



OPERATIONAL GUIDANCE NOTE

VIETNAM

CONTENTS

1. Introduction	1.1 – 1.4
2. Country Assessment	2.1
<u>Actors of Protection</u>	2.2
<u>Internal Relocation</u>	2.3
<u>Country Guidance Caselaw</u>	2.4
3. Main Categories of Claims	3.1 – 3.8
<u>Opposition Political Activists</u>	3.9
<u>Minority Ethnic Groups</u>	3.10
<u>Victims of Trafficking</u>	3.11
<u>Minority Religious Groups</u>	3.12
<u>Gay Men and Lesbians</u>	3.13
<u>Prison Conditions</u>	3.14
4. Minors claiming in their own right	4.1 – 4.4
5. Medical Treatment	5.1 – 5.5
6. Returns	6.1 – 6.5

1 Introduction

- 1.1** This document provides UK Border Agency caseworkers with guidance on the nature and handling of the most common types of claims received from nationals/residents of Vietnam, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseworkers must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseworkers must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

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

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

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian

Protection is being considered, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy.

- 1.4** 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.

2 Country Assessment

- 2.1** Caseworkers should refer the relevant COI Service country of origin information material. An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohrdreport.readandcomment.com/read-and-download-the-report/>

2.2 Actors of Protection

- 2.2.1** Caseworkers must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Caseworkers must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 2.2.2** Internal security is the responsibility of the Ministry of Public Security (MPS), although in some remote areas, the military is the primary government agency and performs public safety functions, including maintaining public order in the event of civil unrest. The Ministry controls the police, a special national security investigative agency and other internal security units. It also maintains a system of household registration and block wardens to monitor the population. While this system was less intrusive than in the past, the Ministry continued to monitor individuals suspected of engaging, or being likely to engage, in unauthorised political activities. Credible reports suggested that local police used “contract thugs” and “citizen brigades” to harass and beat political activists and others, including religious worshippers, perceived as undesirable or a threat to public

security.¹

- 2.2.3** Police organisations exist at the provincial, district and local levels and are subject to the authority of people's committees at each level. At the commune level, it is common for guard forces made up of residents to assist the police. The police are generally effective at maintaining public order, but police capabilities, especially investigative, are generally very limited and training and resources are inadequate. Several foreign governments continued to assist in training provincial police and prison management officials to improve their professionalism.²
- 2.2.4** There is no clear or effective mechanism for pursuing a civil action to redress or remedy abuses committed by authorities. Civil suits are heard by administrative courts, civil courts and criminal courts, all of which follow the same procedures as in criminal cases and are adjudicated by members of the same body of judges and lay assessors. All three levels were subject to the same problems of corruption, lack of independence and inexperience.³
- 2.2.5** By law, a citizen seeking to press a complaint regarding a human rights violation by a civil servant faces difficult barriers. S/he is required first to petition the accused civil servant for permission to refer the complaint to court. If the civil servant refuses a petition, the citizen may appeal to the civil servant's superior. If the civil servant or his superior accepts the complaint for hearing, an administrative court takes up the matter. If that court agrees that the case should be pursued, it is referred either to a civil court for suits involving physical injury seeking redress of less than 20 percent of health-care costs resulting from the alleged abuse, or to a criminal court for redress of more than 20 percent of such costs. This elaborate system of referral and permission ensured that citizens had little effective recourse to civil or criminal judicial procedures to remedy human rights abuses and few legal experts had relevant experience. The government continued to disallow the use of class action lawsuits against overnment ministries, therefore rendering ineffective joint complaints from land-rights petitioners.⁴
- 2.2.6** The law provides criminal penalties for official corruption, however, the government did not always implement the law effectively and officials, sometimes, engaged in corrupt practices with impunity. Corruption continued to be a major problem. The government persisted in efforts to fight corruption, including publicizing central government budget, streamlining inspection measures and occasionally widely publicizing cases of officials accused of corruption.⁵
- 2.2.7** The anticorruption law allows citizens to complain openly about inefficient government, administrative procedures, corruption and economic policy. However, the government considered public political criticism a crime, unless

¹ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204463.pdf>

² US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204463.pdf>

³ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204463.pdf>

⁴ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204463.pdf>

⁵ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 4 <http://www.state.gov/documents/organization/204463.pdf>

controlled by the authorities. It is considered against the law to attempt to organise disaffected citizens to facilitate action and perpetrators were subject to arrest. Senior government and party leaders continued to travel to many provinces, reportedly to try to resolve citizen complaints. Corruption related to land use was widely publicized in the press, apparently in an officially orchestrated effort to bring pressure on local officials to reduce abuses.⁶

- 2.2.8** Corruption among police remains a significant problem at all levels and members of the police sometimes act with impunity. Internal police oversight structures exist, but are subject to political influence.⁷
- 2.2.9** The Supreme People's Court in Hanoi is the highest court and exercises civil and criminal jurisdiction over all lower courts. The Supreme Court may also conduct trials of the first instance in certain cases. There are People's Courts in each province and city which exercise jurisdiction in the first and second instance. Military courts hear cases involving members of the People's Army and cases involving national security. In 1993 legislation was adopted on the establishment of economic courts to consider business disputes. The observance of the law by ministries, government offices and all citizens is the concern of the People's Organs of Control, under a Supreme People's Organ of Control. The Chief Justice of the Supreme People's Court and the Chief Procurator of the Supreme People's Organ of Control are elected by the National Assembly, on the recommendation of the President.⁸
- 2.2.10** The law provides for the independence of judges and lay assessors, but the Communist Party of Vietnam (CPV) controlled the Courts at all levels through its effective control of judicial appointments and other mechanisms and in many cases, by determining verdicts. As in past years, political influence, endemic corruption and inefficiency strongly distorted the judicial system. Most, if not all, judges were members of the CPV and chosen at least in part for their political views. The party's influence was particularly notable in high-profile cases and other instances in which authorities charged a person with challenging or harming the party or state.⁹
- 2.2.11** There continued to be a shortage of trained lawyers and judges. The Vietnam Bar Federation falls under the supervision of the CPV's Vietnam Fatherland Front (VFF), an umbrella group that monitors the country's mass organisations, and is closely co-ordinated with the Ministry of Justice and the Vietnam Lawyers Association. The federation, which oversees local bar association functions, continued to develop a professional code of conduct for lawyers.¹⁰ Credible reports continue that the authorities exert pressure on defence lawyers not to take religious or democracy activists facing trial as clients. Human rights lawyers

⁶ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 4 <http://www.state.gov/documents/organization/204463.pdf>

⁷ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 4 <http://www.state.gov/documents/organization/204463.pdf>

⁸ Europa World <http://www.europaworld.com> (Subscription Only) Country Profile: Vietnam Date accessed 20 March 2012

COIS Report [Vietnam 20 April 2012](http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/) (Para 10.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁹ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204463.pdf>

¹⁰ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204463.pdf>

were restricted, harassed, arrested, disbarred and in some cases detained for representing political activists.¹¹

