



OPERATIONAL GUIDANCE NOTE

VIETNAM

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1. Introduction

- 1.1** This document provides UK Border Agency caseowners 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. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseowners *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 caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

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

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

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

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

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

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

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010>

2.3 Actors of protection

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

2.3.2 Internal security is the responsibility of the Ministry of Public Security (MPS); however, in some remote areas, the military is the primary government agency and performs public safety functions, including maintaining public order in the event of civil unrest. The MPS controls the police, a special national security investigative agency, and other internal security units. It also maintains a system of household registration and block wardens to monitor the population. While this system was less intrusive than in the past, it continued to be used to monitor those suspected of engaging, or 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

2.3.3 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 was common for guard forces made up of residents to assist the police. The police were generally effective at maintaining public order, but police capabilities, especially investigative, were generally very low. Police training and resources were inadequate. The government cooperated with several foreign governments in a program for provincial police and prison management officials to improve the professionalism of security forces.²

2.3.4 There is no clear or effective mechanism for pursuing a civil action to redress or remedy abuses committed by authorities. Civil suits are heard by administrative courts, civil courts, and criminal courts, all of which follow the same procedures as in criminal cases and are adjudicated by members of the same body of judges and lay assessors. All three levels were subject to the same problems of corruption, lack of independence, and inexperience.³

2.3.5 By law a citizen seeking to press a complaint regarding a human rights violation by a civil

¹ US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

² US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

³ US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

servant is required first to petition the officer accused of committing the violation for permission to refer the complaint to the administrative courts. If a petition is refused, the citizen may refer it to the officer's superior. If the officer or his superior agrees to allow the complaint to be heard, the matter is taken up by the administrative courts. If the administrative courts agree that the case should be pursued, it is referred either to the civil courts for suits involving physical injury seeking redress of less than 20 percent of health-care costs resulting from the alleged abuse, or to the criminal courts for redress of more than 20 percent of such costs. In practice this elaborate system of referral and permission ensured that citizens had little effective recourse to civil or criminal judicial procedures to remedy human rights abuses, and few legal experts had experience with the system. In August (2010) the government issued new regulations limiting the number of government agencies that could receive a complaint and restricting each complaint to only one signatory. The new regulation restricted the common practice of individuals, particularly land-rights petitioners, from sending joint complaints to numerous federal agencies.⁴

- 2.3.6** The law provides for criminal penalties for official corruption; however, the government 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 publicising budgets of different levels of government and continuing to streamline government inspection measures. Cases of government officials accused of corruption occasionally were widely publicised.⁵
- 2.3.7** The anticorruption law allows citizens to complain openly about inefficient government, administrative procedures, corruption, and economic policy. In regular Internet chats with high-level government leaders, citizens asked pointed questions about anticorruption efforts. However, the government continued to consider public political criticism a crime unless the criticism was controlled by authorities. Attempts to organise those with complaints to facilitate action are considered proscribed political activities and subject to arrest. Senior government and party leaders travelled to many provinces, reportedly to try to resolve citizen complaints. Corruption related to land use was widely publicised in the press, apparently in an officially orchestrated effort to bring pressure on local officials to reduce abuses.⁶
- 2.3.8** Corruption among police remained a significant problem at all levels, and members of the police sometimes acted with impunity. Internal police oversight structures existed but were subject to political influence.⁷
- 2.3.9** The Supreme People's Court in Hanoi is the highest court and exercises civil and criminal jurisdiction over all lower courts. The Supreme Court may also conduct trials of the first instance in certain cases. There are People's Courts in each province and city which exercise jurisdiction in the first and second instance. Military courts hear cases involving members of the People's Army and cases involving national security. In 1993 legislation was adopted on the establishment of economic courts to consider business disputes. The observance of the law by ministries, government offices and all citizens is the concern of the People's Organs of Control, under a Supreme People's Organ of Control. The Chief Justice of the Supreme People's Court and the Chief Procurator of the Supreme People's Organ of Control are elected by the National Assembly, on the recommendation of the President.⁸
- 2.3.10** There was a shortage of trained lawyers and judges. Low salaries hindered efforts to develop a trained judiciary. The few judges who had formal legal training often had studied abroad in countries with communist legal traditions. The government continued to participate in training programs to address the problem of inadequately trained judges and other court officials. In May 2010 the government granted a foreign nongovernmental organization (NGO) an operating license to conduct training initiatives aimed at reforming

