

**Refugee Review Tribunal  
AUSTRALIA**

**RRT RESEARCH RESPONSE**

**Research Response Number:** VNM32395  
**Country:** Vietnam  
**Date:** 11 October 2007

Keywords: Vietnam – Returnees – Overseas criminal records – Former Republic of Vietnam  
– Citizenship – Political opinion – Overseas demonstrations

This response was prepared by the Research & Information Services Section of the Refugee Review Tribunal (RRT) after researching publicly accessible information currently available to the RRT within time constraints. This response is not, and does not purport to be, conclusive as to the merit of any particular claim to refugee status or asylum. This research response may not, under any circumstance, be cited in a decision or any other document. Anyone wishing to use this information may only cite the primary source material contained herein.

---

**Questions**

1. Are there any reports of people with Australian criminal records (such as drug dealing) are being harmed, arrested or imprisoned on their return to Vietnam?
2. What is the treatment of supporters of the previous regime?
3. Are there restrictions/harassment of people expressing their political opinion?
4. What is the treatment of Buddhists in Vietnam?
5. Question deleted.
6. Can Post comment on the operation of Article 25 of Law No. 07/1998/QH10, and if it's a law of general application?
7. Is this law used in practice to suppress anti-government activities?
8. Deleted.
9. Deleted.

**RESPONSE**

1. Are there any reports of people with Australian criminal records (such as drug dealing) are being harmed, arrested or imprisoned on their return to Vietnam?
2. What is the treatment of supporters of the previous regime?
3. Are there restrictions/harassment of people expressing their political opinion?
4. What is the treatment of Buddhists in Vietnam?
5. Question deleted.
- Can Post provide us with a copy of this law?
6. Can Post comment on the operation of Article 25 of Law No. 07/1998/QH10, and if it's a law of general application?
7. Is this law used in practice to suppress anti-government activities?
8. Deleted.

## 9. Deleted.

A search through the Tribunals resources did not locate any definitive and current information. Consequently, the questions were sent to DFAT for their advice – see Attachment 1 & Attachment 2 (follow-up questions).

On 8 October 2007 DFAT sent a reply regarding the submitted questions;

Cable provides responses to questions at para 6 of reftel:

- A. Not to our knowledge.
- B. People who worked for the South Vietnamese Government (SVG) and/or US agencies in Vietnam during the war were treated harshly following the fall of the SVG in 1975. Those who fled Vietnam are now being welcomed back by the Government, on condition that they engage constructively with Vietnam and do not seek to embarrass the country, the Government, or the Communist Party.
- C. The Constitution of Vietnam permits freedom of association and freedom of expression. In practice, however, those who express political dissent against the ruling regime, such as calls for a multiparty democracy or the end of the ruling authority of the Communist Party of Vietnam, often receive harsh treatment. Several political dissidents have been gaoled, in 2007 alone, after calling publicly for such changes.
- D. Buddhist monks affiliated with the Government-sanctioned 'Sangha Buddhist' organisation generally do not receive any form of biased treatment or harassment. Monks affiliated some other Buddhist sects can face harassment and/or ongoing movement restrictions.
- E. Deleted.
- F. A DIAC contact at the Ministry of Justice said the Vietnamese Government had never revoked citizenship under Article 25 of law no. 7/1998/QH10. A copy of the implementing decree is attached below.
- No.

2. DIAC at Post has been consulted in the drafting of this cable.  
(Department of Foreign and Trade 2007, *DFAT Report 706 – Vietnam: RRT Information Request: VNM32395*, 8 October – Attachment 3).

The Post sent a copy of Decree No. 104/1998/ND-CP of December 31, 1998 detailing and guiding the implementation of the law on Vietnamese nationality;

### **DECREE No. 104/1998/ND-CP OF DECEMBER 31, 1998 DETAILING AND GUIDING THE IMPLEMENTATION OF THE LAW ON VIETNAMESE NATIONALITY**

#### THE GOVERNMENT

Pursuant to the Law on Organization of the Government of September 30, 1992;  
Pursuant to Law No. 07/1998/QH10 on Vietnamese Nationality of May 20, 1998;  
At the proposal of the Minister of Justice,

DECREES:

Chapter I

## GENERAL PROVISIONS

### **Article 1.-** Application scope:

This Decree details and guides the implementation of a number of Articles of the Law on Vietnamese Nationality and prescribes the procedures and order for settlement of applications for naturalization in Vietnam, Vietnamese nationality restoration or relinquishment, the granting of certificates of Vietnamese nationality, certificates of Vietnamese nationality loss and the annulment of decisions on granting or deprivation of Vietnamese nationality.

### **Article 2.-** The responsibilities of the Ministry of Justice regarding nationality

The Ministry of Justice shall assist the Government in performing the State management over Vietnamese nationality and have the following tasks and powers:

1. To elaborate and submit to the competent State agency(ies) for promulgation legal documents on Vietnamese nationality and promulgate according to its own competence documents guiding the implementation thereof;
2. To guide the People's Committees of the provinces and centrally-run cities (hereafter referred to collectively as the provincial People's Committees), coordinate with the Ministry for Foreign Affairs and through which to guide the Vietnamese diplomatic representations and consular offices abroad (hereafter referred to as the Vietnamese diplomatic missions and consular offices) in handling the Vietnamese nationality-related matters;
3. To organize and direct the popularization and education of the legislation on Vietnamese nationality;
4. To conduct the State statistics on Vietnamese nationality;
5. To issue and uniformly manage the forms of papers and books regarding Vietnamese nationality;
6. To inspect, examine and settle according to its competence complaints and denunciations related to the settlement of Vietnamese nationality matters;
7. To coordinate with the Ministry for Foreign Affairs in proposing the signing of international treaties on nationality or in relation to nationality; undertake international cooperation in the field of nationality.

### **Article 3.-** The responsibilities of the ministries, ministerial-level agencies and the agencies attached to the Government regarding nationality

1. The ministries, ministerial-level agencies and the agencies attached to the Government shall, within their respective tasks and powers, have to coordinate with the Ministry of Justice in performing tasks and powers regarding Vietnamese nationality in accordance with the provisions of this Decree and other provisions of law.
2. The Ministry for Foreign Affairs and the Ministry of Public Security shall have to direct and guide their attached agencies in settling Vietnamese nationality-related matters according to the procedures and order prescribed in this Decree.

### **Article 4.-** The responsibilities of the provincial People's Committees and the Vietnamese diplomatic missions and consular offices regarding nationality

1. The provincial People's Committees shall have to receive, process and propose the settlement of applications for naturalization in Vietnam, Vietnamese nationality restoration or relinquishment; consider and grant the certificates of Vietnamese nationality and certificates of Vietnamese nationality loss; consider and propose the annulment of decisions on granting or deprivation of Vietnamese nationality.

The provincial/municipal Justice Services shall assist the provincial People's Committees in performing the functions and tasks stipulated in this Clause.