2.3 Internal relocation.

- 2.3.1** Caseworkers must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Caseworkers must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.3.2** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.3.3** The constitution provides for freedom of internal movement, foreign travel, emigration and repatriation, but the government imposed some limits on the movement of certain individuals. The government generally co-operated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organisations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons and other persons of concern.¹²
- 2.3.4** A government restriction regarding travel to certain areas requires citizens and resident foreigners to obtain a permit to visit border areas; defence facilities; industrial zones involved in national defence; areas of "national strategic storage" and "works of extreme importance for political, economic, cultural and social purposes." Local police require citizens to register when staying overnight in any location outside of their own homes. The government appeared to enforce these requirements more strictly in some Central and Northern Highlands districts. Foreign passport holders must also register to stay in private homes, although

¹¹ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204463.pdf>

¹² US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 2 <http://www.state.gov/documents/organization/204463.pdf>

there were no known cases of local authorities refusing to allow foreign visitors to stay with friends and family. Authorities did not broadly implement residence law and migration from rural areas to cities continued unabated. However, moving without permission hampered persons seeking legal residence permits, public education and health-care benefits.¹³

- 2.3.5** It may be practical for applicants who have a well-founded fear of persecution in one area to relocate to other parts of Vietnam where they would not have a well-founded fear and, taking into account their personal circumstances, it would not be unduly harsh to expect them to do so.

2.4 Country Guidance Caselaw

[Supreme Court: RT \(Zimbabwe\) & others v Secretary of State for the Home Department \[2012\] UKSC 38 \(25 July 2012\)](#) The Supreme Court ruled that the rationale of the decision in [HJ \(Iran\)](#) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

[VP \(Palliative AIDS treatment - return permissible\) Vietnam \[2004\] UKIAT 00267](#) In this appeal the Tribunal dismissed an appeal brought by a 19 year old Vietnamese citizen suffering from advanced AIDS. It was found that the anti-retroviral treatment that the appellant receives in the UK has extended his life expectancy from a few months to 3 years - if this were stopped any benefits of the treatment would be lost in a few months. The Tribunal held that there is one centre for AIDS sufferers in Vietnam which offers palliative care only - following N the Tribunal found this sufficient.

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Vietnam. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

¹³ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 2 <http://www.state.gov/documents/organization/204463.pdf>

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in the Court of Appeal's judgment in [Karanakaran](#) should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction '[Considering the asylum claim and assessing credibility](#)').
- 3.3** For any asylum cases which involve children either as dependents or as the main applicants, caseworkers must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UKBA instruction '[Every Child Matters: Change for Children](#)' sets out the key principles to take into account in all Agency activities.
- 3.4** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on [Discretionary Leave](#))

Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR

- 3.5** An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Caseworkers are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

Other severe humanitarian conditions and general levels of violence

- 3.6** There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.
- 3.7** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

Credibility

- 3.8** 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 'Section 4 – Making the Decision in the Asylum Instruction [‘Considering the asylum claim and assessing credibility’](#). Caseworkers must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the UKBA file. In all other cases, the caseworkers should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.9 Opposition political activists

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

3.9.2 Treatment: The Socialist Republic of Vietnam is an authoritarian state ruled by a single party, the Communist Party of Vietnam (CPV), led by General Secretary Nguyen Phu Trong, Prime Minister Nguyen Tan Dung and President Truong Tan Sang. The most recent National Assembly elections, which were held in May 2011, were not free or fair. The constitution vests all authority and political power in one party, the CPV, and recognizes the leadership of the CPV. The CPV Politburo functions as the supreme decision-making body in the country, although technically it reports to the CPV Central Committee. Political opposition movements and other political parties are illegal. The National Assembly, although subject to CPV control continued to take incremental steps to assert itself as a legislative body. The National Assembly and its Constitutional Amendment Drafting Committee met in February 2012 with government-invited foreign experts to discuss lessons learned and best practices as the country proceeds toward amending its 1992 constitution. Under a law passed in November 2012 and scheduled to become effective in 2013, the president, prime minister, cabinet members, Supreme People’s Court justices and the National Assembly president must submit to an annual vote of support in the National Assembly.¹⁴

3.9.3 The constitution does not provide for the right of citizens to change their government peacefully and citizens could not freely choose and change the laws and officials that govern them.¹⁵ Political opposition movements and other political parties are illegal. The government continued to restrict public debate and criticism severely. There was no public challenge to the legitimacy of the one-party state although there were instances during 2012 of unsanctioned public letters from private citizens critical of government policy. The government continued to crack down on the small opposition political groups established in 2006 and members of these groups faced arrests and arbitrary detentions.¹⁶

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

¹⁴ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 3 <http://www.state.gov/documents/organization/204463.pdf>

¹⁵ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 3 <http://www.state.gov/documents/organization/204463.pdf>

¹⁶ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 3 <http://www.state.gov/documents/organization/204463.pdf>

and arrests, possibly spurred by government concerns regarding events in the pro-democracy movement 'Arab Spring'. The 11th Vietnam Communist Party Congress in January 2011 and the stage-managed National Assembly election in May determined the leadership of the party and government for the next five years.¹⁷ Members of Bloc 8406, a political activist group that calls for the creation of a multiparty state, continued to face harassment and imprisonment.¹⁸ The internal human rights NGO, Vietnam Human Rights Network (VHRN) has reported many instances of political activists and bloggers being beaten by the police, arrested, detained and imprisoned, often for long periods of time.¹⁹

See also: [Actors of Protection \(Section 2.2 above\)](#)
[Internal Relocation \(Section 2.3 above\)](#)
[Caselaw \(Section 2.4 above\)](#)

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

3.9.6 The Vietnamese authorities take serious action against individuals involved with opposition political parties/organisations who they believe pose a threat to the state and this treatment may amount to persecution. The country evidence does not show that, as a general matter, those with no political opinion would be put in situations where they are required to demonstrate loyalty to the government (see [RT \(Zimbabwe\)](#)). Where an individual is able to demonstrate that they have taken part in opposition political activities or will otherwise be perceived as being involved in opposition politics, and as a result of that would come to the adverse attention of the authorities, they would face a serious risk of persecution on account of their activities, a grant of asylum will be appropriate.

3.10 Minority ethnic groups

3.10.1 Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the ordinary Vietnamese population and/or the Vietnamese authorities due to their membership of a minority ethnic group.