⁴ US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

⁵ US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

⁶ US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

⁷ US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

⁸ COIS Vietnam Country Report April 2011 (para 10.01) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

the criminal code and strengthening lawyers' capacity.⁹

2.4 Internal relocation.

- 2.4.1** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and Gender Issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.4.2** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.4.3** The Socialist Republic of Vietnam is situated in South-East Asia, bordered to the north by the People's Republic of China, to the west by Laos and Cambodia, and to the east by the South China Sea.¹⁰ Vietnam covers an area of 329,247 sq km (127,123 sq miles) and a UN (United Nations) estimate in 2010 put the total population at 89 million, with life expectancy of 73 years for men and 77 years for women.¹¹ It is divided into 63 administrative units, comprised of provinces and cities.¹²
- 2.4.4** The constitution provides for freedom of movement within the country, foreign travel, emigration, and repatriation; however, the government imposed some limits on freedom of movement for certain individuals. The government generally cooperated with the UNHCR and other humanitarian organisations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.¹³
- 2.4.5** A government restriction regarding travel to certain areas remained in effect. It requires citizens and resident foreigners to obtain a permit to visit border areas, defence facilities, industrial zones involved in national defence, areas of "national strategic storage," and "works of extreme importance for political, economic, cultural, and social purposes." The 2007 Law on Residence was not broadly implemented, and migration from rural areas to cities continued unabated. However, moving without permission hampered persons seeking legal residence permits, public education, and health-care benefits. Citizens also were required to register with local police when staying overnight in any location outside of their own homes; the government appeared to enforce these requirements more strictly in some districts of the Central and Northern Highlands.¹⁴

⁹ COIS Vietnam Country Report April 2011 (para 10.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁰ COIS Vietnam Country Report April 2011 (para 1.01) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹¹ COIS Vietnam Country Report April 2011 (para 1.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹² COIS Vietnam Country Report April 2011 (para 1.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹³ US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

¹⁴ US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

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

2.5 Country guidance caselaw

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

(Palliative AIDS treatment - return permissible) In this appeal the Tribunal dismiss 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 on centre for AIDS sufferers in Vietnam which offers palliative care only - following N the Tribunal found this sufficient.

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Vietnam. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

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

3.5 Credibility

- 3.5.1** This guidance is not designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Caseowners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.6 Opposition political activists

- 3.6.1** Applicants may make an asylum and/or human rights claim based on ill treatment amounting to persecution at the hands of the Vietnamese authorities due to their or a relatives involvement with opposition political parties.
- 3.6.2** *Treatment.* Vietnam is not an electoral democracy. The Communist Party of Vietnam (CPV), the sole legal political party, controls politics and the government, and its Central Committee is the top decision-making body. The National Assembly, whose 500 members are elected to five-year terms, generally follows CPV dictates. The Vietnam Fatherland Front, an arm of the CPV, vets all candidates. The president, elected by the National Assembly for a five-year term, appoints the prime minister, who is confirmed by the legislature.¹⁵
- 3.6.3** The constitution does not provide for the right of citizens to change their government peacefully, and citizens could not freely choose and change the laws and officials that govern them. Political opposition movements and other political parties are illegal. The government continued to restrict public debate and criticism severely. No public challenge to the legitimacy of the one-party state was permitted; however, there were instances of unsanctioned letters critical of government policy from private citizens, including some former senior party members. The government continued to crack down on the small opposition political groupings established in 2006, and members of these groups faced arrests and arbitrary detentions.¹⁶
- 3.6.4** The Vietnamese government does not tolerate political dissent or criticism of the Communist Party's role. Opposition political parties are illegal and dissidents expressing opinions about multi-party democracy risk imprisonment.¹⁷
- 3.6.5** The Human Rights Watch world report stated that 2010 saw a steady stream of political trials and arrests as the government stepped up suppression of dissent in advance of the 11th Communist Party congress in January 2011. In December 2009 and January 2010, five activists linked to the banned Democratic Party of Vietnam, including lawyer Le Cong Dinh, were sentenced to prison on subversion charges, followed by the January 29 sentencing of democracy campaigner Pham Thanh Nghien for disseminating anti-government propaganda.¹⁸
- 3.6.6** Members of Bloc 8406, a political activist group that calls for the creation of a multiparty state, continued to face harassment and imprisonment. At least 38 members of the group were in detention at year's end [2010].¹⁹
- 3.6.7** There were no precise estimates of the number of political prisoners. The government reportedly held more than 100 political detainees at year's end, although some international observers claimed there were even more. Several other political dissidents affiliated with outlawed political organisations, including Bloc 8406, PDP, People's Action Party, Free Vietnam Organization, DPV, UWFO, and others, remained in prison or under house arrest in various locations. In March (2010) Bloc 8406 published a list of 38 members imprisoned for their affiliation with the movement. Several of approximately 30 activists arrested in 2006-07 but later released remained under investigation and administrative detention without being formally charged.²⁰