2. The Vietnamese diplomatic missions and consular offices shall have to receive, process and propose the settlement of applications for Vietnamese nationality restoration or relinquishment; consider and grant the certificates of Vietnamese nationality and certificates of Vietnamese nationality loss; consider and propose the annulment of decisions on granting or deprivation of Vietnamese nationality.

The Vietnamese diplomatic missions and consular offices shall have to receive, process and propose the settlement of applications for naturalization in Vietnam in particular cases specified in Point b, Clause 1, Article 9 of this Decree.

**Article 5.-** The validity of papers issued or certified by foreign agencies

The papers enclosed with the applications for settlement of Vietnamese nationality-related matters, which have been issued or certified by foreign competent agencies, must be legalized by consular procedures; papers in foreign language(s) must be translated into Vietnamese. The translations must be notarized according to provisions of Vietnamese law.

**Article 6.-** Filing of dossiers and payment of fee(s)

1. Persons applying for the granting, restoration or relinquishment of Vietnamese nationality, for certificates of Vietnamese nationality or certificates of Vietnamese nationality loss, who reside in the country, shall file their dossiers at the Justice Service of the provinces or cities where they reside; if they reside abroad, they shall file their dossiers at the Vietnamese diplomatic mission or consular office in charge of the territory where they reside.

2. When filing dossiers applying for settlement of Vietnamese nationality-related matters as specified in Clause 1 of this Article, applicants shall have to pay fee(s). The levels, management and use of fees shall be jointly stipulated by the Minister of Finance, the Minister of Justice and the Minister for Foreign Affairs.

Persons applying for naturalization or restoration of Vietnamese nationality, who have done meritorious services to the cause of building and defending the Vietnamese fatherland or are helpful to the economic, social or scientific development or national defense and security of the Socialist Republic of Vietnam, shall be exempt from the fee(s).

**Article 7.-** Application of international treaties

In cases where an international treaty which the Socialist Republic of Vietnam has signed or acceded to contains provisions different from those of this Decree, the provisions of such treaty shall apply.

## Chapter II

### THE PROCEDURES AND ORDER FOR SETTLING VIETNAMESE NATIONALITY-RELATED MATTERS

#### Section 1. NATURALIZATION IN VIETNAM

**Article 8.-** Dossiers applying for naturalization in Vietnam

1. Foreigners who apply for Vietnamese nationality shall have to make applications according to the form set by the Ministry of Justice. Enclosed with an application for naturalization in Vietnam must be the following papers:

- a) The copy(ies) of the applicant's birth certificate or other papers of substitute value, including those of his/her minor children, in cases where the application is made also for such children;
- b) The curriculum vitae made according to the form set by the Ministry of Justice;
- c) The judicial background certificate issued by the Vietnamese competent agency in the locality where the applicant resides; in cases where the applicant does not reside in Vietnam, the certificate of the judicial background issued by the competent agency of the country of which the applicant is a citizen or where the applicant resides, shall be required;

- d) The certificate of Vietnamese language acquisition, including knowledge of Vietnamese culture, history and law as prescribed by the Ministry of Education and Training and the Ministry of Justice;
- e) The paper certifying the continuous period of residence in Vietnam issued by the People's Committee of the commune, ward or township (hereafter referred to as the commune People's Committee) where the applicant resides; if the applicant has previously resided in other localities, the papers certifying such previous residence period issued by the commune People's Committees of such localities are also required;
- f) The paper certifying the domicile, occupation, lawful income or property status in Vietnam issued by the People's Committee of the commune where the applicant resides;
- g) The written commitment to relinquish foreign nationality (if any) when he/she is naturalized in Vietnam.

For case of automatic loss of foreign nationality upon the naturalization in Vietnam, the above-said written commitment shall be substituted by a paper of the diplomatic mission or consular office of the country, of which the applicant is a citizen, certifying that such country's law stipulates the automatic nationality loss in this case.

In special cases where persons applying for naturalization in Vietnam wish to retain their foreign nationality(ies) in accordance with Clause 3, Article 20 of the Law on Vietnamese Nationality, they shall not have to submit the paper prescribed in this Point, but shall have to make applications for retention of their foreign nationality(ies) according to the form set by the Ministry of Justice, which clearly state the reason(s) for retention of foreign nationality(ies) and commitment that such foreign nationality retention shall not hinder the performance of basic rights and obligations of Vietnam citizens.

2. Applicants for naturalization in Vietnam must have Vietnamese proper names; and such Vietnamese names must be clearly written in their applications for naturalization in Vietnam.

3. Each application for naturalization in Vietnam and papers enclosed therewith of a foreigner residing in Vietnam must be made in 4 dossier sets; for a foreigner who does not reside in Vietnam but falls within the exceptional cases specified in Point b, Clause 1, Article 9 of this Decree, such an application and enclosed papers shall be made only in 3 dossier sets.

**Article 9.-** Exemption or reduction of conditions for naturalization in Vietnam

1. The exemption or reduction of a number of conditions for naturalization in Vietnam is stipulated as follows:

a) Persons whose spouses, parents or children are Vietnamese citizens; and those who have been awarded orders, medals and/or other honorable titles by the State of the Democratic Republic of Vietnam, the Provisional Revolutionary Government of the Republic of South Vietnam, the State of the Socialist Republic of Vietnam or have made outstanding contributions to the cause of building and defending the Vietnamese fatherland, shall be entitled to 2-year reduction of the required length of continuous residence in Vietnam and exempt from conditions regarding the Vietnamese language knowledge and ability to ensure their living in Vietnam.

b) In particular cases where the naturalization in Vietnam of foreigners is especially beneficial to the economic, social and/or scientific development and/or national defense and security of the Socialist Republic of Vietnam, such foreigners shall be exempt from conditions regarding the length of their residence in Vietnam, Vietnamese language knowledge and ability to ensure living in Vietnam.

2. Persons who are entitled to exemption or reduction of conditions for naturalization in Vietnam as stipulated in Clause 1 of this Article shall not have to submit corresponding papers prescribed in Clause 1, Article 8 of this Decree, but have to produce papers to prove the eligible conditions as stipulated in Clause 1 of this Article.

**Article 10.-** The procedures and order for settlement at the provincial level

1. Within 4 months after the provincial/municipal Justice Services receive complete and valid dossiers, the provincial People's Committees shall have to direct the Justice Services in verifying the dossiers, then submitting them to the provincial People's Committees for consideration and conclusion, and request the Ministry of Justice to settle such dossiers.

2. The order for settling the dossiers is stipulated as follows:

a) Within 07 days after receiving a complete and valid dossier and collecting fee(s), the provincial/municipal Justice Service shall send a written request to the Police of the same level (hereafter referred to as the provincial Police), together with 01 dossier set for personal status verification.

b) Within 30 subsequent days, the provincial/municipal Justice Service shall have to verify the dossier, compare the applicant's statements, certifications and papers with the conditions for naturalization in Vietnam.