3.10.2 Treatment Vietnam officially recognizes 54 ethnic groups, among whom the majority ethnic Kinh make up 86 per cent of the population. Ethnic minority and indigenous groups have significant populations in the Northern Highlands, Central Highlands and the Mekong delta region – including Hmong, Khmer, Muong, Tay and Thai. In the Central Highlands, in Gia Lai and Dak Lak provinces in particular, about two dozen indigenous groups collectively self-identify as Montagnards, many of whom are also Protestant Christians.²⁰

¹⁷ Human Rights Watch: [Vietnam 2012](#)

<http://www.hrw.org/world-report-2012/world-report-2012-vietnam>

¹⁸ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013

Section 3 <http://www.state.gov/documents/organization/204463.pdf>

¹⁹ Vietnam Human Rights Network: [VHRN Latest News: See multiple entries](#)

<http://www.vietnamhumanrights.net/>

²⁰ Minority Rights Group International (MRGI) Report, State of the World's Minorities and Indigenous Peoples 2012, <http://www.minorityrights.org/?lid=11374>

- 3.10.3** The law prohibits discrimination against ethnic minorities, but there was no information available on government enforcement measures. Societal discrimination against ethnic minorities has been longstanding and persistent during 2012. Despite the country's significant economic growth, some ethnic minority communities benefited little from improved economic conditions, even though ethnic minority groups formed a majority of the population in certain areas, including the Northwest and Central Highlands and portions of the Mekong Delta.²¹ The government continued to address the causes of ethnic minority discontent through special programs to improve education and health facilities and expand road access and electrification of rural communities and villages.²²
- 3.10.4** The law provides for universal education for children regardless of religion or ethnicity and members of ethnic minority groups are not required to pay school fees. The government operated special schools for ethnic minority children and there were 223 boarding schools for them in the Northwest and Central Highlands and the Mekong Delta, including at middle-and high-school levels, in addition to special admission and preparatory programs as well as scholarships and preferential admissions at the university level. In February 2012 the government reported to the 80th session of the UN Committee on the Elimination of All Forms of Racial Discrimination and highlighted its program of conducting elementary-and secondary-school classes in some ethnic minority languages. The government also worked with local officials to develop local language curricula, but it appeared to implement this program more comprehensively in the Central Highlands and the Mekong Delta and only in limited areas of the Northwest Highlands. During 2012 there were also a few government-subsidized technical and vocational schools for ethnic minorities. Nonetheless, there were some credible cases of educational discrimination against ethnic minorities.²³

Chinese (Hoa)

- 3.10.5** The Chinese are generally well integrated into Vietnamese society, and believed to be the largest ethnic group in Vietnam. Their numbers are disputed, but estimated at between 1 and 2 million. The Hoa people are officially recognised by the government, but other groups of Chinese, i.e. the San Diu and the Ngai, are not.²⁴
- 3.10.6** The Chinese are reportedly dispersed across the country, although they are concentrated in the southern region of Vietnam, with many residing in and round Ho Chi Minh City. They speak Mandarin and other Chinese dialects, but many are also likely to speak Vietnamese. Those in the south of the country, and around Ho Chi Minh City speak primarily Cantonese.²⁵ Referred to as the Hoa in Vietnamese, the Chinese are Buddhists and physically distinguishable from the Vietnamese, who are referred to as the Kinh. There is limited information available about the cultural characteristics of the Chinese Vietnamese. However,

²¹ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 4 <http://www.state.gov/documents/organization/204463.pdf>

²² US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 4 <http://www.state.gov/documents/organization/204463.pdf>

²³ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 4 <http://www.state.gov/documents/organization/204463.pdf>

²⁴ UNHCR Refworld: World Directory of Minorities and Indigenous Peoples - Vietnam : Chinese (Hoa) <http://www.unhcr.org/refworld/publisher,MRGI,,VNM,49749c7f8,0.html> Updated 28 March 2013

²⁵ UNHCR Refworld: World Directory of Minorities and Indigenous Peoples - Vietnam : Chinese (Hoa) <http://www.unhcr.org/refworld/publisher,MRGI,,VNM,49749c7f8,0.html> Updated 28 March 2013

they are likely to share similar cultural characteristics with the Kinh, because of the long period of Chinese Han dynasty domination of Vietnam.²⁶

Montagnards

- 3.10.7** ‘Montagnards’ is the collective term used for a number of different ethnic minorities that inhabit the Central Highlands of Vietnam.²⁷ The ‘Montagnards’ population once numbered over 3 million during French colonialism. Today it has dwindled to only a few hundred thousand. The remaining tribes are Bahnar, Jarai, Rhade, Koho, Sedang, Bru, Pacoh, Katu, Jeh, Cua, Halang, Hre, Rongao, Monom, Roglai, Cru, Mnong, Lat, Sre, Nop, Maa, Stieng, etc. There are more than forty distinct and recognizable aboriginal groups that inhabit Central Vietnam. Their languages are derived from the Malayo-Polynesian and Mon-Khmer families.²⁸ The government has increased the level of repression of indigenous minorities from the Central Highland provinces. It is reported by Human Rights Watch that special ‘political security’ units conduct operations with provincial police to capture, detain and interrogate people identified as political activists or leaders of unregistered house churches.²⁹
- 3.10.8** The government continued to assert that some Montagnards were operating an illegal “Dega” church. The government accused the Dega Protestant churches of calling for the creation of an independent Montagnard state. The Southern Evangelical Church of Vietnam and house churches in the provinces of Dak Lak, Gia Lai, Kon Tum, Binh Phuoc, Phu Yen, and Dak Nong continued to experience government scrutiny because of feared association with separatist groups overseas. Some ethnic minority worshippers in the Central Highlands, particularly in areas suspected to be affiliated with the “Dega” church, continued to be prevented from gathering to worship. The number of reported incidents was significantly lower than in previous years and appeared to reflect individual local bias rather than central government policy. In some instances the local officials involved apologised and were reprimanded or fired.³⁰
- 3.10.9** At least 250 Christians Montagnards and many ethnic Hmongs are serving harsh sentences for participating in peaceful demonstrations or practicing their faith in “unrecognized” house churches. Many have been brutally beaten in prison and at least 25 have died in prison from beatings and lack of medical care. On 9 May 2012, three Christian Montagnards were arrested in the Central Highlands for “anti-state activities”. The official press reported that security forces had seized weapons that the “reactionary organisation” was using “to oppose authorities” – they consisted of home-made bows, arrows and swords.³¹

²⁶ Minority Rights Group International: [World Directory of Minorities and Indigenous Peoples - Vietnam](#) accessed 20/07/2012

²⁷ Degar Foundation Inc, “Who are Degar” http://www.degarfoundation.org/?page_id=407

²⁸ Degar Foundation Inc, “Who are Degar” http://www.degarfoundation.org/?page_id=407

²⁹ Degar Foundation Inc, “Who are Degar” http://www.degarfoundation.org/?page_id=407

³⁰ US State Department (USSD) <http://www.state.gov/g/drl>

International Religious Freedom Report 2011: Vietnam. Published by the Bureau of Democracy, Human Rights, and Labour, 30 July 2012

<http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192677#wrapper>

Date accessed 13 May 2013

³¹ Que Me <http://queme.net/>

Arbitrary Detention of Pro-Democracy and Religious Activists in Vietnam, Testimony by Vo Van Ai to the Tom Lantos Human Rights Commission, 15 May 2012

http://queme.net/eng/docs_detail.php?numb=1837

Date accessed 13 May 2013

3.10.10 During 2012, the government monitored certain Highland minorities closely, particularly several ethnic minorities in the Central and Northwest Highlands, where it continued to be concerned that the religion practised by those populations encouraged ethnic minority separatism. The authorities arrested and convicted several individuals connected to overseas separatist organisations and sentenced them to lengthy prison terms during 2012.³²