See also: [Actors of protection](#) (section 2.3 above)

¹⁵ Freedom House Report Country Report; Vietnam 2011

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

¹⁶ COIS Vietnam Country Report April 2011 (para 14.01) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁷ COIS Vietnam Country Report April 2011 (para 14.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

¹⁸ Human Rights Watch World report 2011; Vietnam <http://www.hrw.org/en/world-report-2011/vietnam>

¹⁹ COIS Vietnam Country Report April 2011 (para 14.11) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁰ US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.6.8 Conclusion. The Vietnamese authorities may take serious action against individuals involved with opposition political parties/organisations who they believe pose a threat to the state and this treatment may amount to persecution. Where an individual is able to demonstrate that they have taken part in opposition political activities and as a result of these will come to the attention of the authorities, and face a serious risk of persecution on account of their activities, a grant of asylum will be appropriate.

3.7 Minority ethnic groups

3.7.1 Some 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 Chinese or Montagnard ethnicity.

3.7.2 Treatment. There are 54 official ethnic communities within Vietnam²¹ and although the government officially prohibits discrimination against ethnic minorities, longstanding societal discrimination against ethnic minorities persisted. Despite the country's significant economic growth, some ethnic minority communities benefited little from improved economic conditions. In certain areas, including the Northwest Highlands, Central Highlands, and portions of the Mekong Delta, ethnic minority groups made up the majority of the population.²²

3.7.3 The government continued to address the causes of ethnic minority discontent through special programs to improve education and health facilities and expand road access and electrification of rural communities and villages.²³

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

Chinese (Hoa)

3.7.5 The Chinese are well integrated into Vietnamese society. There is no history of persistent protest or rebellion; there is little support from kindred elsewhere for such activities. Furthermore, the government of Vietnam does not actively discriminate against or repress the group. More than 400,000 Chinese fled the country in the late 1970s but they are unlikely to return as they have settled in China and other Southeast Asian and Western countries.²⁵

3.7.6 The Chinese are reportedly dispersed across the country, although they are concentrated in the southern region of Vietnam, with many residing in and round Ho Chi Minh City. They

²¹ COIS Vietnam Country Report April 2011 (para 18.01) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²² COIS Vietnam Country Report April 2011 (para 18.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²³ COIS Vietnam Country Report April 2011 (para 18.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁴ COIS Vietnam Country Report April 2011 (para 18.04) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁵ COIS Vietnam Country Report April 2011 (para 18.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

speaking Mandarin and other Chinese dialects, but many are also likely to speak Vietnamese. Referred to as the Hoa in Vietnamese, the Chinese are Buddhists and they are physically distinguishable from the Vietnamese, who are referred to as the Kinh. There is limited information available about the cultural characteristics of the Chinese Vietnamese. However, they are likely to share similar cultural characteristics with the Kinh, because of the long period of Chinese Han dynasty domination of Vietnam.²⁶

- 3.7.7** The Chinese remain economically advantaged in relation to the Kinh. This situation will likely continue unless there are reversals in Vietnam's economic and political liberalisation programs. Links between the Hoa [Chinese] and the overseas Chinese community have helped to promote Vietnam's economic growth and could help assuage any potential economic downturn.²⁷