In cases where it deems necessary to make additional verification of actual conditions of the applicant for naturalization in Vietnam (such as his/her capacity for acts, the length of his/her residence in Vietnam, the capability to ensure living in Vietnam or Vietnamese language knowledge), the Justice Service shall coordinate with the specialized agencies in conducting such verification.

c) Within 60 days for the provincial Police and 30 days for other specialized agencies after receiving the provincial/municipal Justice Service's request, such agencies shall have to conduct the verification according to their respective specialized functions and reply the Justice Service in writing.

d) Right after receiving the results of the verification by the provincial Police and other specialized agencies, the Justice Service shall draft and submit to the president of the provincial People's Committee for consideration, conclusion and signing a written settlement request, which shall be forwarded to the Ministry of Justice together with 02 sets of the applicant's dossier applying for naturalization in Vietnam.

3. In cases where the president of the provincial People's Committee concludes that the applicant is unqualified for naturalization in Vietnam, the Justice Service shall have to notify in writing the applicant thereof; if the applicant disagrees with such conclusion, he/she shall be entitled to lodge a complaint according to law.

**Article 11.-** The procedures and order for settlement at Vietnamese diplomatic missions and consular offices

1. Within 03 months after receiving a complete and valid dossier and collecting fee for particular cases specified in Point b, Clause 1, Article 9 of this Decree, a Vietnamese diplomatic mission or consular office shall have to consider and verify the dossier, compare the statements, certifications and papers of the applicant with the conditions for naturalization in Vietnam, then make and send written conclusion and request for settlement of the dossier applying for naturalization in Vietnam to the Ministry for Foreign Affairs before being forwarded to the Ministry of Justice together with 02 sets of the applicant's dossier applying for naturalization in Vietnam.

2. In cases where it concludes that the applicant is unqualified for naturalization in Vietnam, the Vietnamese diplomatic mission or consular office shall notify in writing the applicant thereof; if the applicant disagrees with such conclusion, he/she shall be entitled to lodge a complaint according to law.

**Article 12.-** The procedures and order for settlement at the central level

Within 30 days after receiving a written request of a provincial People's Committee or a Vietnamese diplomatic mission or consular office, the Ministry of Justice shall have to re-examine the dossier and if it finds that the dossier is complete and the applicant is fully

qualified for naturalization in Vietnam as prescribed by law, it shall submit a written report to the Prime Minister to get the latter's authorization to sign the report to the State President for consideration and decision.

In cases where it deems that the dossier is incomplete or contains matters that need to be clarified, the Ministry of Justice shall request in writing the provincial People's Committee or, through the Ministry for Foreign Affairs, the Vietnamese diplomatic mission or consular office to complete the dossier or make the additional verification. For such cases, the above-said time limit shall be 75 days.

Within 30 days after receiving the Ministry of Justice's request, the provincial People's Committee, the Vietnamese diplomatic mission or consular office shall complete the dossier or clarify the requested matters and reply the Ministry of Justice in writing.

2. Right after getting the Prime Minister's authorization, the Ministry of Justice shall have to notify the provincial People's Committee or the Vietnamese diplomatic mission or consular office of the completion of the dossier applying for the naturalization in Vietnam by the applicant. In cases of necessity, the provincial People's Committee or the Vietnamese diplomatic mission or consular office shall issue the naturalization applicant a paper certifying the dossier completion, so that the latter can fill in the procedures for relinquishment of his/her foreign nationality.

3. Within 07 days after getting the Prime Minister's authorization, or in cases of necessity, after receiving the certificate of relinquishment of foreign nationality of the applicant, the Ministry of Justice shall have to complete the dossier; the Minister of Justice shall, under the Prime Minister's authorization, sign a report to the State President for consideration and decision, together with 01 set of the applicant's dossier applying for naturalization in Vietnam. For special cases where the applicant wishes to retain his/her foreign nationality, the report must clearly state such wish.

If the applicant is naturalized in Vietnam, the State President's decision shall write his/her Vietnamese name.

## Section 2. VIETNAMESE NATIONALITY RESTORATION

### **Article 13.-** Dossiers applying for Vietnamese nationality restoration

1. Persons applying for Vietnamese nationality restoration shall make applications according to form set by the Ministry of Justice. Enclosed with an application for Vietnamese nationality restoration must be the following papers:

- a) The curriculum vitae made according to the form set by the Ministry of Justice;
- b) The judicial background certificate issued by the competent agency of the country of which the applicant is a citizen or a resident;
- c) The paper or document proving that the applicant once held the Vietnamese nationality.

2. Apart from the papers prescribed in Clause 1 of this Article, the applicant shall also have to submit one of the following papers:

- a) The paper of the Vietnamese diplomatic mission, consular office or the Commission for Overseas Vietnamese certifying that the applicant has filed an application for repatriation to Vietnam;
- b) The paper or document proving that the applicant's spouse, offspring, father or mother is a Vietnamese citizen;
- c) The paper or document proving that the applicant was awarded orders, medals and/or other honorable titles by the State of the Democratic Republic of Vietnam, the Provisional Revolutionary Government of the Republic of South Vietnam, the State of the Socialist Republic of Vietnam, or certifying that the applicant has done meritorious services to the cause of building and defending the Vietnamese fatherland;

d) The paper or document proving that the restoration of the applicant's Vietnamese nationality shall be beneficial to the economic, social and/or scientific development or national defense and security of the Socialist Republic of Vietnam.

3. The persons applying for Vietnamese nationality restoration shall have to resume their previous Vietnamese names and clearly write them on the applications for Vietnamese nationality restoration; if they wish to change their names, they must clearly state the reason(s) therefor.

4. An application for Vietnamese nationality restoration and the papers enclosed therewith of a person residing in Vietnam must be made in 4 dossier sets; in cases where the applicant resides abroad, his/her application and enclosed papers must be made in 3 dossier sets.

**Article 14.-** The procedures and order for settlement at the provincial level

1. Within 2 months after the provincial/municipal Justice Service receives a complete and valid dossier, the provincial People's Committee shall have to direct the Justice Service in verifying the dossier, then submitting it to the former for consideration, conclusion and requesting the Ministry of Justice to settle such dossier.

2. The order for settling dossiers is stipulated as follows:

a) Within 07 days after receiving a complete and valid dossier and collecting the fee(s), the provincial/municipal Justice Service shall send a written request to the provincial Police together with 01 dossier set for personal status verification.

b) Within 15 subsequent days, the provincial/municipal Justice Service shall have to verify the dossier, compare the statements, certifications and papers of the applicant with the conditions for Vietnamese nationality restoration.

In cases where it deems necessary to make an additional verification of actual conditions of the person applying for Vietnamese nationality restoration (such as his/her repatriation, relationship with Vietnamese citizens, meritorious services or ability to contribute to the cause of building and defending the Vietnamese fatherland), the provincial/municipal Justice Service shall coordinate with the specialized agencies in conducting such verification.

c) Within 30 days after receiving the provincial/municipal Justice Service's requests, the provincial Police and other specialized agencies shall have to conduct the verification according to their respective specialized functions and reply the provincial/municipal Justice Service in writing.

d) Right after receiving the verification results from the provincial Police and other specialized agencies, the Justice Service shall draft and submit to the President of the provincial People's Committee for consideration, conclusion and signing a written request, which shall be sent to the Ministry of Justice together with 02 sets of the applicant's dossier applying for Vietnamese nationality restoration.