3.10.11 The NGO VHRN has drawn attention to a large number of incidents of harassment and ill-treatment of ethnic minorities, particularly those in the Central and Northwest Highlands.³³ Additionally, another NGO, the Unrepresented Nations and People's Organisation (UNPO) have reported in detail on the human rights situation and general treatment of ethnic minorities in the country.³⁴

See also: **Actors of Protection (Section 2.2 above)**
 Internal Relocation (Section 2.3 above)
 Caselaw (Section 2.4 above)

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

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

3.11 Victims of Trafficking

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

3.11.2 Treatment The US State Department's (USSD) Trafficking in Persons (TiP) Report 2012 has put Vietnam in a Tier 2 placement. The USSD TiP report defined this as countries whose governments do not fully comply with the minimum standards of the Trafficking Victims Protection Act, but are making

³² US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 6 <http://www.state.gov/documents/organization/204463.pdf>

³³ Vietnam Human Rights Network: [VHRN Latest News: See multiple entries](http://www.vietnamhumanrights.net/IndexE.html)
<http://www.vietnamhumanrights.net/IndexE.html>

³⁴ Unrepresented Nations & People's Organisation: [Persecution of Indigenous People in Vietnam & Laos](http://www.vietnamhumanrights.net/website/UNPO_020212.htm)
http://www.vietnamhumanrights.net/website/UNPO_020212.htm

significant efforts to bring themselves into compliance with those standards.³⁵ In 2011, the government finalized and disseminated a five year (2011-2015) national action plan on human trafficking and announced the allocation of the equivalent of \$15 million to implement this plan, which covers all forms of trafficking and co-ordinates the government's anti-trafficking responses through the National Steering Committee on Human Trafficking chaired by Deputy Prime Minister Nguyen Xuan Phuc. Although police officials acknowledged that internal trafficking and trafficking of men may constitute significant segments of the country's trafficking problem, the government took no discernible actions to increase efforts to address these particular forms of trafficking during 2012.³⁶

- 3.11.3** Vietnam is a source and, to a lesser extent, a destination country for men, women and children subjected to sex trafficking and conditions of forced labour. Vietnam is a source country for men and women who migrate abroad for work either on their own or through predominantly state-affiliated labour export companies in the construction, fishing, agriculture, mining, logging and manufacturing sectors. Vietnamese women and children subjected to sex trafficking throughout Asia are often misled by fraudulent labour opportunities and sold to brothels on the borders of Cambodia, China and Laos, with some eventually sent to third countries, including Thailand and Malaysia. Some Vietnamese women are forced into prostitution in Thailand, Malaysia, Singapore, and in Europe.³⁷
- 3.11.4** In both sex trafficking and labour trafficking, debt bondage, confiscation of identity and travel documents and threats of deportation are commonly utilised to intimidate victims. Some Vietnamese women moving to China, Taiwan, Hong Kong, Macau and increasingly to South Korea as part of internationally brokered marriages are subsequently subjected to conditions of forced labour (including as domestic servants), forced prostitution, or both.³⁸
- 3.11.5** Vietnam's labour export companies, most of which are affiliated with state-owned enterprises, as well as unlicensed middlemen brokers, have been known to charge workers in excess of the fees allowed by law for the opportunity to work abroad. This forces Vietnamese workers to incur some of the highest debts among Asian expatriate workers, making them highly vulnerable to debt bondage and forced labour. A study on migration trends conducted in 2010 of 1,265 Vietnamese migrants from three northern districts who had gone abroad for work found that nearly all faced high recruitment fees that put them in a state of debt bondage for years.³⁹
- 3.11.6** The majority of those that had to return to Vietnam early were not able to earn enough to pay off those debts. Upon arrival in destination countries, some workers found themselves compelled to work in substandard conditions for little

³⁵ US State Department (USSD) Trafficking in Persons Report 2012 Vietnam – Tier Placements – Published June 2012

<http://www.state.gov/j/tip/rls/tiprpt/2012/192363.htm>

³⁶ US State Department (USSD) Trafficking in Persons Report 2012 Vietnam – Published June 2012

<http://www.state.gov/documents/organization/192598.pdf>

³⁷ US State Department (USSD) Trafficking in Persons Report 2012 Vietnam – Published June 2012

<http://www.state.gov/documents/organization/192598.pdf>

³⁸ US State Department (USSD) Trafficking in Persons Report 2012 Vietnam – Published June 2012

<http://www.state.gov/documents/organization/192598.pdf>

³⁹ US State Department (USSD) Trafficking in Persons Report 2012 Vietnam – Published June 2012

<http://www.state.gov/documents/organization/192598.pdf>

or no pay despite large debts and with no credible avenues of legal recourse. Some of Vietnam's recruitment companies reportedly did not allow workers to read their contracts until the day before they were scheduled to depart the country, after the workers had already paid significant recruitment fees, often incurring debt. Some workers reported signing contracts in languages they could not read. There also have been documented cases of recruitment companies being unresponsive to workers' requests for assistance in situations of exploitation.⁴⁰

- 3.11.7** The Government of Vietnam continued its law enforcement efforts to combat trafficking. In March 2011, the National Assembly passed a comprehensive anti-trafficking law, which expands the definition of trafficking in persons to include forms of trafficking not prohibited in the Penal Code under Articles 119 and 120 and includes provisions for victim care and trafficking prevention. This law went into effect in January 2012, although criminal penalties for the newly enumerated trafficking offences have not yet been established. In order to hold perpetrators criminally accountable for trafficking crimes prohibited under the anti-trafficking law, the Supreme People's Court must issue detailed guidance establishing the criminal penalties for the new crimes. The law's expansion of the definition of trafficking in persons was not applied during the reporting period despite the law's coming into effect in January 2012 because the government has yet to issue the necessary guidance.⁴¹
- 3.11.8** While the Vietnamese government demonstrated some efforts in addressing transnational sex trafficking, it demonstrated overall inadequate law enforcement efforts to combat all forms of human trafficking during 2011, including labour trafficking. Authorities did not report any investigations or prosecutions of cases of internal trafficking. The Supreme People's Procuracy reported that between 1 December 2010 and 30 November 2011, Vietnamese authorities prosecuted 153 cases of trafficking and related offences, the same number of cases as reported the previous year. The government reported having convicted seven trafficking offenders and sentencing them to prison terms ranging from 4 to 18 years. However, no details were provided to substantiate these claims. The government acknowledged that there must be further implementing regulations, agency guidelines or amendments to the Criminal Code to ensure that perpetrators are held criminally accountable for all trafficking crimes.⁴²
- 3.11.9** Many NGOs suggested trafficking-related corruption continued to occur at the local level, where officials at border crossings and checkpoints took bribes to look the other way. The government reported only two criminal convictions of officials for trafficking related complicity during 2011. Government and NGO sources report that lack of financial resources, inadequately trained workforce, cumbersome mechanisms for interagency co-operation, poorly co-ordinated enforcement of existing legal instruments across the country and the current legal structure that is ill-suited to supporting the identification and prosecution of trafficking cases remain obstacles to greater progress in the country's anti-trafficking efforts.⁴³