Montagnards

- 3.7.8** The Montagnards is the collective term used for a number of ethnic minorities that inhabit the Central Highlands of Vietnam. Human rights violations against ethnic minority Montagnards in the Central Highlands continue. These include restrictions on movement and forcing Christians belonging to unauthorised 'house churches' to renounce their religion. An unknown number of Montagnards from among the more than 250 who were sentenced to lengthy prison terms in connection with the large-scale protests in 2001 and 2004 around land ownership and religious freedom are believed to remain in prison. Many of them were sentenced to between five and 12 years' imprisonment under Articles 87 (Undermining the unity policy), 88 (Conducting propaganda against the Socialist Republic of Vietnam), 89 (Disrupting security) and 91 (Fleeing abroad or defecting to stay overseas with a view to opposing the people's administration) of the national security section of the Penal Code.²⁸
- 3.7.9** During the last decade, the Vietnamese government has launched a series of crackdowns on Montagnards in the Central Highlands, often in response to mass public protests calling for the return of confiscated land and greater religious freedom. The demonstrations have been fuelled by Montagnards' growing anger and desperation over the steady loss of their farm land to agricultural plantations and lowland Vietnamese (Kinh) settlers, along with tightened restrictions on independent house churches.²⁹
- 3.7.10** Since 2001, more than 350 Montagnards have been sentenced to long prison sentences on vaguely-defined national security charges for their involvement in public protests and unregistered house churches considered subversive by the government, or for trying to flee to Cambodia to seek asylum. They include Dega church activists as well as Montagnard Christians who do not describe themselves as followers of Dega Protestantism, including pastors, house church leaders, and land rights activists. Charges brought against them include undermining national solidarity (Penal Code article 87) or disrupting security (article 89).³⁰

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

- 3.7.6 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

²⁶ COIS Vietnam Country Report April 2011 (para 18.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁷ COIS Vietnam Country Report April 2011 (para 18.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁸ COIS Vietnam Country Report April 2011 (para 18.11) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

²⁹ Human Rights Watch; Montagnard Christians in Vietnam March 2011
<http://www.hrw.org/sites/default/files/reports/vietnam0311Web.pdf>

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

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.

3.7.7 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 (see sections 3.6 and 3.8) Where an individual is able to demonstrate that they have taken part in opposition political activities or anti-government protests and as a result of these will come to the attention of the authorities and face a serious risk of persecution on account of their activities a grant of asylum will be appropriate.

3.8 Minority religious groups

3.8.1 Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution at the hands of the Vietnamese authorities due to their religious beliefs.

3.8.2 *Treatment.* Most estimates suggest more than half of the population of Vietnam is at least nominally Buddhist. The Roman Catholic Church constitutes 7 percent. Several Cao Dai organisations constitute 2.5 to 4 percent, the primary Hoa Hao organisation 1.5 to 3 percent, Protestants 1 to 2 percent, and Muslims less than 0.1 percent of the population. Most other citizens consider themselves nonreligious, although some practice traditional beliefs such as animism and veneration of ancestors and national heroes.³¹

3.8.3 The constitution provides for freedom of worship; however, government restrictions on the organised activities of many religious groups continued. Respect for religious freedom and practice improved in some regards during the reporting period (2010). However, significant problems remained, including occasional harassment and excessive use of force by local government officials against religious groups in some locations. The government maintained a prominent role overseeing all officially recognised religions. Religious groups encountered the greatest restrictions when the government perceived their activities as challenging its rule or the authority of the Communist Party. Persons who belonged to unofficial religious groups were not permitted to speak publicly about their beliefs, but some conducted religious training and services without harassment. Members of registered religious organisations may speak about their beliefs and may persuade others to adopt their religions, but only in their registered places of worship. The government controlled all forms of public assembly; however, several large religious gatherings were allowed during the year (2010).³²

3.8.4 Religious freedom remains restricted. All religious groups and most individual clergy members must join a party-controlled supervisory body and obtain permission for most activities. The Roman Catholic Church can now select its own bishops and priests, but they must be approved by the government. Many restrictions on charitable activities have been lifted, and clergy enjoy greater freedom to travel domestically and internationally. However, several religious leaders and adherents remain in prison.³³

