

**Statelessness and legal identity issues
among ethnic Vietnamese minority populations in Cambodia**

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Purpose of the submission

1. This submission is made in response to the Special Rapporteur's call for information issued at the occasion of the Regional Expert Meeting in Bangkok. The purpose of this submission is to provide the Special Rapporteur with background information and updates of recent developments concerning the situation of a long-neglected minority group in Asia: the ethnic Vietnamese in Cambodia. The submission has two parts: (1) general background information and updates about recent development concerning the group; and (2) specific information about the group relating to three of the priority themes identified by the Special Rapporteur in his call for information (non-neutral nationality laws and practices, the consequences of forced population movements, and the protection of children).

General background and problem

2. The ethnic Vietnamese in Cambodia is the largest minority group in the country. Whilst some ethnic Vietnamese have Cambodian identification documents and have integrated into society, many others continue to live at the margins of society and face difficulties substantiating their legal status in Cambodia.¹ 'The Vietnamese' in Cambodia are not comprised of one single group, but comprise diverse sub-groups including Cambodian citizens of Vietnamese origin; ethnic Vietnamese in mixed marriages with Khmer spouses; long-term residents of Cambodia; and more recent immigrants seeking economic opportunities. One of the most vulnerable groups is Cambodia's long-term ethnic Vietnamese minority.²
3. Despite the fact that the ethnic Vietnamese form Cambodia's largest minority group, there is little information available about the minority group. As a result, the Cambodian government, international development partners and local NGOs have often ignored the group. In 2012, the report *A Boat Without Anchors* broke new ground in exploring the legal status of members of the Vietnamese minority population residing on floating villages on the Tonle Sap in Kampong Chhnang province.³ All respondents in this research indicated that they, and in the majority of cases also their parents were born in Cambodia, with the group belonging to longer existing Vietnamese communities in Cambodia, as distinct from more recent Vietnamese immigrants. The report assessed the status of this group under the

¹ See Berman, J. (1996), 'No Place Like Home: Anti-Vietnamese Discrimination and Nationality in Cambodia', *California Law Review* 84: 817-874; and Ehrentraut, S. (2011), 'Perpetually Temporary: Citizenship and Ethnic Vietnamese in Cambodia', *Ethnic and Racial Studies* 34(5): 779-798.

² See Mauk, B. (2018), 'A People in Limbo, Many Living Entirely on the Water', *New York Times Magazine*. <<https://nyti.ms/2usiXnn>> (9 May 2018)

³ Nguyen, L. and C. Sperfeldt (2012), *Boat Without Anchors: A Report on the Legal Status of Ethnic Vietnamese Minority Populations in Cambodia under Domestic and International Laws Governing Nationality and Statelessness*. Phnom Penh: Jesuit Refugee Service. Available at <http://jrscambodia.org/about_without_anchors.html> (7 May 2018)

applicable Cambodian and Vietnamese nationality laws and considered how the authorities of Cambodia and Vietnam view and treat this group under the operation of their respective laws. All respondents seemed to be living legally in Cambodia and possessed various forms of documentation identifying them as ‘foreign residents’ – but none held any proof of citizenship. The report concluded that these communities appeared to be stateless. Without citizenship and other documentation, numerous ethnic Vietnamese in Cambodia do not have access to basic economic, political, and social rights and face an array of disadvantages, including limited freedom of movement, being unable to own land, and difficulty accessing employment, education, health care, and legal protection. Over the following years, the Cambodian NGO Minority Rights Organization (MIRO) continued to monitor the situation and issued various reports and statements highlighting the adverse effects of a lack of citizenship on the lives of members of these communities.⁴