3. In cases where the president of the provincial People's Committee concludes that the applicant is unqualified for Vietnamese nationality restoration, the provincial/municipal Justice Service shall notify in writing the applicant thereof; if the applicant disagrees with such conclusion, he/she shall be entitled to lodge a complaint according to law.

**Article 15.-** The procedures and order for settlement at the Vietnamese diplomatic missions and consular offices

1. Within 02 months after receiving a complete and valid dossier and collecting the fee(s), the Vietnamese diplomatic mission or consular office shall have to examine and verify such dossier, compare the applicant's statements, certifications and papers with the conditions for Vietnamese nationality restoration and make written conclusion thereon, then send a written request for the settlement of the dossier of application for Vietnamese nationality restoration to the Ministry for Foreign Affairs, which shall be forwarded to the Ministry of Justice



together with 02 sets of the involved party's dossier of application for Vietnamese nationality restoration.

2. In cases where it concludes that the applicant is unqualified for Vietnamese nationality restoration, the Vietnamese diplomatic mission or consular office shall notify in writing the applicant thereof; if the applicant disagrees with such conclusion, he/she shall be entitled to lodge a complaint according to law.

**Article 16.-** The procedures and order for settlement at the Central level

1. Within 30 days after receiving the written request of the provincial People's Committee or the Vietnamese diplomatic mission or consular office, the Ministry of Justice shall have to re-examine the dossier, if it finds that the dossier is complete and the applicant is fully qualified for Vietnamese nationality restoration according to the provisions of law, it shall report in writing to the Prime Minister to get the latter's authorization to sign a report to the State President for consideration and decision.

In cases where it deems that the dossier is incomplete or contains matters that need to be clarified, the Ministry of Justice shall request the provincial People's Committee, or request, through the Ministry for Foreign Affairs, the Vietnamese diplomatic mission or consular office to complete the dossier or make additional verification. In these cases, the above-said time limit shall be 60 days.

2. Within 15 days after receiving the Ministry of Justice's request, the provincial People's Committee or the Vietnamese diplomatic mission or consular office shall have to complete the dossier or additional verification, and reply the Ministry of Justice in writing.

3. Within 07 days after getting the Prime Minister's authorization, the Ministry of Justice shall complete the dossier, the Minister of Justice shall, under the Prime Minister's authorization, sign a report to the State President for consideration and decision together with 01 set of the involved party's dossier of application for Vietnamese nationality restoration.

If the applicant's Vietnamese nationality restoration is permitted, the State President's decision shall write the applicant's Vietnamese name.

### Section 3. GRANTING OF VIETNAMESE NATIONALITY CERTIFICATES

**Article 17.-** The dossiers applying for Vietnamese nationality certificates

1. Vietnamese citizens applying for Vietnamese nationality certificates shall have to make applications according to the form set by the Ministry of Justice which clearly state the purpose(s) of their application therefor.

Enclosed with the applications for Vietnamese nationality certificates must be copies of identity cards or Vietnamese passports which are still valid. Upon filing the applications, the applicants shall have to produce their identity cards or passports for checking.

In cases where an applicant has no identity card or passport, he/she must submit together with the application for Vietnamese nationality certificate the certified copy of one of the following papers to prove his/her Vietnamese nationality:

- a) The paper proving the applicant has been naturalized in Vietnam;
- b) The paper proving the applicant's Vietnamese nationality has been restored;
- c) The decision recognizing the adoption of a child who is a foreigner;
- d) The certificate of citizen registration issued by a Vietnamese diplomatic mission or consular office;
- e) The household registration book;
- f) The latest voter's card;
- g) The paper proving Vietnamese nationality of his/her parents; or of either of them;

h) The birth certificate;

i) The paper and/or document proving that the applicant holds Vietnamese nationality under the international treaty which Vietnamese has signed or acceded to; or

j) In cases where he/she has none of the papers prescribed in Points from a to i of this Clause, the applicant shall submit an affidavit on his/her date of birth, place of birth, native land, place of residence, full name, age, nationality, his/her parents' place(s) of residence and his/her family origin. Such an affidavit must be testified by at least two persons who know well the information stated therein and certified by the People's Committee of the commune where the applicant was born.

2. The application for Vietnamese nationality certificate and the papers enclosed therewith as prescribed in Clause 1 of this Article shall be made in 02 dossier sets.

**Article 18.-** The procedures and order for settlement at the provincial People's Committees

1. Within 30 days after receiving a complete and valid dossier and collecting the fee(s), the provincial/municipal Justice Service shall have to verify the dossier. If it deems that the dossier is complete, the applicant's statements, certifications and papers are truthful and the applicant has not yet lost Vietnamese nationality, the Justice Service shall request in writing the president of the provincial People's Committee to consider and grant Vietnamese nationality certificate.

Right after the president of the provincial People's Committee signs Vietnamese nationality certificate, the provincial/municipal Justice Service shall deliver or send such certificate to the applicant.

In cases where it deems that the dossier needs to be further verified, the provincial/municipal Justice Service shall send a written request together with 01 dossier set to the provincial Police for such verification. For such a case, the above-said time limit shall be 60 days.

Within 30 days after receiving the Justice Service's request, the provincial Police shall have to verify and reply the former in writing.

2. In cases where the president of the provincial People's Committee concludes that the applicant is unqualified and shall not be granted Vietnamese nationality certificate, the provincial/municipal Justice Service shall notify in writing the applicant thereof; if the applicant disagrees with such conclusion, he/she shall be entitled to lodge a complaint according to law.

3. Every three months, the provincial/municipal Justice Services shall report to the Ministry of Justice on the situation of granting of Vietnamese nationality certificates.

**Article 19.-** The order for settlement at the Vietnamese diplomatic missions and consular offices

1. Within 30 days after receiving a complete and valid dossier, the Vietnamese diplomatic or consular office shall verify the dossier. If deeming that the dossier is complete, the applicant's statements, certifications and papers are truthful and the applicant has not yet lost Vietnamese nationality, the head of the Vietnamese diplomatic or consular office shall sign the Vietnamese nationality certificate and deliver or send it to the applicant.

In cases where it deems that the dossier needs to be further verified, the Vietnamese diplomatic mission or consular office shall coordinate with the domestic specialized agencies in such verification. For such a case, the above-said time limit shall be 60 days.

Within 15 days after receiving the request of the Vietnamese diplomatic mission or consular office, the domestic agencies shall have to verify and notify in writing the Vietnamese diplomatic mission or consular office of the verification results.

2. In cases where it concludes that the applicant shall not be granted Vietnamese nationality certificate, the Vietnamese diplomatic mission or consular office shall have to notify the

applicant in writing thereof; if the applicant disagrees with such conclusion, he/she shall be entitled to lodge a complaint according to law.