Catholics

3.8.5 Although government statistics indicate there are 6.28 million Catholics, other estimates place the number at eight million. Catholics live throughout the country, with the largest concentrations in the provinces around Ho Chi Minh City, in parts of the Central Highlands,

³¹ US State Department International Religious Freedom report 2010; Vietnam
<http://www.state.gov/g/drl/rls/irf/2010/148903.htm>

³² US State Department International Religious Freedom report 2010; Vietnam
<http://www.state.gov/g/drl/rls/irf/2010/148903.htm>

³³ Freedom House Country Report; Vietnam 2011
<http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8164>

and in the provinces southeast of Hanoi. Catholicism has revived in recent years with newly rebuilt or renovated churches and a growing number of persons who want to be religious workers. Three archbishops, 44 bishops, and nearly 4,000 priests oversaw 26 dioceses. There are more than 10,000 places of worship including six seminaries and two clergy training centres. The number preparing for the priesthood has grown by more than 50 percent over the past five years and now totals 1,500, according to the Vatican.³⁴

- 3.8.6** The government does not permit religious instruction in public schools; however, it permitted clergy to teach at universities in subjects in which they are qualified. Catholic religious education, on weekends or evenings, is permitted in most areas and has increased in recent years. Religious groups are not permitted to operate independent schools beyond preschool and kindergarten. In some areas, especially in the south, Catholic priests and nuns operated kindergartens, orphanages, vocational training centres, and clinics and engaged in a variety of other humanitarian projects. Operating without a legal basis, however, created some difficulties for the church.³⁵
- 3.8.7** 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.³⁶ Disputes over land ownership between local authorities and the Catholic Church continued. In May (2010) hundreds of police used batons and electric prods against Catholics of Con Dau parish who were attempting to bury a woman in a cemetery on land designated by the authorities for development. Dozens of people were injured, and around 60 briefly detained. Two were sentenced in October (2010) to nine and 12 months' imprisonment, and five received non-custodial sentences after being charged with public order offences. Some 40 parishioners fled Vietnam to seek asylum in Thailand.³⁷

Protestants

- 3.8.8** The two largest officially recognised Protestant churches are the Southern Evangelical Church of Vietnam (SECV) and the smaller Evangelical Church of Vietnam North (ECVN). The Vietnam Baptist Convention (Grace Southern Baptist), United World Mission Church, Vietnam Mennonite Church, Vietnam Presbyterian Church, Vietnam Baptist Society (Southern Baptist), Vietnam Seventh-day Adventist Church, and Vietnam Christian Fellowship also are officially recognized. Other Protestant denominations also are present, including the Assemblies of God (officially registered) as well as the United Methodist Church and others registered locally but not registered on the national level.³⁸
- 3.8.9** Estimates of the number of Protestants ranged from government figures of one million to claims by churches of over two million, with the strongest recent growth occurring from 1996 to 2000. Some new converts belong to unregistered evangelical house churches. Based on adherents' estimates, two-thirds of Protestants are members of ethnic minorities, including minority groups in the Northwest Highlands (H'mong, Dzao, Thai, and others) and in the Central Highlands (Ede, Jarai, Sedang, and M'nong, among others).³⁹
- 3.8.10** The 2005 Prime Minister's 'Instruction on Some Tasks Regarding Protestantism' (Instruction) calls on authorities to facilitate the requests of recognised Protestant denominations to construct churches as well as to train and appoint pastors. The Instruction directs authorities to help unrecognised denominations register their congregations so they can worship openly and move toward fulfilling the criteria for full recognition. The Instruction directs authorities in the Central and Northwest Highlands to help groups of Protestants register their religious activities and practice in homes or 'suitable locations,' even if they do

³⁴ US State Department International Religious Freedom report 2010; Vietnam <http://www.state.gov/g/drl/rls/irf/2010/148903.htm>

³⁵ COIS Vietnam Country Report April 2011 (para 17.17) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

³⁶ Freedom House Country Report; Vietnam 2011 <http://www.freedomhouse.org/template.cfm?page=22&year=2011&country=8164>

³⁷ Amnesty International Annual Report 2011; Vietnam <http://www.amnesty.org/en/region/viet-nam/report-2011>