⁴⁰ US State Department (USSD) Trafficking in Persons Report 2012 Vietnam – Published June 2012 <http://www.state.gov/documents/organization/192598.pdf>

⁴¹ US State Department (USSD) Trafficking in Persons Report 2012 Vietnam – Published June 2012 <http://www.state.gov/documents/organization/192598.pdf>

⁴² US State Department (USSD) Trafficking in Persons Report 2012 Vietnam – Published June 2012 <http://www.state.gov/documents/organization/192598.pdf>

⁴³ US State Department (USSD) Trafficking in Persons Report 2012 Vietnam – Published June 2012

- 3.11.10** The Vietnamese government sustained some efforts to protect victims of transnational sex trafficking and outlined additional victim protection plans in its new anti-trafficking law, though it did not make sufficient efforts during 2011 to identify or protect victims of labour trafficking or internal trafficking.⁴⁴
- 3.11.11** The government's Vietnamese Women's Union (VWU), in partnership with NGOs, continued to operate three trafficking shelters in Vietnam's largest urban areas, which offered counselling and vocational training to female sex trafficking victims. The VWU and border guards also operate smaller shelters that provide temporary assistance to migrants in need of assistance at some of the most heavily used crossing points. The government, however, lacks the resources and technical expertise to adequately support shelters, and as a result, in many areas shelters are rudimentary, underfunded and lack appropriately trained workforce. Trafficking victims also are inappropriately housed at times in MOLISA shelters co-located with those of drug users' rehabilitation and reintegration of individuals leaving prostitution. There are no shelters or services specifically dedicated to assisting male victims of trafficking or victims of labour trafficking.⁴⁵
- 3.11.12** The government reportedly encourages victims to assist in the prosecution of their traffickers, though Vietnam generally does not provide police-assisted witness protection to victims of crime. There were no data on the number of victims involved in prosecutions during 2010 or 2011. Victims are often reluctant to participate in investigations or trials due to social stigma, particularly as it relates to prostitution, fear of retribution in their local communities and lack of incentives for participation. Vietnamese law does have provisions to protect trafficking victims from facing criminal charges for actions taken as a direct consequence of being trafficked. There are no legal alternatives for the removal of foreign victims to countries where they face retribution or hardship.⁴⁶
- 3.11.13** The Government of Vietnam failed to provide adequate remedies to overseas workers who experienced debt bondage or other forms of forced labour. During 2011, the government drafted new victim identification procedures. In 2011, the government finalised and disseminated a five year (2011-2015) national action plan on human trafficking and announced the allocation of the equivalent of \$15 million to implement this plan, which covers all forms of trafficking and co-ordinates the government's anti-trafficking responses through the National Steering Committee on Human Trafficking chaired by Deputy Prime Minister Nguyen Xuan Phuc. Although police officials acknowledged that internal trafficking and trafficking of men may constitute significant segments of the country's trafficking problem, the Government took no discernible actions to increase efforts to address these particular forms of trafficking during 2011.⁴⁷

See also: [Actors of Protection \(Section 2.2 above\)](#)

<http://www.state.gov/documents/organization/192598.pdf>

⁴⁴ US State Department (USSD) Trafficking in Persons Report 2012 Vietnam – Published June 2012

<http://www.state.gov/documents/organization/192598.pdf>

⁴⁵ US State Department (USSD) Trafficking in Persons Report 2012 Vietnam – Published June 2012

<http://www.state.gov/documents/organization/192598.pdf>

⁴⁶ US State Department (USSD) Trafficking in Persons Report 2012 Vietnam – Published June 2012

<http://www.state.gov/documents/organization/192598.pdf>

⁴⁷ US State Department (USSD) Trafficking in Persons Report 2012 Vietnam – Published June 2012

<http://www.state.gov/documents/organization/192598.pdf>

Internal Relocation (Section 2.3 above)

Caselaw (Section 2.4 above)

- 3.11.14 Conclusion:** When considering applications under this category, caseworkers must always refer to the Asylum Instruction on ‘Victims of Trafficking’. That a person has been trafficked is not, in itself, a ground for refugee status. However, some trafficked women have been able to establish a 1951 Convention reason (such as a membership of a particular social group) and may have valid claims to refugee status. Forced recruitment of women for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence and/or abuse and may amount to persecution. Trafficked women may face serious repercussions upon their return to their home country, such as reprisals or retaliation from trafficking rings or individuals, or discrimination from their community and families and there may be a risk of being re-trafficked. Each case should be considered on its individual merits and in the context of the country on which it is based.
- 3.11.15** Where a victim of trafficking has agreed to give evidence as part of a criminal prosecution, consideration should be given to whether this is likely to affect the basis of the asylum claim (for example by increasing the risk of retribution) and therefore whether the decision should be postponed until after the trial is concluded. The impact of the applicant’s evidence at the trial on the likelihood of future risk can then be assessed. It may be necessary to liaise with the police in this situation.
- 3.11.16** Support and protection from governmental and non-governmental sources in Vietnam are generally available to victims of trafficking. Internal relocation will often also be a viable option for applicants who fear reprisals from traffickers upon return to the country. Cases in which sufficiency of protection is clearly available and/or internal relocation is a reasonable option are likely to fail. Still, applications from those who have been trafficked and who are able to demonstrate that the treatment they will face on return amounts to torture, inhuman or degrading treatment must be considered in the context of the individual circumstances of each claim. In individual cases, sufficiency of protection by the state authorities may not be available, and in such cases where internal relocation is also not possible, a grant of Humanitarian Protection may be appropriate.
- 3.12 Minority religious groups**
- 3.12.1** Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the Vietnamese authorities due to their religious beliefs.
- 3.12.2 Treatment.** The Country of Origin Research and Information, Country Report Vietnam 2012 states that half the population of Vietnam is ‘at least nominally Buddhist’, 7 percent are Roman Catholic, 2.5 to 4 percent practice Cao Dai, 1.5 to 3 percent are Hoa Hao followers, 1 to 2 percent are Protestants, 0.1 percent are Muslim with further religious communities include Hindu’s, Baha’is, Mormons, animists and Jews.⁴⁸

⁴⁸ Country of Origin Research and Information Country Report Vietnam 2012
<http://www.refworld.org/cgi-bin/teaxis/vtx/rwmain?page=search&docid=50b8a3c12&skip=0&query=vietnam>