4. As the research for *Boat Without Anchors* and MIRO’s follow on research were limited in scope, its findings do not allow for making broader generalisations about the situation of all ethnic Vietnamese in Cambodia. In fact, the lack of data to determine the size of affected populations and the scope of the overall problem have been a key impediment for more domestic and international recognition of the challenges faced by ethnic Vietnamese minority populations. The little reporting available on this topic suggests that tens, potentially hundreds of thousands of individuals may be affected – although the exact magnitude remains unknown.⁵ Due to the sensitivity of the topic, Cambodia does not publish regular statistics about ethnic Vietnamese populations on its territory. The government’s 2010 report to the CERD refers to 72,775 individuals whose ‘mother tongue’ is Vietnamese.⁶ These government figures are significantly below most contemporary estimates.
5. Due to widespread prejudices and negative attitudes among the Khmer majority population towards the ethnic Vietnamese minority, coordinated action from governmental and non-governmental stakeholders is lacking.⁷ No broad-based Cambodian NGO network is working on the issue, with the exception of some smaller NGOs working in the fields of conflict transformation and development. Considering the history of past persecutions under previous regimes, especially the genocidal policies under the Khmer Rouge regime during the 1970s, affected Vietnamese populations are not well-organised and refrain from public engagement mainly because of fear and safety concerns.
6. After years of silence, the issue has re-emerged on the radar of international human rights mechanisms, which Cambodia has ratified. During Cambodia’s last reporting

⁴ See Ang C. et al. (2014), ‘Limbo on Earth: An Investigative Report on the Current Living Conditions and Legal Status of Ethnic Vietnamese in Cambodia’, Phnom Penh: Minority Rights Organisation, March 2014; and Minority Rights Organization (MIRO) (2016), ‘Research Finding Statelessness Minority Groups in Cambodia Takeo, Kampong Chhnang, and Pursat’, Phnom Penh: MIRO. All reports available at <http://mirocambodia.org/?page_id=96> (7 May 2018)

⁵ Contemporary estimates of the number of various ethnic Vietnamese populations in Cambodia are contested and range from 400,000 to more than 700,000. The NGO MIRO puts the estimated number at around 700,000 individuals. See also Minority Rights Group (MRG) profile of the group at <<http://minorityrights.org/minorities/ethnic-vietnamese/>> (accessed 9 May 2018)

⁶ ‘Written replies by the Kingdom of Cambodia concerning the list of issues (CERD/C/KHM/Q/8-13) formulated by the Committee on the Elimination of Racial Discrimination relating to Cambodia’s eight to thirteenth periodic reports (CERD/C/KHM/8-13)’, UN doc. [CERD/C/KHM/Q/8-13/Add.1 of 17 February 2010], Annex I, Table A3.

⁷ See also Fewer, T. (2016), ‘Cambodia’s Anti-Vietnam Obsession’, *The Diplomat*, 6 September 2016.

cycle under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the CEDAW Committee expressed concern that ‘women of Vietnamese origin undergo considerable difficulties in the registration of births and the acquisition of Cambodian citizenship, which places them at risk of statelessness’. The Committee therefore called upon Cambodia to ‘intensify efforts to facilitate the birth registration of children born to Vietnamese mothers and their acquisition of citizenship’.⁸ The Human Rights Committee similarly raised the issue during its last review of the implementation of the country’s ICCPR obligations and recommended that Cambodia ‘facilitate access to identification documentation’ and ‘guarantee the right of children who were born on the territory of Cambodia to stateless parents to acquire a nationality’.⁹

Recent Developments in Cambodia: Deportation and Registration

7. In the aftermath of the 2013 national elections, Cambodian authorities have adopted new policies regarding the legal status of ethnic Vietnamese populations in the country. The policies proceeded in two steps: first an immigrant census targeting predominately ethnic Vietnamese populations and leading to the deportation of thousands of individuals deemed to be ‘illegal immigrants’; and second a registration process under which new legal immigration documents are being provided to ethnic Vietnamese residing in Cambodia, regardless of any prior status these individuals may have held under Cambodian law.
8. In late 2014, Cambodian authorities began implementing a so-called foreigner census with the aim of identifying and deporting ‘illegal immigrants’.¹⁰ The census seemed to have targeted disproportionately Vietnamese; most of them appear to be more recent immigrants. The Ministry of Interior reported the following numbers of Vietnamese deported from Cambodia to Vietnam (as reported in local newspapers): 1,059 in 2014, 6,265 in 2015, 2,453 in 2016, and 1,880 in 2017.¹¹
9. Shortly thereafter, Cambodian authorities began implementing a centrally-organised, nation-wide registration process under the auspices of the Ministry of Interior – again focusing predominantly on ethnic Vietnamese populations – that involved the issuance of new immigration documents and more recently of permanent resident cards. MIRO monitored this process in the provinces of Kampong Chhnang and Pursat. The new cards are issued for a fee of 250,000 Riel per person (more than US\$60), requiring renewal after two years for the same price. These documents identify their holders as “immigrant aliens” having “Vietnamese nationality”, without any verification of such a status. Many people interviewed by MIRO reported that officials told them that they could apply for naturalisation after 7 years residing legally in Cambodia with these new documents. While this process is seemingly in line with the 1994 Immigration Law, it is discretionary and disregards

