



Australian Government
Refugee Review Tribunal

Country Advice

Vietnam

Vietnam – Penalties for narcotics-related offences – Death penalty – Treatment on return of those convicted outside Vietnam

23 December 2009

- 1 Please advise what is the penalty in Vietnam, whether a person has been convicted or not, for a Vietnamese citizen who has been charged with heroin trafficking in an overseas country?**
- 2 Would that person face the death penalty?**

The *Penal Code* of the Socialist Republic of Vietnam appears to allow for a citizen who has committed an offence outside of Vietnam to be further “examined for penal liability in Vietnam” on return. Article 6 of the *Penal Code* states, in relevant part:

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.¹

Narcotics-related crimes are specifically referred to in Chapter XVIII of the *Penal Code*, Article 194 of which indicates a range of applicable penalties for transporting narcotics. Article 194 includes the provision that “offenders shall be sentenced to twenty years of imprisonment, life imprisonment or capital punishment” in cases involving “heroin or cocaine weighing one hundred grams or more”:

Article 194.- Illegally stockpiling, transporting, trading in or appropriating narcotics

1. Those who illegally store, transport, trade in or appropriate narcotics shall be sentenced to between two and seven years of imprisonment.

...

4. Committing the crime in one of the following circumstances, the offenders shall be sentenced to twenty years of imprisonment, life imprisonment or capital punishment:

...

b) Heroine or cocaine weighing one hundred grams or more;

...

¹ Socialist Republic of Viet Nam 1999, *Penal Code (No. 15/1999/QH10)*, The National Legal Database of the Socialist Republic of Viet Nam website, 21 December
http://vbqpl.moj.gov.vn/law/en/1991_to_2000/2000/200001/200001040005_en – Accessed 22 May 2007 – Attachment 1.

5. The offenders may also be subject to a fine of between five million dong and five hundred million dong, the confiscation of part or whole of property, a ban from holding certain posts, practicing certain occupations or doing certain jobs for one to five years.¹

Sources indicate that these provisions in Vietnam's *Penal Code* result in the death penalty not infrequently being imposed. Amnesty International's 2008 report on Vietnam stated:

At least 83 people, including 14 women, were sentenced to death for drug trafficking offences, some after unfair trials. The true number is believed to be much higher.²

Media reports indicate that, in practice, the death penalty is applied in cases where the amount of heroin found in the person's possession was in excess of 600 grams. An *Agence France Presse* report from December 2007 noted that:

Vietnam has sentenced eight heroin traffickers to death, a court official said Friday, raising to more than 40 the number of drug smugglers to receive the death penalty over the past month.

... Communist Vietnam, like most Asian countries, imposes harsh penalties for drug smugglers. Those caught with over 600 grammes of heroin or 20 kilogrammes of opium, its raw material, are sentenced to death by firing squad.³

Similarly, *The Age* reported on 22 March 2008 that "[t]rafficking more than 600 grams of heroin is punishable by death or life imprisonment in Vietnam"⁴, and an *ABC News* report dated 5 September 2009 noted that in Vietnam "anyone found guilty of possessing more than 600 grams of heroin can face the death penalty"⁵.

The Australian Department of Foreign Affairs and Trade (DFAT) currently advises on its Smartraveller website that in Vietnam "[p]enalties for drug offences are severe. Under the Vietnamese penal code, a person caught in possession of even a small amount of heroin can be sentenced to death".⁶

Notwithstanding such application of the death penalty in certain drug-related cases, no reference was found amongst the sources consulted to the death penalty having been applied in cases where the person had been arrested outside of Vietnam.

DFAT has on a number of occasions provided advice to the Refugee Review Tribunal (RRT) in response to requests for information regarding the treatment of returnees to Vietnam who have Australian criminal records. In a report dated 23 November 2004, DFAT confirmed its previous advice, issued in 1999, that:

² Amnesty International 2008, *Annual Report 2008 – Socialist Republic of Viet Nam*, May – Attachment 2.

³ 'Vietnam sentences 43 heroin traffickers to death in a month: officials' 2007, *Agence France Presse*, 28 December – Attachment 3.

⁴ Murray, L. 2008, 'Death-row woman "forced" into drug crime', *The Age*, 22 March <http://www.theage.com.au/articles/2008/03/21/1205602661748.html> – Accessed 23 December 2009 – Attachment 4.

⁵ 'Australian heroin smuggler jailed in Vietnam' 2009, *ABC News*, 5 September <http://www.abc.net.au/news/stories/2009/09/05/2677529.htm> – Accessed 22 December 2009 – Attachment 5.

⁶ Department of Foreign Affairs and Trade 2009, 'Travel Advice – Vietnam', Smartraveller website, 8 December <http://www.smartraveller.gov.au/zw-cgi/view/Advice/Vietnam> – Accessed 23 December 2009 – Attachment 6.

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.⁷

In a report dated 8 October 2007, DFAT responded to an information request from the RRT regarding whether there had been any recent reports of people with Australian criminal records being “harmed, arrested or imprisoned on their return to Vietnam” by advising, “Not to our knowledge”.⁸

Information in a media release dated 16 December 2004 by the Department of Immigration and Citizenship indicated that, at that date, 59 Vietnamese nationals had been removed under a Memorandum of Understanding (MoU) between the Australian and Vietnamese governments signed on June 2001. The media release stated as follows:

A Vietnamese man jailed for drugs offences has been deported from Australia under the Memorandum of Understanding (MoU) with the Vietnamese Government, the Department of Immigration and Multicultural and Indigenous Affairs confirmed today.

The man was escorted on a commercial flight to Ho Chi Minh City, Vietnam, on Tuesday.