- 3.12.3** Religious freedom remains restricted. The 2004 Ordinance on Religion and Belief is the primary document governing religious practice. It asserts the right of citizens to freedom of belief and religion, but specifically warns that the “abuse” of freedom of belief or religion to “undermine the country’s peace, independence and unity” is illegal, and such religious activities must be suspended if they “negatively affect the cultural traditions of the nation” in Article 8(2).⁴⁹
- 3.12.4** The constitution provides for freedom of worship; however, government restrictions on the organised activities of many religious groups continued. The government generally respected the religious freedom of most registered religious groups, but some registered and unregistered groups reported abuses during 2011. Reports of abuses of religious freedom remained at a consistent level during 2011, compared with the previous year. Some religious believers continued to experience harassment or repression, particularly those without legal sanction. In many cases, the authorities forced church gatherings to cease, closed unregistered house churches, and pressured individuals to renounce their religious beliefs.⁵⁰
- 3.12.5** The practice of forced renunciations of faith was officially banned by Decree 22 in 2004. However, there continue to be reports of forced renunciations of faith, which specifically target ethnic minorities. These are not isolated cases, but are sanctioned by central government to impede the growth of Protestantism in the northwest provinces, and independent religious activity in the Central Highlands. The government continues to harass, threaten, detain and sentence lawyers and human rights defenders who have assisted religious communities or religious freedom advocates in cases against the state.⁵¹
- 3.12.6** The US Commission on International Religious Freedom Annual Report included Vietnam on its list of “countries of particular concern”. It stated that the Vietnamese government continues to control all religious communities, restrict and penalise independent religious practise severely, and repress individuals and groups viewed as challenging its authority.⁵²

Catholics

- 3.12.7** Catholicism continues to grow rapidly in Vietnam and the church has expanded both clerical training and charitable activities in recent years. Hanoi and the Vatican continue to discuss resuming diplomatic relations. Nevertheless, the relationship between the Vietnamese government and the Catholic Church laity and members of the Redemptorist Order continues to be tense. In the past several years, including last year, police have used tear gas and batons against, and have detained, participants at peaceful prayer vigils and demonstrations at properties formerly owned by the Catholic Church.⁵³

⁴⁹ U.S Commission on International Religious Freedom Annual Report 2012
[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

⁵⁰ U.S Commission on International Religious Freedom Annual Report 2012
[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

⁵¹ U.S Commission on International Religious Freedom Annual Report 2012
[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

⁵² U.S Commission on International Religious Freedom Annual Report 2012
[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

⁵³ U.S Commission on International Religious Freedom Annual Report 2012
[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

- 3.12.8** Catholics in Hanoi and Vinh have demonstrated publicly against intimidation and plans to confiscate and use properties formerly owned by the Catholic Church. In August 2011, thousands of Catholics in Vinh protested against a decision by local authorities to seize land in Cau Ram parish to build a park dedicated to soldiers who died during the war with the United States. In November and December 2011, priests and laypeople from the Thai Ha parish in Hanoi took to the streets to protest further government plans to expropriate church property to build a sewage treatment plant and public attacks on their church properties. Thai Ha parish church was the site of 2008 protests against land confiscation that led to violence and the arrest of six Catholics. The church is part of the Redemptorist Order, whose priests, parishes and leadership have been targeted in recent years.⁵⁴
- 3.12.9** Despite the tensions between Catholics and the Vietnamese government in the past several years, the Vietnamese president met again with Pope Benedict to discuss diplomatic relations. The government maintains veto power over appointments of bishops, but often co-operates with the Vatican in the appointment process. Two new bishops were ordained in the past year without incident. Catholic leaders in Ho Chi Minh City reported that they often move ahead with ordinations and placement of priests without seeking government approval. All students must be approved by local authorities before enrolling in a seminary and again prior to their ordination as priests and the province of Thien-Hue restricted the number of seminarians. However, in 2009, the government allowed a new Jesuit seminary to be built in Ho Chi Minh City and permitted several local dioceses to conduct religious education classes for minors on weekends and to engage in some sizeable medical and charitable activities. Hundreds of new priests were trained in seminaries to meet a growing Catholic population in Vietnam.⁵⁵
- 3.12.10** Although the Catholic Church is officially recognised by the government of Vietnam, there are many incidents of harassment, ill-treatment and severe repression reported. The NGO VHRN (not a specifically Christian NGO) reports a large number of incidents perpetrated by State authorities against Catholics.⁵⁶ In January 2010, Vietnamese Catholic groups reported that priests and believers in the area of Dong Chiem had been attacked on their way to pray; similar sporadic attacks were reported throughout the year.⁵⁷ During 2011 – 2012, disputes continued over land ownership between local authorities and the Catholic Church, in many cases involving excessive and unnecessary force by security officials against protestors.⁵⁸
- 3.12.11** The authorities continued arresting Catholic Ha Mon Montagnard activists throughout 2011. At least 15 Catholics affiliated with Redemptorist Catholic churches in Hanoi and Ho Chi Minh City were arrested in July, August and

⁵⁴ U.S Commission on International Religious Freedom Annual Report 2012
[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

⁵⁵ U.S Commission on International Religious Freedom Annual Report 2012
[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

⁵⁶ Vietnam Human Rights Network: [VHRN Latest News: See multiple entries](http://www.vietnamhumanrights.net/IndexE.html)
<http://www.vietnamhumanrights.net/IndexE.html>

⁵⁷ Freedom House Country Report; Vietnam 2011
<http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8164>

⁵⁸ Amnesty International: [Annual Report 2012: Viet Nam](http://www.unhcr.org/refworld/country,,,VNM,4562d8cf2,4fbc38ff58,0.html)
<http://www.unhcr.org/refworld/country,,,VNM,4562d8cf2,4fbc38ff58,0.html>

September 2011. Father Nguyen Van Ly was returned to prison after a period of medical parole; he has suffered a series of strokes in prison and there are serious concerns for his health.⁵⁹ A number of Catholics have been arrested and imprisoned during the past year, particularly those accused of criticising the government, or of being allied to the Roman Catholic priest and democracy activist Fr. Nguyen Van Ly.⁶⁰

Protestants

- 3.12.12** The two largest officially recognized Protestant churches are the Southern Evangelical Church of Vietnam (SECV) and the smaller Evangelical Church of Vietnam North (ECVN). The Vietnam Baptist Convention (Grace Southern Baptist), United World Mission Church, Vietnam Mennonite Church, Vietnam Presbyterian Church, Vietnam Baptist Society (Southern Baptist), Vietnam Seventh-day Adventist Church, and Vietnam Christian Fellowship also are officially recognized. Other Protestant denominations also are present, including the Assemblies of God (registered nationally) as well as others registered locally but not registered on the national level. Estimates of the number of Protestants ranged from government figures of one million to claims by churches of more than two million.⁶¹
- 3.12.13** In 2006, the Committee on Religious Affairs in Hanoi published a handbook instructing provincial officials in the northwest provinces on how to manage and control religious practice among ethnic minorities. The handbook offered instructions on ways to restrict religious freedom, including a command to "resolutely subdue" new religious growth, "mobilize and persuade" new converts to return to their traditional religious practice, and halt anyone who "abuses religion" to undermine "the revolution" –therefore seemingly condoning forced renunciations of faith. Although the 2006 handbook recognizes the legitimacy of some religious activity, it also indicates that the Vietnamese government continues to control and manage religious growth, label anyone spreading Christianity in the northwest provinces a national security threat, and use unspecified tactics to "persuade" new converts to renounce their beliefs.⁶²
- 3.12.14** The 2007 revised version also states that local officials must try to "solve the root cause" of Protestant growth by "mobilizing" ethnic groups to "preserve their own beautiful religious traditions." A 2008 version of the handbook contains all the language in the 2007 revision but adds a final chapter which chides local officials for "loose control" over Protestantism, leading to an increase in illegal meeting places. Local officials are instructed that these meeting places "must be ... disbanded."⁶³