³⁸ COIS Vietnam Country Report April 2011 (para 17.25) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

³⁹ COIS Vietnam Country Report April 2011 (para 17.25) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

not meet the criteria to establish an official congregation, such as having the required minimum number of adherents. The Instruction also directs local officials to allow unregistered 'house churches' to operate so long as they are 'committed to follow regulations' and are not affiliated with separatist political movements.⁴⁰

- 3.8.11** Despite areas of progress during the reporting period, significant problems remained, especially at the provincial and village levels. These included the slow pace, in some cases due to government inaction, of registration of Protestant congregations in the North and the Northwest Highlands. Inconsistent application of procedures for registration caused some of the above-mentioned problems. In some areas, Protestant congregations experienced harassment. In certain cases recognised and unrecognised Protestant groups were able to overcome local harassment or to overturn negative local decisions after they appealed to higher-level authorities.⁴¹
- 3.8.12** In many provinces, Protestant churches were required to submit lists of all worshippers as part of the registration process, although the legal framework on religion does not require this information. This practice appeared to be widespread. In some cases authorities removed this requirement in response to the protests of the registering groups; in other cases the extra-legal requirement was maintained, slowing the registration process.⁴²
- 3.8.13** Protestants also faced land rights issues. The government returned a small number of previously confiscated properties to recognised Protestant organisations, but other disputes continued. As in previous years, there were indications that provincial officials rebuked local authorities for harassing house churches in contravention of the Prime Minister's Instruction on Protestantism.⁴³

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

- 3.8.14 Conclusion.** Although there are restrictions on religious freedom and the Vietnamese authorities seek to control religious groups, the treatment individual members of officially registered religious groups suffer on account of these restrictions does not generally amount to persecution. The majority of claimants from this category of claim are therefore unlikely to qualify for asylum or Humanitarian Protection.
- 3.8.15** Members of unregistered religious groups face more difficulties than members of registered communities and individuals may face intimidation and harassment. The levels of ill-treatment suffered will vary depending on region and the attitude of local officials and in the majority of cases this will not amount to persecution. Therefore a grant of asylum or Humanitarian Protection will not be appropriate. However, in some instances, in particular cases involving ethnic minorities belonging to unregistered protestant groups, the level of ill-treatment may amount to persecution and therefore in these cases a grant of asylum may be appropriate.

3.9 Victims of trafficking

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

3.9.2 Treatment Vietnam is a source and, to a lesser extent, a destination country for men, women, and children subjected to sex trafficking and conditions of forced labour.

⁴⁰ COIS Vietnam Country Report April 2011 (para 17.26) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁴¹ COIS Vietnam Country Report April 2011 (para 17.27) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁴² COIS Vietnam Country Report April 2011 (para 17.27) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁴³ COIS Vietnam Country Report April 2011 (para 17.27) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

Vietnamese women and children subjected to forced prostitution throughout Asia are often misled by fraudulent labour opportunities and sold to brothels on the borders of Cambodia, China, and Laos, with some eventually sent to third countries, including Thailand and Malaysia. Some Vietnamese women are forced into prostitution in Thailand, Malaysia, Singapore, and in Europe.⁴⁴

