004 – Vietnam*, 28 February – Attachment 3).

As noted above, in response to Question 4, Professor Zachary Abuza’s April 2004 Freedom House report states that that, in Vietnam, “civic associations...operate in a complex web of arbitrary administrative rulings and contradictory regulations”. Nonetheless, Abuza also states that there is “a commitment to legal procedure” in Vietnam; “courts are not an *ad hoc*

system of arbitrary justice”. Local authorities are, however, officially authorized to act with a degree of independence. For example, “Directive 89/CP in 1989...authorizes troops...to establish short-term detention centers to deal with people threatening peace and security until civil order is restored and the appropriate legal bodies can take over”. The report also notes that “[n]early every independent analysis finds that Vietnam is one of the most corrupt countries in Southeast Asia”; and that “the party has proven unable to police itself effectively”. Relevant extracts follow in detail:

Although the constitution prohibits arbitrary arrest and detention without trial, there have been a number of party decrees and directives to circumvent this. Under Directive 31/CP, issued in April 1997, the ministry of public security is authorized to detain people without trial or formal charges for up to two years, often in the form of house arrest. There is no appeal process, nor has the Vietnamese Supreme Court ever challenged the legality of this ruling (p.3).

...In order to contend with outbreaks of rural unrest and large-scale demonstrations, the Communist Party issued Directive 89/CP in 1989, which authorizes troops under both the ministry of public security and the ministry of defense to establish short-term detention centers to deal with people threatening peace and security until civil order is restored and the appropriate legal bodies can take over. The Communist Party views the outbreak of rural unrest as one of the greatest threats to its survival (p.4).

The trials of political prisoners are just as rapid and are almost always held behind closed doors. Yet there is a commitment to legal procedure, in which the prosecution must provide evidence and make a case, while the defense is allowed to refute the charges; courts are not an ad hoc system of arbitrary justice (p.8).

...Nearly every independent analysis finds that Vietnam is one of the most corrupt countries in Southeast Asia...the party has proven unable to police itself effectively (p.10).

...The Communist Party does have its own internal watchdog and disciplinary body. Overworked and understaffed, it has shown an inability to police the party with any degree of effectiveness (p.12) (Abuza, Zachary 2004, *Countries at the Crossroads*, ‘Vietnam’, April <http://www.freedomhouse.org/research/crossroads/2004/Vietnam2004.pdf> – Accessed 17 March 2005 – Attachment 23).

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