⁸ CEDAW Committee, ‘Concluding Observations on the Fourth and Fifth Periodic Report of Cambodia’, UN doc [CEDAW/C/KHM/CO/4-5 of 18 October 2013], paras. 30-31.

⁹ Human Rights Committee, ‘Concluding Observations on the Second Periodic Report of Cambodia’, UN doc [CCPR/C/KHM/CO/2 of March 2015], para. 27.

¹⁰ Seiff, A. (2014), ‘Cambodia’s Immigrant Census Stokes Fears Among Vietnamese’, *UCA News*, 17 October 2014.

¹¹ So reported at Khy S. (2017), ‘Deportations of Vietnamese Dropped Last Year’, *Cambodia Daily*, 23 January 2017. Available at <<https://www.cambodiadaily.com/news/deportations-vietnamese-dropped-last-year-123878/>> (9 May 2018)

any previous status these individuals may have held under Cambodian law, especially for long-term residents.

10. Since mid-2017, this registration process has been accompanied by systematic confiscation of all prior documentation that authorities deem to be ‘irregular administrative documents’ – the most problematic aspect of the new policies.¹² The Ministry of Interior identified at least 70,000 mostly Vietnamese ‘foreigners’ holding such irregular documents.¹³ In the provinces monitored by MIRO, authorities have confiscated the majority of legal documents previously held by Vietnamese residents, including birth certificates, old immigration cards, in some cases Cambodian ID cards, family books and other identification documents. In fact, the Ministry seems to deem irregular or even illegal most documentation previously issued by other Cambodian authorities. Much of this documentation had identified the affected individuals as residing legally in Cambodia. Confiscated documents are kept with the Ministry of Interior, and it is uncertain whether the authorities intend to return to their owners documents ultimately not assessed to be irregular.
11. These policies seem to treat all ethnic Vietnamese residents in Cambodia the same, regardless of whether they have resided in the country for generations or whether they are more recent immigrants. The policies and their implementation do not provide an individual assessment process that would consider the specific circumstances and legal status of each individual. The underlying assumption seems to be that ethnic Vietnamese are ‘immigrants’, irrespective of any legal entitlements they may hold under Cambodian law. *Boat Without Anchors* argued that numerous ethnic Vietnamese long-term residents and/or their children may in fact hold Cambodian citizenship under past and current nationality laws, but struggle to provide documentary proof.¹⁴ The confiscation of legal documentation under the current policies will make such proof even more difficult and, in effect, threatens to eradicate the limited documentary proof of residence or previous migration held by affected populations. High fees have also served as a deterrent. As a result, MIRO and other observers have noticed a rising trend among ethnic Vietnamese in Kampong Chhnang and Pursat to leave to Vietnam in search of better living conditions. A joint Cambodian-Vietnamese government statement expressed the hope that ‘the Kingdom of Cambodia would continue to take measures in ensuring the legitimate rights of Vietnamese residents, equally treated as other foreign residents in Cambodia in conformity with the laws and regulations of Cambodia’.¹⁵

¹² Based on Sub-Decree No. 129 on the cancellation and withdrawal of irregular Cambodian administrative documents possessed and used by foreigners.

¹³ Reported at Kong M. (2017), ‘Interior Ministry Identifies 70,000 “Improper Citizens, Mostly Ethnic Vietnamese’, Phnom Penh Post, 5 October 2017. <<https://www.phnompenhpost.com/national/interior-ministry-identifies-70000-improper-citizens-mostly-ethnic-vietnamese>> (9 May 2018)

¹⁴ Both the 1954 and the 1996 nationality laws contain *jus soli* provisions. The current nationality provides under Article 4(2) that ‘any child who is born from a foreign mother and father (parents) who were born and living legally in the Kingdom of Cambodia’ shall obtain ‘Khmer’ nationality. These provisions do not seem to be applied in the operation of these laws. See Sperfeldt, C. (2017), ‘Report on Citizenship Law: Cambodia’, GLOBALCIT.