3. Through the Ministry for Foreign Affairs, the Vietnamese diplomatic missions and consular offices shall have to report once every three months to the Ministry of Justice on the situation of granting Vietnamese nationality certificates.

#### Section 4. VIETNAMESE NATIONALITY RELINQUISHMENT

**Article 20.-** The dossiers applying for Vietnamese nationality relinquishment

Vietnamese citizens applying for Vietnamese nationality relinquishment shall have to make applications according to form set by the Ministry of Justice.

1. Enclosed with an application for Vietnamese nationality relinquishment of a Vietnamese citizen residing in the country must be the following papers:

- a) The curriculum vitae made according to the form set by the Ministry of Justice;
- b) The copies of identity papers, passport or other papers proving that the applicant is bearing foreign nationality(ies) (for persons bearing foreign nationality(ies); or the papers certifying or guaranteeing that the applicant shall be naturalized in foreign country(ies) (for persons applying for naturalization in foreign country(ies), except for cases where the laws of such country(ies) do not stipulate the issuance of such papers;
- c) The paper certifying that the applicant is not owing tax debts to the State, issued by the tax authority of the locality where the applicant resides;
- d) For persons who were once State officials, public employees or servicemen in the people's armed forces and have retired, resigned or been released from work or demobilized for no more than 5 years, the paper of the agency, which issued the decisions on retirement, release from work or demobilization, certifying that such persons' Vietnamese nationality relinquishment is not detrimental to Vietnam's national interests;
- e) The judicial background certificate issued by the Vietnamese competent agency of the locality where the applicant resides;
- f) The paper of the Service of Education and Training of the province or city where the applicant resides, certifying that the applicant has reimbursed training expenses to the State if he/she had been provided with tertiary, vocational secondary education or post-graduate training with State funds, including foreign-financed funds.

2. Enclosed with the nationality relinquishment applications of Vietnamese citizens residing abroad must be the papers prescribed in Points a, b and f, Clause 1 of this Article. In this case, the papers prescribed in Point e, Clause 1 of this Article shall be issued by the Vietnamese diplomatic missions or consular offices in charge of the territories where the applicants reside.

3. The nationality relinquishment application and the papers enclosed therewith of a Vietnamese citizen residing in the country must be made in 04 dossier sets; for citizens residing abroad, such application and enclosed papers must be made in 3 sets.

**Article 21.-** Exemption from the procedures for personal status verification

The Vietnamese nationality relinquishment application dossiers of the persons falling into one of the following cases shall not have to go through the verification procedures carried out by the Police as prescribed in Clause 2, Article 22 of this Decree:

1. Persons who are under 14 years old;
2. Persons who were born and grown up abroad;
3. Persons who have been residing overseas for more than 15 years;
4. Persons who have been permitted to leave Vietnam for family reunion.

**Article 22.-** The procedures and order for settlement at the provincial People's Committees

1. Within 2 months after a provincial/municipal Justice Service receives a complete and valid dossier, the provincial People's Committee shall have to direct the Justice Service to verify the dossier, then submit it to the People's Committee for consideration and conclusion, and request the Ministry of Justice to settle such dossier. For the cases specified in Article 21 of this Decree, the above-said time limit shall be 01 month.

2. The procedural order for settling the dossier is stipulated as follows:

a) Within 07 days after receiving the complete and valid dossier and collecting the fee(s), the Justice Service shall send a written request together with 01 dossier set to the provincial Police for personal status verification.

Also within such time limit, the provincial/municipal Justice Service shall post up at its office, and at the same time, publish on a local newspaper for three consecutive issues the applicant's Vietnamese nationality relinquishment.

b) Within 30 subsequent days, the Justice Service shall verify the dossier, compare the applicant's statements, certifications and papers with the conditions for the Vietnamese nationality relinquishment.

In cases where it deems necessary to make further verification or it receives complaint(s) about the actual conditions of the applicant for Vietnamese nationality relinquishment (such as the tax debts or property obligations toward Vietnamese agencies, organizations and/or individuals), the Justice Service shall coordinate with the specialized agencies in conducting the verification.

c) Within 30 days from the date of receiving the Justice Service's request, the provincial Police and other specialized agencies shall have to conduct the verification according to their respective specialized functions and reply in writing the Justice Service.

d) Past the time limit prescribed in Point b of this Clause or right after receiving the verification results from the provincial Police and other specialized agencies, the Justice Service shall draft and submit to the President of the provincial People's Committee for consideration, conclusion and signing a written request, which shall be sent to the Ministry of Justice together with 02 sets of the dossiers of application for Vietnamese nationality relinquishment.

3. In cases where the president of the provincial People's Committee concludes that the applicant is unqualified for Vietnamese nationality relinquishment, the Justice Service shall notify in writing the applicant thereof; if the applicant disagrees with such conclusion, he/she shall be entitled to lodge a complaint according to law.

**Article 23.-** The procedures and order for settlement at the Vietnamese diplomatic missions and consular offices

1. Within 02 months after receiving a complete and valid dossier and collecting the fee(s), the Vietnamese diplomatic mission or consular office shall post up the application for Vietnamese nationality relinquishment at its office; consider and verify the dossier, compare the applicant's statements, certifications and papers with the conditions for Vietnamese nationality relinquishment and make written conclusion thereon, then send a request for the settlement of the dossier of application for Vietnamese nationality relinquishment to the Ministry for Foreign Affairs, which shall be forwarded to the Ministry of Justice together with 2 sets of dossier of application for Vietnamese nationality relinquishment. For such a case specified in Article 21 of this Decree, the above-said time limit shall be 01 month.

2. In cases where it concludes that the applicant is unqualified for Vietnamese nationality relinquishment, the Vietnamese diplomatic mission or consular office shall notify in writing the applicant thereof; if the applicant disagrees with such conclusion, he/she shall be entitled to lodge a complaint according to law.

**Article 24.-** The procedures and order for settlement at the Central level

1. Within 30 days from the date of receiving written request from the provincial People's Committee or the Vietnamese diplomatic mission or consular office, the Ministry of Justice shall have to re-examine the dossier, if it finds that the dossier is complete and the applicant is fully qualified for Vietnamese nationality relinquishment according to the provisions of law, it shall report in writing to the Prime Minister for his/her authorization to sign a report to the State President for consideration and decision.

In cases where it deems that the dossier is incomplete or contains matters that need to be clarified, the Ministry of Justice shall request in writing the provincial People's Committee, or, through the Ministry for Foreign Affairs, the Vietnamese diplomatic mission or consular office to complete the dossier or make additional verification. For such a case, the above-said time limit shall be 60 days.

2. Within 15 days from the date of receiving the Ministry of Justice's request, the provincial People's Committee or the Vietnamese diplomatic mission or consular office shall have to complete the dossier or additional verification, and reply the Ministry of Justice in writing.

3. Within 07 days from the date of getting the Prime Minister's authorization, the Ministry of Justice shall complete the dossier, the Minister of Justice shall, under the Prime Minister's authorization, sign the report to the State President for consideration and decision together with 01 set of the involved party's dossier of application for Vietnamese nationality relinquishment.