- 3.9.3** In both sex trafficking and labour trafficking, debt bondage, confiscation of identity and travel documents, and threats of deportation are commonly utilised to intimidate victims. Some Vietnamese women moving to China, Taiwan, Hong Kong, Macau, and increasingly to South Korea as part of internationally brokered marriages are subsequently subjected to conditions of forced labour (including as domestic servants), forced prostitution, or both.⁴⁵
- 3.9.4** The Government of Vietnam does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. During the year, the government passed new anti-trafficking legislation and a new five-year national action plan on trafficking. Nevertheless, while a number of structural reforms were carried out during the year, there remained a lack of tangible progress in the prosecution of trafficking offenders and protection of trafficking victims during the reporting period.⁴⁶
- 3.9.5** 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 the reporting period, including in particular labour trafficking. Authorities did not report any investigations or prosecutions of cases of internal trafficking and did not provide information to substantiate reports that it had prosecuted 14 cases of labour trafficking. 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.⁴⁷
- 3.9.6** 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 did not report any criminal prosecutions or convictions of officials for trafficking related complicity during the year. Government and NGO sources report that lack of financial resources, inadequately trained personnel, cumbersome mechanisms for interagency cooperation, poorly coordinated enforcement of existing legal instruments across the country, and the current legal structure that is ill-suited to supporting the identification and prosecution of trafficking cases remain obstacles to greater progress in the country's anti-trafficking efforts.⁴⁸
- 3.9.7** The Vietnamese government sustained some efforts to protect victims of transnational sex trafficking and outlined additional victim protection plans in its new anti-trafficking law, though it did not make sufficient efforts during the year to identify or protect victims of labour trafficking or internal trafficking. Border guards and police at the district and provincial levels received limited training about identification of trafficking victims and handling of cases, which in some cases improved some officers' ability to monitor and investigate trafficking cases, but the lack of adequate training reportedly led to poor investigations and techniques that were harmful to some victims.⁴⁹
- 3.9.8** The government's Vietnamese Women's Union (VWU), in partnership with NGOs, continued to operate three trafficking shelters in Vietnam's largest urban areas, which provided counselling and vocational training to female sex trafficking victims. The VWU and border guards also operate smaller shelters that provide temporary assistance to migrants in need of assistance at some of the most heavily used crossing points. The government,

⁴⁴ US State Department Trafficking in persons report 2011; Vietnam <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm>

⁴⁵ US State Department Trafficking in persons report 2011; Vietnam <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm>

⁴⁶ US State Department Trafficking in persons report 2011; Vietnam <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm>

⁴⁷ US State Department Trafficking in persons report 2011; Vietnam <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm>

⁴⁸ US State Department Trafficking in persons report 2011; Vietnam <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm>

⁴⁹ US State Department Trafficking in persons report 2011; Vietnam <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm>

however, lacks the resources and technical expertise to adequately support shelters, and as a result, in many areas shelters are rudimentary, underfunded, and lack appropriately trained personnel. Trafficking victims also are inappropriately housed at times in MOLISA shelters co-located with those of drug users' rehabilitation and reintegration of individuals leaving prostitution. There are no shelters or services specifically dedicated to assisting male victims of trafficking or victims of labour trafficking.⁵⁰

3.9.9 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 the reporting period. 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.⁵¹

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

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

3.9.11 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.

3.9.12 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.

3.9 Prison conditions

3.9.1 Applicants may claim that they cannot return to Vietnam due to the fact that there is a

⁵⁰ US State Department Trafficking in persons report 2011; Vietnam <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm>

⁵¹ US State Department Trafficking in persons report 2011; Vietnam <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm>

serious risk that they will be imprisoned on return and that prison conditions in Vietnam are so poor as to amount to torture or inhuman treatment or punishment.

- 3.9.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.
- 3.9.3** **Consideration.** Prison conditions could be austere but generally were not life threatening. Overcrowding, insufficient diet, lack of clean drinking water, and poor sanitation remained serious problems. Prisoners generally were required to work but received no wages. Foreign diplomats observed spartan but clean living areas and generally acceptable labour conditions during a November 2009 visit to Nam Ha Prison in Ha Nam Province. Prisoners sometimes were placed in solitary confinement, where they were deprived of reading and writing materials for periods of up to several months. Family members made credible claims that prisoners received benefits by paying bribes to prison officials or undertaking hunger strikes. Prisoners had access to basic health care, with additional medical services available at district or provincial hospitals. However, in many cases officials prevented family members from providing medication to prisoners.⁵²
- 3.9.4** The total number of prisoners and detainees was not publicly available. Pretrial detainees were held separately from convicted prisoners. Juveniles were held separately from adults in prison, but on rare occasions they were held with adults in detention for short periods of time due to unavailability of space. Men and women were held separately. Political prisoners were typically sent to specially designated prisons that also held other regular criminals, and in most cases political prisoners were kept separate from non-political prisoners. Some high-profile political prisoners were kept in complete isolation from all other prisoners. While prison sentences could be extremely lengthy, prisoners were not forced to serve beyond the maximum sentence for their charged offence.⁵³
- 3.9.5** 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. Prisoners did not have the right to manifest their religious beliefs or practices in public. Roman Catholic priest Thaddeus Nguyen Van Ly (released in March), Le Thi Cong Nhan, and Nguyen Van Dai were allowed to keep the Bibles given to them by visiting foreign delegations, but in general prisoners were denied access to religious books and scriptures. Prisoners were allowed to submit complaints to prison management and judicial authorities, but their complaints were routinely ignored.⁵⁴
- 3.9.6** Authorities allowed foreign diplomats and a foreign delegation to make limited prison visits and meet with prisoners in various prisons. The press was permitted limited visits to prisons, but state control of the media restricted reporting on living conditions. In the past the International Committee of the Red Cross was permitted to visit prisons, but no such visits occurred during the year (2010).⁵⁵
- 3.9.7** **Conclusion** Whilst prison conditions in Vietnam are poor with overcrowding, insufficient diet, and poor sanitation being a particular problem, conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Vietnam a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention, the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the article 3 threshold a grant of Humanitarian