⁵⁹ Human Rights Watch: [World Report 2012: Vietnam](http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&category=&publisher=&type=&coi=VNM&rid=4562d8cf2&docid=4f2007bac&skip=0)
<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&category=&publisher=&type=&coi=VNM&rid=4562d8cf2&docid=4f2007bac&skip=0>

⁶⁰ Human Rights Watch: [Vietnam: Free Catholic Activists](http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&category=&publisher=&type=&coi=VNM&rid=4562d8cf2&docid=4fbf57d22&skip=0)
<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=country&category=&publisher=&type=&coi=VNM&rid=4562d8cf2&docid=4fbf57d22&skip=0>

⁶¹ Country of Origin Research and Information (CORI) Country Report, Vietnam, September 2012
<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=50b8a3c12&skip=0&query=vietnam>

⁶² Country of Origin Research and Information (CORI) Country Report, Vietnam, September 2012
<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=50b8a3c12&skip=0&query=vietnam>

⁶³ Country of Origin Research and Information (CORI) Country Report, Vietnam, September 2012
<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=50b8a3c12&skip=0&query=vietnam>

- 3.12.15** During the last decade, Protestant churches in the Central Highlands have grown rapidly among the Montagnard minority ethnic groups. Mass protests and aggressive police crackdowns have occurred, with arbitrary arrests, imprisonment and torture leading to forced renunciations of faith. Many of these Christians have fled the country to Cambodia and other countries, where many have been recognised as refugees.⁶⁴
- 3.12.16** Reports of abuses of Protestants continued during 2011 and 2012. Members of the congregations of the Mennonite Church,⁶⁵ the United Presbyterian Church, the Good News Mission Church, the Full Gospel Church and others all reported disruption to services, harassment, detention and physical abuse of members, and in some cases, were refused permission to register their churches locally, as the church was not recognised nationally. Some churches have been forcibly closed or demolished.⁶⁶
- 3.12.17** Conditions of religious freedom have not improved, according to many reports. Religious freedom often depends on geographic location, ethnicity, relationships between religious leaders and provincial officials, or perceived 'political' activity. Also, lingering property disputes over buildings and facilities previously confiscated by the Communist government have resulted in church demotions, confiscation of property, detentions and violence.⁶⁷

See also: **Actors of Protection (Section 2.2 above)**
 Internal Relocation (Section 2.3 above)
 Caselaw (Section 2.4 above)

- 3.12.18 Conclusion:** Although there are restrictions on religious freedom, and the Vietnamese authorities seek to control religious groups, the treatment individual members of officially registered religious groups suffer on account of these restrictions does not, in general, amount to persecution. The majority of applicants from this category of claim are therefore unlikely to qualify for asylum or Humanitarian Protection. However, in some instances, Catholics, including priests, Catholic activists and Catholics from ethnic minorities have faced treatment that does amount to persecution. Applications should be considered on a case by case basis, since the majority of Vietnamese Catholics are not generally at risk of treatment amounting to persecution.
- 3.12.19** Members of unregistered religious groups generally face more difficulties than members of registered communities, and members may face intimidation and harassment. The levels of ill-treatment suffered will vary depending on region, ethnicity, and the attitude of local officials and in the majority of cases this will not amount to persecution. Therefore a grant of asylum or Humanitarian Protection will not be appropriate. However, in some cases involving ethnic minorities belonging to unregistered Protestant churches, the level of ill-treatment may

⁶⁴ Human Rights Watch: [Montagnard Christians in Vietnam](http://www.hrw.org/node/97623/section/2) 30 March 2011

<http://www.hrw.org/node/97623/section/2>

⁶⁵ VHRN: [Pastor jailed](http://www.vietnamhumanrights.net/website/VOA_032712.htm) – 27 March 2012

http://www.vietnamhumanrights.net/website/VOA_032712.htm

⁶⁶ VHRN: [Officials destroy two new church buildings](http://www.vietnamhumanrights.net/website/CDN_062712.htm) – 27 June 2012

http://www.vietnamhumanrights.net/website/CDN_062712.htm

⁶⁷ U.S Commission on International Religious Freedom Annual Report 2012

[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

amount to persecution, particularly where the applicant is also perceived to be politically active against the government. In these cases a grant of asylum may be appropriate, depending on the individual circumstances and profile of the applicant.

3.13 Gay Men and Lesbians

3.13.1 Some applicants may make asylum and/or human rights claims based on ill-treatment amounting to persecution as gay men, lesbians, and bisexual or transgender persons in Vietnam.

3.13.2 Treatment: Same-sex relationships are not illegal in Vietnam, but the law does not prohibit discrimination based on sexual orientation or gender identity. Societal discrimination and stigma remain pervasive. There is no reported official discrimination based on sexual orientation or gender identity. No laws criminalize consensual same-sex sexual conduct, although by decree, individuals may not change their gender.⁶⁸

3.13.3 A lesbian, gay, bisexual and transgender (LGBT) community exists but is largely underground. A survey and study conducted by the Institute for Studies of Society, Economy and the Environment beginning in 2010 and reported in December 2012 noted that 87 percent of participants did not fully understand LGBT concerns or had a very limited understanding of LGBT rights. The study, based on surveying 854 males and females above age 18 and interviews in representative cities (Hanoi and Ho Chi Minh City) and provinces (Ha Nam and An Giang), concluded that misunderstandings about and prejudice against LGBT individuals led directly to discrimination or harassment in the workplace, most often by disgruntled fellow employees or a supervisor. The institute also reported that government officials, the Women's Union and the Lawyers Association participated in sensitivity training during 2012. Most LGBT persons chose not to tell family members their sexual orientation for fear of being disowned, and a 2011 online survey, conducted by the Information Sharing and Connecting Group with more than 1,000 LGBT respondents, noted that their families forced more than 20 percent into counselling.⁶⁹

3.13.4 On 5 August 2012, more than 100 individuals demonstrated in Hanoi for equal rights in the country's first gay pride parade. Organisers requested but did not receive permission; however there were no adverse incidents.⁷⁰ Reports suggest that although discrimination and harassment do take place, Vietnamese society is becoming more accepting of LGBT individuals and culture.⁷¹ In the larger cities, such as Ho Chi Minh City, Hanoi and others, there are thriving LGBT communities with supportive services.⁷²

3.13.5 In May 2012 the Ministry of Justice solicited input from NGOs involved in LGBT

⁶⁸ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 6 <http://www.state.gov/documents/organization/204463.pdf>

⁶⁹ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 6 <http://www.state.gov/documents/organization/204463.pdf>