#### Section 5. GRANTING OF CERTIFICATES OF VIETNAMESE NATIONALITY LOSS

**Article 25.-** Dossiers applying for certificates of Vietnamese nationality loss

1. Persons applying for certificates of Vietnamese nationality loss shall have to make applications according to the set form; the applicants must clearly state the purpose(s) of their application for certificates of Vietnamese nationality loss.

Enclosed with an application for certificate of Vietnamese nationality loss must be certified copies of one of the papers prescribed in Clause 1, Article 17 of this Decree to prove that the applicant once held the Vietnamese nationality, and one of the following papers to prove that the applicant has lost his/her Vietnamese nationality:

- a) The paper proving that the applicant has been permitted to relinquish his/her Vietnamese nationality;
- b) The paper proving that the applicant has been deprived of his/her Vietnamese nationality;
- c) The paper proving the annulment of the decision on granting the Vietnamese nationality to the applicant;
- d) The paper and/or documents proving that the applicant has lost his/her Vietnamese nationality under an international treaty which Vietnam has signed or acceded to;
- e) The paper or document proving that the applicant has lost his/her Vietnamese nationality due to the fact that his/her parents or guardian(s) have been found being foreign citizens under Clause 2, Article 19, or due to his/her parents' Vietnamese nationality relinquishment according to Article 28 of the Law on Vietnamese Nationality.

2. Each application for certificate of Vietnamese nationality loss and the papers enclosed therewith as prescribed in Clause 1 of this Article shall be made in 02 sets of dossier.

**Article 26.-** The procedures and order for granting certificates of Vietnamese nationality loss

The procedures and order for settling the applications for certificates of Vietnamese nationality loss shall comply with provisions of Articles 18 and 19 of this Decree.

#### Section 6. THE ANNULMENT OF DECISIONS ON GRANTING VIETNAMESE NATIONALITY, THE VIETNAMESE NATIONALITY DEPRIVATION

**Article 27.-** The annulment of decisions granting Vietnamese nationality

The persons, who have been naturalized in Vietnam for not more than 5 years, regardless of whether they are residing in the country or abroad, if falling within one of the following cases, may have the decisions granting the Vietnamese nationality annulled:

1. They have committed acts of deliberately making false statements in their applications for naturalization in Vietnam which led to the Vietnamese competent agencies misunderstanding of their conditions for naturalization in Vietnam;
2. They have forged or used forgeries of one of the papers prescribed in Points a, c, d, e, f and g, Clause 1, Article 8 and Clause 2, Article 9 or the certificates of foreign nationality relinquishment as prescribed in Clause 3, Article 12 of this Decree, with a view to proving that they are qualified for naturalization in Vietnam.

**Article 28.-** Vietnamese nationality deprivation

Vietnamese citizens residing abroad and persons having been naturalized in Vietnam, regardless of whether they reside inside or outside the Vietnamese territory, if committing acts that cause serious harms to the national independence, the cause of building and defending the Vietnamese fatherland or the prestige of the Socialist Republic of Vietnam, may be deprived of their Vietnamese nationality.

**Article 29.-** The procedures and order for proposing the annulment of decisions on granting the Vietnamese nationality or the Vietnamese nationality deprivation

1. Within 15 days after detecting or receiving written denunciations against acts specified in Articles 27 and 28 of this Decree, the provincial People's Committee, the Vietnamese diplomatic mission or consular office shall have to verify them and make 3 sets of dossiers, then send a written request to the Ministry of Justice, together with 2 dossier sets.
2. The court that has brought to trial violation acts specified in Clause 2, Article 27 and Article 28 of this Decree shall be entitled to propose the Ministry of Justice to annul the decisions on granting of Vietnamese nationality or deprivation of Vietnamese nationality.
3. Within 15 days after receiving a written request of the provincial People's Committee, the Vietnamese diplomatic mission or consular office or the court for the annulment of the decision on granting or deprivation of Vietnamese nationality, the Ministry of Justice shall have to examine the dossiers and coordinate with the Ministry of Public Security, the Ministry for Foreign Affairs and other functional ministries and branches in reporting in writing to the Prime Minister for his/her authorization to sign a report to the State President for consideration and decision.

In cases where it deems that the dossiers are incomplete or contain matters that need to be clarified, the Ministry of Justice shall request in writing the agencies that have made the dossiers to complete them or make additional verifications within 15 days.

4. Right after getting the Prime Minister's authorization, the Ministry of Justice shall complete the dossier; the Minister of Justice shall, under the Prime Minister's authorization, sign a report to the State President for consideration and decision together with 01 dossier set.

Chapter III

IMPLEMENTATION PROVISIONS

**Article 30.-** Publishing on the Official Gazette the State President's decisions on settling Vietnamese nationality-related matters

The State President's decisions on naturalization in Vietnam, Vietnamese nationality restoration or relinquishment, annulment of decisions permitting the naturalization in Vietnam or Vietnamese nationality deprivation shall be published on the Official Gazette of the Socialist Republic of Vietnam within 15 days after their signing.

**Article 31.-** The papers applicable to the stateless persons

For the stateless persons, the papers prescribed in Point c, Clause 1, Article 8 and Point b, Clause 1, Article 13 of this Decree shall be construed as those issued by the competent agencies of the countries where such person reside.

**Article 32.-** Effect

1. This Decree takes effect from January 1<sup>st</sup>, 1999 and replaces Decree No. 37/HDBT of February 5, 1990 detailing the implementation of the 1988 Law on Vietnamese Nationality and Decree No. 06/1998/ND-CP of January 1<sup>st</sup>, 1998 of the Government amending and supplementing a number of Articles of Decree No. 37/HDBT.

2. The provisions in this Decree shall also apply to the settlement of the applications for naturalization in Vietnam filed at the Vietnamese competent State agencies before the effective date of this Decree which have not yet been settled.

**Article 33.-** Stipulations on granting of certificates of non-holding of Vietnamese nationality

Basing himself on the procedures and order for settling Vietnamese nationality-related matters as prescribed in this Decree, the Minister of Justice shall stipulate the granting of certificates of non-holding of Vietnamese nationality at the requests of foreigners residing in Vietnam.

**Article 34.-** Implementation organization

The Minister of Justice shall have to guide the implementation of this Decree.

The ministers, the heads of the ministerial-level agencies, the heads of the agencies attached to the Government, the presidents of the People's Committees of the provinces and centrally-run cities shall have to implement this Decree.