The man has several criminal convictions in New South Wales including one for trafficking and possession of heroin. This conviction resulted in a sentence of two years imprisonment.

‘A permanent resident whose behavior results in a substantial criminal record fails the character test in the Migration Act, with the result that they are subject to visa cancellation and removal from Australia,’ a department spokesperson said.

‘The successful return of criminal deportees to Vietnam under the MoU can be attributed to the high level of cooperation extended by both governments to the return arrangements.’

Some 59 Vietnamese nationals have now been removed under the MoU with the Vietnamese Government, which was signed in June 2001.⁹

Information provided by DFAT in February 2005 regarding the MoU indicated that “established practice for returns” included providing to the returnee’s home country a notice of cancellation form which lists the individual’s criminal history in Australia. According to that advice from DFAT:

Criminal deportation of Vietnamese citizens 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. The details of the MoU are confidential. Under established practice for returns to any country, Australia provides to the returnee’s home country a translation of personal particulars (case number, full name, sex, relationship to family members in home country, permanent address before leaving home country), and of the notice of cancellation form given to an individual when his/her permanent residence in

⁷ Department of Foreign Affairs and Trade 2004, *DFAT Report 344: RRT Information Request VNM17108*, 23 November – Attachment 7.

⁸ Department of Foreign Affairs and Trade 2007, *DFAT Report 706: RRT Information Request VNM32395*, 8 October – Attachment 8.

⁹ ‘Vietnamese Criminal Deported’ 2004, Department of Immigration and Citizenship website, 16 December http://www.newsroom.immi.gov.au/media_releases/207 – Accessed 23 December 2009 – Attachment 9.

Australia is cancelled. The notice of cancellation form lists an individual's criminal history in Australia.¹⁰

In *Research Response VNM32278* of 25 September 2007, it was recorded that the RRT had sought further information from DFAT regarding the provisions of the MoU, particularly in relation to safeguards against and monitoring of possible mistreatment of returnees, but had been advised by DFAT that information on these issues could not be made available because of the classified nature of the memorandum.¹¹

¹⁰ DIMIA Country Information Service 2005, *Country Information Report No. 13/05 [Amended 14/11/07]* – *Vietnamese National Deserting Army* (sourced from DFAT advice of 7 February 2005), 9 February – Attachment 10.

¹¹ RRT Research & Information 2007, *Research Response VNM32278*, 25 September – Attachment 11.

List of Sources Consulted

Internet Sources:

Government Information & Reports

Attorney-General's Department website <http://www.ag.gov.au>

Department of Foreign Affairs and Trade website <http://www.dfat.gov.au>

Department of Immigration and Citizenship website <http://www.immi.gov.au>

Embassy of the Socialist Republic of Vietnam in Australia website www.vietnamembassy.org

Ministry of Foreign Affairs, Vietnam website http://www.mofa.gov.vn/en/tt_vietnam/

US Department of State <http://www.state.gov/>

Non-Government Organisations

Amnesty International <http://www.amnesty.org>

Asian Centre for Human Rights website <http://www.achrweb.org/>

Human Rights Watch <http://www.hrw.org/>

International News & Politics

ABC News <http://www.abc.net.au>

The Age <http://www.theage.com.au>

Topic Specific Links

Australian Federal Police website <http://www.afp.gov.au/international.html>

The National Legal Database of the Socialist Republic of Viet Nam website <http://vbqppl.moj.gov.vn/>

Search Engines

Copernic <http://www.copernic.com/>

Databases:

FACTIVA (news database)

BACIS (DIAC Country Information database)

ISYS (RRT Research database)

MRT-RRT Library catalogue

List of Attachments

1. Socialist Republic of Viet Nam 1999, *Penal Code (No. 15/1999/QH10)*, The National Legal Database of the Socialist Republic of Viet Nam website, 21 December http://vbqppl.moj.gov.vn/law/en/1991_to_2000/2000/200001/200001040005_en – Accessed 22 May 2007.
2. Amnesty International 2008, *Annual Report 2008 – Socialist Republic of Viet Nam*, May.
3. 'Vietnam sentences 43 heroin traffickers to death in a month: officials' 2007, *Agence France Presse*, 28 December. (CISNET Vietnam CX190908)
4. Murray, L. 2008, 'Death-row woman "forced" into drug crime', *The Age*, 22 March <http://www.theage.com.au/articles/2008/03/21/1205602661748.html> – Accessed 23 December 2009.
5. 'Australian heroin smuggler jailed in Vietnam' 2009, *ABC News*, 5 September <http://www.abc.net.au/news/stories/2009/09/05/2677529.htm> – Accessed 22 December 2009.

6. Department of Foreign Affairs and Trade 2009, 'Travel Advice – Vietnam', Smartraveller website, 8 December <http://www.smartraveller.gov.au/zw-cgi/view/Advice/Vietnam> – Accessed 23 December 2009.
7. Department of Foreign Affairs and Trade 2004, *DFAT Report 344: RRT Information Request VNM17108*, 23 November.
8. Department of Foreign Affairs and Trade 2007, DFAT Report 706: RRT Information Request VNM32395, 8 October.
9. 'Vietnamese Criminal Deported' 2004, Department of Immigration and Citizenship website, 16 December http://www.newsroom.immi.gov.au/media_releases/207 – Accessed 23 December 2009.
10. DIMIA Country Information Service 2005, *Country Information Report No. 13/05 [Amended 14/11/07] – Vietnamese National Deserting Army* (sourced from DFAT advice of 7 February 2005), 9 February. (CISNET Vietnam CX113467)
11. RRT Research & Information 2007, *Research Response VNM32278*, 25 September.