⁷⁰ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 6 <http://www.state.gov/documents/organization/204463.pdf>

⁷¹ GayStar News: Vietnam government consults on same-sex marriage: 20 July 2012

<http://www.gaystarnews.com/article/vietnam-government-consults-same-sex-marriage200612>

⁷² International Gay and Lesbian Human Rights Commission: The Start of PFLAG Vietnam: 17 May 2011 <http://www.iglhrc.org/content/start-pflag-vietnam>

advocacy concerning possible 2013 revisions on same-sex cohabitation in family and marriage law. Several NGOs collaboratively submitted a plan of action that included a public relations campaign and a strategy to inform members of the National Assembly about the importance of rewriting the law.⁷³

- 3.13.6 Conclusion** Same sex relationships are not illegal in Vietnam but societal hostility and discrimination against LGBT persons does occur. However there is no evidence to show that in general it would amount to persecution or reach the threshold to engage UK's obligations under Article 3 of the European Convention on Human Rights. Nevertheless, personal circumstances may place some individual gay men and lesbians at greater risk. Where gay men and lesbians do encounter ill-treatment which puts them at real risk, the individual would not be able to seek effective protection from the authorities due to a lack of protective legislation. Caseworkers should consider whether the claimant could avoid the risk by relocating elsewhere in Vietnam. Caseworkers must however take into account that the Supreme Court in the case of [HJ \(Iran\)](#) established that individuals cannot be expected to modify their behaviour and that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.
- 3.13.7** Each case must be considered on its own merits. Where caseworkers conclude that a claimant is at real risk of persecution in Vietnam on account of their sexual orientation and are unable to internally relocate then they should be granted asylum because gay men, lesbians and bisexuals in Vietnam are considered to be members of a particular social group. However, not all gay men and lesbians are at risk of ill-treatment amounting to persecution.
- 3.13.8** Where an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to family and friends, that person will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to their sexual orientation.
- 3.13.9** Where an individual chooses to live discreetly because he/she fears persecution if they were to live openly as gay, lesbian or bisexual, then that person will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual persons enjoy the right to live openly without fear of persecution. They should not be asked or be expected to live discreetly because of a fear of persecution due to sexual orientation.
- 3.14 Prison conditions**
- 3.14.1** Applicants may claim that they cannot return to Vietnam due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Vietnam are so poor as to amount to torture or inhuman treatment or punishment.
- 3.14.2** 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

⁷³ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 6 <http://www.state.gov/documents/organization/204463.pdf>

cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

- 3.14.3 Consideration** Prison conditions are austere but generally not life threatening. Overcrowding, insufficient diet, lack of clean drinking water and poor sanitation remained serious problems during 2012. Prisoners generally were required to work but received no wages. Prisoners sometimes were placed in solitary confinement, where they were deprived of reading and writing materials for periods of up to several months. Family members made credible claims that prisoners received benefits by paying bribes to prison officials or undertaking hunger strikes. Prisoners had access to basic healthcare, however, in many cases officials prevented family members from providing medication to prisoners.⁷⁴
- 3.14.4** There were no precise estimates of the number of political prisoners. The government reportedly held more than 120 political detainees at the end of 2012, although some international observers claimed there were even more. Diplomatic sources maintained that four re-education centres in the country held approximately 4000 prisoners. Political prisoners are typically sent to specially designated prisons, and generally held separately from non-political prisoners. Authorities completely isolated some high-profile political prisoners from all others.⁷⁵
- 3.14.5** The number of prisoners and detainees was not publicly available, but the NGO International Centre for Prison Studies reported that the prison population as of mid-2011, excluding pre-trial detainees, was 113,018, of whom 10.9 percent were women. Authorities generally held juveniles in prison separately from adults, but on rare occasions, juveniles were held in detention with adults for short periods due to the unavailability of space. While prison sentences could be extremely lengthy, authorities did not force prisoners to serve beyond the maximum sentence for their charged offences. There were no prison ombudsmen and no consideration of alternatives to incarceration for non-violent offenders. Prison administrators did not keep adequate records and at times statistics were contradictory.⁷⁶
- 3.14.6** Prisoners were limited to one 30-minute family visit a month and family members were generally permitted to give supplemental food and bedding to prisoners during 2012. Prisoners did not have the right to practice their religion in public or to have access to religious books and scriptures, although authorities allowed Roman Catholic priest and democracy activist Thaddeus Nguyen Van Ly (rearrested in July 2011) to keep a Bible, pray and give communion to fellow prisoners. Prisoners were allowed to submit uncensored complaints to prison management and judicial authorities, but their complaints were routinely ignored. Although permitted, the International Committee of the Red Cross did not request or carry out prison visits during 2012.⁷⁷

⁷⁴ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204463.pdf>

⁷⁵ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204463.pdf>

⁷⁶ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204463.pdf>

⁷⁷ US State Department Vietnam Country Report on Human Rights Practices 2012 Published 19 April 2013 Section 1 <http://www.state.gov/documents/organization/204463.pdf>

- 3.14.7 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 applicants can demonstrate a real risk of imprisonment on return to Vietnam a grant of Humanitarian Protection will not generally be appropriate.
- 3.14.8** 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. Minors claiming in their own right**
- 4.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where the Secretary of State is satisfied that safe and adequate reception arrangements are in place in the country to which the child is to be returned.
- 4.2** At present there is insufficient information to be satisfied that there are adequate alternative reception, support and care arrangements in place for minors with no family in Vietnam. Those who cannot be returned should be considered for leave as a Unaccompanied Asylum Seeking Children (UASC).
- 4.3** Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of UASC as soon as possible after the claim for asylum is made, while ensuring that those endeavours do not jeopardise the child's and/or their family's safety. Information on the infrastructure within Vietnam which may potentially be utilised to assist in endeavouring to trace the families of UASC, can be obtained from the Vietnam country of origin report.
- 4.4** Caseworkers should refer to the Asylum Instruction: [Processing an Asylum Application from a Child](#), for further information on assessing the availability of safe and adequate reception arrangements, UASC Leave and family tracing. Additional information on family tracing can be obtained from the [interim guidance](#) on Court of Appeal judgment in [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#).
- 5. Medical treatment**
- 5.1** Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service

(COIS).

- 5.2** The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.
- 5.3** That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.
- 5.4** The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.
- 5.5** Where a caseworker considers that the circumstances of the individual applicant and the situation in the country would make 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. Caseworkers must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.
- 6. Returns**
- 6.1** There is no policy which precludes the enforced return to Vietnam of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 6.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 6.3** Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [Chapter 53.8 of the Enforcement Instructions and Guidance](#).

- 6.4** Vietnamese nationals may return voluntarily to any region of Vietnam at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 6.5** The AVR scheme is implemented on behalf of UKBA by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Vietnam. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Vietnamese nationals wishing to avail themselves of this opportunity for assisted return to Vietnam should be put in contact with Refugee Action Details can be found on Refugee Action's web site at: www.choices-avr.org.uk.

**Country Specific Litigation Team
Operational Policy and Rules Unit
Operational Systems Transformation
Home Office
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