On behalf of the Government

Prime Minister

*PHAN VAN KHAI*

(Department of Foreign and Trade 2007, – Decree No. 104/1998/ND-CP - Vietnam: RRT Information Request: VNM32395, 8 October – Attachment 4)

A previous response dated May 2007 also examined the issue as to whether a person would lose their Vietnamese citizenship because of a criminal record overseas. The response stated;

**1. Is there any reports of people with Australian criminal records, particularly in relation to drug dealing, are being harmed, arrested or imprisoned on return to Vietnam?**

No detailed reports were found providing information on the situation faced by persons with an Australian criminal record on return to Vietnam. Brief reports have been provided by the Department of Foreign Affairs and Trade (DFAT) on a number of occasions in recent years (2005, 2004, 2002 and 1999) on whether Vietnamese authorities take punitive action against such individuals. On 7 February 2005 DFAT confirmed an earlier February 1999 report (CX33942) which had indicated that it was unlikely that the Vietnamese government would take action against individuals deported to Vietnam with criminal records:

Question.3. Post response to CX33942 [of 25 February 1999] indicated that it was unlikely that the Vietnamese authorities would take action against a national who left Vietnam illegally, acquired permanent residence in Australia but was later deported to Vietnam on criminal grounds. Is this still the case?

Answer.3. Confirm still the case (DIMIA Country Information Service 2005, *Country Information Report No.13/05 – Vietnam: Vietnamese National Deserting Army* (sourced from DFAT advice of 7 February 2005), 9 February – Attachment 1).

The earlier 1999 DFAT response referred to above contained in CX33942 is also provided here. Alongside the unlikelihood of punitive action by Vietnam, this report also states that the authorities would seek information on the deportees familial and community links in Vietnam for the purposes of assessing employment prospects and possibly for surveillance:

Q3. Is it likely that the Vietnamese authorities would take action against a national who left Vietnam illegally, acquired permanent residence in Australia and was returned to Vietnam as a deportee on criminal grounds ie if person was deported from Australia because of criminal conviction in Australia? If so please can you describe what action they would be likely to take? Would the[y]... be denied the right to work, housing and a passport?

**A3. It is unlikely that the Vietnamese authorities would take punitive action against a national who left Vietnam illegally, acquired permanent residence in Australia and who was returned to Vietnam as a deportee from Australia because of a criminal conviction in Australia.** Between 1996 and 1999, 110,000 people who left Vietnam illegally were returned to Vietnam by the UNHCR. The UNHCR individually visited and monitored the situation of 40 percent of these returnees. UNHCR officials have confirmed that in no case monitored, did a returnee complain of arrest, persecution or discrimination because of their decision to flee. The embassy estimates that between 3,000 and 4,000 Vietnamese, resettled in Australia as refugees, have now returned to Vietnam to live and to work, or to set up businesses. The government of Vietnam is pursuing a series of policies to encourage such people to return. Nearly all of these people would have left Vietnam illegally. **Information sought by the Vietnamese authorities in the case of criminal deportations relates to a person's place of origin and family links in Vietnam. This information may be used in surveillance of the individual concerned, but is sought in the first instance in order to ensure that there is familial or community support, including accommodation, for that individual on their return to Vietnam. Levels of unemployment are high in Vietnam. Opportunities for employment depend on familial and community links; educational qualifications and work skills** (DIMA Country Information Service 1999, *Country Information Report No.54/99 – Vietnam: Desertion* (sourced from DFAT advice of 25 February 1999), 26 February – Attachment 2).

In November 2004 DFAT again confirmed to the RRT Country section earlier advice provided in 1997 that punitive action against individuals with an Australian criminal record was highly unlikely:

Post confirms the information in Para D of RRT request VNM17108 is accurate in relation to the same offence:

‘We would regard it to be highly unlikely that a Vietnamese citizen who had served a gaol sentence in Australia for a drug-related offence would be retried or subject to other punitive action on return.’ (Department of Foreign Affairs and Trade 2004, *DFAT Report 344: RRT Information Request: VNM17108*, 23 November – Attachment 3).

In February 2002 DFAT did provide some details on the treatment by Vietnamese government authorities, including health officials, of a criminal returnee addicted to heroin or on methadone:



Q.2 What would be the likely attitude of the Vietnamese government toward a criminal heroin addict or methadone user deported to Vietnam from Australia?

A.2 The Ministry of Foreign Affairs in Ho Chi Minh city advises that the **returnee would not be discriminated against and would be given access to drug rehabilitation treatment**. It is unlikely that the fact of the person's deportation would lead to unfavourable treatment, however, if the returnee were placed in a drug rehabilitation centre in which drug use plus criminality are part of the profile of inmates, which UNDCP [United Nations Drug Control Programme] considers likely, **they may be subject to general disapproval/discrimination which is directed at criminal drug users in Vietnam** (DIMA Country Information Service 2002, *Country Information Report No.50/02 – Vietnam: Criminal returnee on Methadone* (sourced from DFAT advice of 285 February 2002), 25 February – Attachment 4).

Further information on the number of drug rehabilitation services and clients in Vietnam is provided in two recent news articles from the *Thai News Service* ('Vietnam: Drug prevention and control under strict management' 2007, *Thai News Service*, 8 May – Attachment 5; 'Vietnam: Drug law guidance needs Gov't revisions, committee says' 2006, *Thai News Service*, 26 October – Attachment 6). While focussing on recent positive developments in Vietnam's drug prevention strategies, the articles do point out some difficulties in the area of rehabilitation:

Though the country had recorded many achievements, many shortcomings and difficulties continue. Many people still consider drug prevention to be the responsibility of the police, and authorities in many localities are not fully aware of their responsibilities in fighting the menace.

With expenses increasing for drug prevention and control activities, many localities find it difficult to support prevention programmes and rehabilitate drug addicts. Agencies responsible for drug control are short of staff and specialists, especially the local police force.

Meanwhile, rehabilitation centres nationwide have met only 40 per cent of the demand, with centres in Hanoi having capacity to meet only 37 per cent. Due to such problems, many cities and provinces are forced to divide and reduce funds allocated for prevention and rehabilitation. Allowance for cadres involved in drug prevention and control activities was low at between VND150,000 and VND200,000 per month ('Vietnam: Drug law guidance needs Gov't revisions, committee says' 2006, *Thai News Service*, 26 October – Attachment 6).

## **2. Is there any 'double jeopardy' law for people returning to Vietnam who have been convicted of crimes in Australia?**

No reference to a 'double jeopardy' type law in Vietnamese legislation could be found in the sources consulted. The possibility of a second prosecution in Vietnam for an offence for which one has already been convicted and punished in Australia does appear to exist under the Penal Code of Vietnam. Article 6 of the Penal Code (No. 15/1999/QH10) allows for someone who has committed an offence outside of Vietnam to be examined for penal liability in Vietnam. This Article states:

Article 6 – The effect of the Penal Code on criminal acts committed outside the territory of the Socialist Republic of Vietnam

**1. Vietnamese citizens who commit offenses outside the territory of the Socialist Republic of Vietnam may be examined for penal liability in Vietnam according to this Code.**

This provision also applies to stateless persons who permanently reside in the Socialist Republic of Vietnam.

2. Foreigners who commit offenses outside the territory of the Socialist Republic of Vietnam may be examined for penal liability according to the Penal Code of Vietnam in circumstances provided for in the international treaties which the Socialist Republic of Vietnam has signed or acceded to (Socialist Republic of Viet Nam 1999, Penal Code, The National Legal Database of the Socialist Republic of Viet Nam website, [http://vbqpppl.moj.gov.vn/law/en/1991\\_to\\_2000/2000/200001/200001040005\\_en](http://vbqpppl.moj.gov.vn/law/en/1991_to_2000/2000/200001/200001040005_en) – Accessed 22 May 2007 – Attachment 7).