⁵² US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

⁵³ US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

⁵⁴ US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

⁵⁵ US State Department Human Rights report 2010; Vietnam <http://www.state.gov/g/drl/rls/hrrpt/2010/eap/154408.htm>

Protection will be appropriate.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 With particular reference to Vietnam the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Vietnam. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

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

4.4.2 Vietnam's health system retains its socialist basis, with the state health system playing a key role in health service provision. Services are delivered by both private providers and an extensive public network of village health workers, commune health stations, inter-communal polyclinics, district hospitals, district preventive health centres, provincial hospitals, and regional, central and specialist hospitals.⁵⁶

4.4.3 The 1056 public hospitals provide 17.24 beds per 10 000 residents and deliver most inpatient care; the 49 private hospitals provide only 0.48 beds per 10 000 residents. Evidence on quality standards is limited, but widely acknowledged to need improvement. Inequities are evident in the inpatient admission rate and the average length of hospital stay, both of which are nearly twice as high for the highest quintile compared with the lowest. A significant volume of outpatient services are provided by private hospitals and the 30 000 private general practitioner clinics. There is a serious imbalance in the distribution of private practitioners, with a higher concentration in areas with higher living standards.⁵⁷

4.4.4 In the face of economic difficulties, the Vietnamese Government has decided to increase the number of the beneficiaries of free medical charges for poor households and those in mountainous areas, to enhance malaria control, to extend the aid to purchase medical insurance for poor families, war invalids and soldiers. The State has attached great importance to primary health care for the community.⁵⁸

4.4.5 Although the country faces challenges to meet its universal access targets, Vietnam has

⁵⁶ COIS Vietnam Country Report April 2011 (para 24.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁵⁷ COIS Vietnam Country Report April 2011 (para 24.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁵⁸ COIS Vietnam Country Report April 2011 (para 24.03) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

made significant progress in some areas. Expansion of coverage and access to quality HIV treatment and care have been considerably improved in those areas with high HIV prevalence since the targets were set in 2006. There has been a 50% increase in the number of eligible pregnant women receiving antiretroviral treatment, and a six-fold increase in access to antiretroviral treatment. Methadone pilot sites started operation in two provinces in 2008.⁵⁹

- 4.4.6** The country has disability benefits for persons with mental disorders. Primary care is provided for maintenance and rehabilitation. Traditional medicines are routinely used for treatment. Community based mental health care is integrated in the primary care system. Effective psychosocial rehabilitation is still to develop. Proper integration of different facilities is lacking. Out of the 64 provinces and cities in the country, 47 have a psychiatric department in a general hospital and 29 have a psychiatric hospital. However, the level of services and access fall as one moves from province to district to community.⁶⁰
- 4.4.7** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** There is no policy which precludes the enforced return to Vietnam of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.3** Vietnamese nationals may return voluntarily to any region of Vietnam at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes 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.
- 5.4** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Vietnam. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Vietnamese nationals wishing to avail themselves of this opportunity for assisted return to Vietnam should be put in contact with Refugee Action Details can be found on Refugee Action's web site at:

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

Country Specific Litigation Team
Immigration Group
UK Border Agency
November 2011

⁵⁹ COIS Vietnam Country Report April 2011 (para 24.06) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

⁶⁰ COIS Vietnam Country Report April 2011 (para 24.02) <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>