The Penal Code of Vietnam deals with drug related offences in Chapter 13, Articles 192-201 (Socialist Republic of Viet Nam 1999, Penal Code, The National Legal Database of the Socialist Republic of Viet Nam website, [http://vbqpppl.moj.gov.vn/law/en/1991\\_to\\_2000/2000/200001/200001040005\\_en](http://vbqpppl.moj.gov.vn/law/en/1991_to_2000/2000/200001/200001040005_en) – Accessed 22 May 2007 – Attachment 7).

### **3. Is there a bilateral agreement or equivalent between Australia and Vietnam in such circumstances?**

A memorandum of understanding (MOU) on criminal deportation does exist between Vietnam and Australia. The MOU was signed on 15 June 2001 and a significant number of persons have been deported under the MOU since that time: a December 2004 news article indicated that 59 Vietnamese nationals had by that time been deported to Vietnam ('Drug offender deported to Vietnam', 2004, *Australian Associated Press General News*, 16 December – Attachment 8). In February 2005 DFAT provided the following information on the contents of the MOU, including what information on the deportee is provided to Vietnamese authorities by the Australian government. This information includes familial contacts in Vietnam and a criminal record:

Q.4. In cases of criminal deportation what information, if any, is sought by the Vietnamese authorities

A.4. Criminal deportation is governed by MOU between Australia and Vietnam concerning the re-admittance of Vietnamese citizens who are deported due to breaches of Australian laws, signed on 15 June 2001. **Under established practice, Australia provides to Vietnam a translation of personal particulars (case number, full name, sex, relationship to family members in Vietnam, permanent address before leaving Vietnam), and of the notice of cancellation form given to an individual when his/her permanent residence in Australia is cancelled. The notice of cancellation form lists an individual's criminal history in Australia** (DIMIA Country Information Service 2005, *Country Information Report No.13/05 – Vietnam: Vietnamese National Deserting Army* (sourced from DFAT advice of 7 February 2005), 9 February – Attachment 1).

On the eve of the signing of the MOU, the NSW government funded Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS) wrote on the plight of a number of convicted prisoners awaiting deportation to Vietnam. In the 2001 winter edition of its publication, *Transitions*, the organisation refers to the actions of the Vietnamese government with regard to expected deportees. It suggests that detailed village-level background checks are conducted by the Vietnamese government:

Few details have been released, but it is understood that the Vietnamese Government will want to make detailed village-level background checks on these people, before accepting them as deportees ('One step closer to deportation' 2001, *Transitions*, Iss. 10, Winter, New South Wales Government South Western Sydney Area Health Service website,

[http://www.swsahs.nsw.gov.au/areaser/Startts/volunteers/transitions/Issue%2010\\_ON\\_E%20STEP%20CLOSER%20TO%20DEPORTATION.htm](http://www.swsahs.nsw.gov.au/areaser/Startts/volunteers/transitions/Issue%2010_ON_E%20STEP%20CLOSER%20TO%20DEPORTATION.htm) – Accessed 23 May 2007 – Attachment 9).

#### **4. Would a person in these circumstances lose their Vietnamese citizenship?**

No reports were found indicating that someone [returning to Vietnam with a criminal record]... would be deprived of their Vietnamese citizenship on return to the country. The law governing Vietnamese citizenship is *Law No. 07/1998/QH10 on Vietnamese Nationality of 20 May 1998*. (Article 4 of the law defines citizens as those persons holding Vietnamese nationality.) Chapter Three (Articles 23 to 27) deals with the conditions under which Vietnamese nationality is removed. It does not indicate that someone in similar circumstances ..., who is deported with a criminal record, would lose their Vietnamese citizenship. Of those articles dealing with the deprivation of Vietnamese nationality, that which is possibly applicable ... is Article 25, which states:

Vietnamese citizens residing abroad may be deprived of Vietnamese nationality if they take acts that cause serious harms to the national independence, the cause of building and defending the Vietnamese fatherland or to the prestige of the Socialist Republic of Vietnam (*Law No. 07/1998/QH10 on Vietnamese Nationality of 20 May 1998*, 1999, United Nations High Commissioner for Refugees website, January, <http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/print.html?CATEGORY=RSDLEGAL&id=3ae6b56010> – Accessed 11 November 2005 – Attachment 10).

### **List of Sources Consulted**

#### Internet Sources:

##### **Government Information & Reports**

The National Legal Database of the Socialist Republic of Viet Nam website

<http://vbqtpl.moj.gov.vn/>

##### **United Nations (UN)**

United Nations High Commissioner for Refugees website [http://www.unhcr.ch/cgi-](http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/)

[bin/texis/vtx/rsd/](http://www.unhcr.ch/cgi-bin/texis/vtx/rsd/)

##### **Search Engines**

Google search engine <http://www.google.com.au/>

#### Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

REFINFO (IRBDC (Canada) Country Information database)

ISYS (RRT Country Research database, including Amnesty International, Human Rights Watch, US Department of State Reports)

MRT-RRT Library Catalogue

### **List of Attachments**

1. Refugee Review Tribunal, 2007, Email to DFAT, 21 September.
2. Refugee Review Tribunal, 2007, Email to DFAT follow-up questions, 21 September.
3. Department of Foreign and Trade 2007, DFAT Report 706 – Vietnam: RRT Information Request: VNM32395, 8 October.
4. Department of Foreign and Trade 2007, Decree No. 104/1998/ND-CP - Vietnam: RRT Information Request: VNM32395, 8 October.
5. RRT Country Research 2007, *Research Response VNM31803*, 24 May.
6. ‘Vietnam: Drug law guidance needs Gov’t revisions, committee says’ 2006, *Thai News Service*, 26 October.
7. Socialist Republic of Viet Nam 1999, Penal Code, The National Legal Database of the Socialist Republic of Viet Nam website, [http://vbqpppl.moj.gov.vn/law/en/1991\\_to\\_2000/2000/200001/200001040005\\_en](http://vbqpppl.moj.gov.vn/law/en/1991_to_2000/2000/200001/200001040005_en) – Accessed 22 May 2007.
8. ‘Drug offender deported to Vietnam’, 2004, *Australian Associated Press General News*, 16 December.
9. ‘One step closer to deportation’ 2001, *Transitions*, Iss. 10, Winter, New South Wales Government South Western Sydney Area Health Service website, [http://www.swsahs.nsw.gov.au/areaser/Startts/volunteers/transitions/Issue%2010\\_ONE%20STEP%20CLOSER%20TO%20DEPORTATION.htm](http://www.swsahs.nsw.gov.au/areaser/Startts/volunteers/transitions/Issue%2010_ONE%20STEP%20CLOSER%20TO%20DEPORTATION.htm) – Accessed 23 May 2007.