<http://cadmus.eui.eu/bitstream/handle/1814/45084/GLOBALCIT_2017_02_Cambodia.pdf> (9 May 2018)

¹⁵ *Joint Statement between the Kingdom of Cambodia and the Socialist Republic of Vietnam*, Phnom Penh, 16 June 2016, para. 8.

Responses to the priority issues raised by the Special Rapporteur

Non-neutral nationality laws and practices

12. The case study of ethnic Vietnamese populations in Cambodia provides an example for how nationality-related legislation is not always at the core of solving situations of statelessness or undetermined nationality. Rather often it is the operation of these laws in practice (be it with or without discriminatory intent) that is a barrier to improving protracted legal identity problems. These observations should have implications for technical assistance and advocacy, which currently often focus on legislative reform (as perhaps also the easier pathway), rather than on long-term efforts of changing attitudes among majority populations and improving the performance of institutions and bureaucracies.

Forced population movements and migration

13. The case study also is an example of the long-lasting effects of conflict-related forced population movements on the legal status of affected populations.¹⁶ The majority of ethnic Vietnamese populations who have resided in Cambodia since the time prior to the 1970s have experienced a series of persecutions and forced deportations, especially under the Lon Nol regime and the Khmer Rouge regime.¹⁷ Genocidal policies by the Khmer Rouge almost led to a disappearance of the minority from Cambodian territory.¹⁸ Since their return during the 1980s, most of these refugees have been treated as ‘immigrants’ by the Cambodian authorities. Some ethnic Vietnamese survivors have sought recognition of their harm from the Khmer Rouge Tribunal (ECCC) and brought a claim for recognition of or access to Cambodian citizenship under the Tribunal’s collective reparations mandate.¹⁹

Protection of children

14. Finally, the case study is an example of how lack of a legal identity is often the result of a lack of access to or exclusion from birth registration for children of affected populations. *Boat Without Anchors* and MIRO follow-on reports found that many Vietnamese minority communities have no effective access to birth registration. In 2016, MIRO found that only 5 per cent of 414 ethnic Vietnamese surveyed in Takeo, Kampong Chhnang and Pursat provinces had birth certificates.²⁰ Cambodian law allows children of non-citizens living legally in the country to be issued a birth certificate, but local officials seem to conflate issuing birth certificates with conferring citizenship. The absence of birth registration for children in these communities creates barriers for obtaining other documents relevant to exercising future rights and entitlements such as admission to school and access to Cambodian

¹⁶ See Gleeson, M. (2012) ‘State of Migration: An Overview of Forced Displacement in Cambodia’, Phnom Penh: Jesuit Refugee Service Cambodia.

¹⁷ It is estimated that 200,000 to 250,000 Vietnamese fled Cambodia from violent persecutions under the Lon Nol regime. Another estimated 150,000 to 170,000 ethnic Vietnamese were forced out of the country in 1975 by the Khmer Rouge – most of those who stayed behind were systematically killed.

¹⁸ In Case 002 before the Khmer Rouge Tribunal, the defendants have been charged with committing genocide against the Cham and the Vietnamese minority in Cambodia Office of Co-Investigating Judges, ‘Closing Order’, 15 September 2010 (D427), Case File No. 002/19-09-2007-ECCC-OCIJ.

¹⁹ See Nguyen, L. and C. Sperfeldt (2014), ‘Victim Participation and Minorities in Internationalised Criminal Trials: Ethnic Vietnamese Civil Parties at the Extraordinary Chambers in the Courts of Cambodia’, *Macquarie Law Journal* 14: 97-126.

²⁰ Minority Rights Organization (MIRO) (2016), ‘Research Finding Statelessness Minority Groups in Cambodia Takeo, Kampong Chhnang, and Pursat’, Phnom Penh: MIRO

citizenship.²¹ Many children in these communities are not able to visit public schools due to a lack of birth registration. The Cambodian government urgently needs to address this issue, also in light of the sustainable development goals, which aim under goal 16.9: ‘by 2030 provide legal identity for all including birth registration’.

Conclusion

15. The recent developments are worrying. It is within the prerogative of the Cambodian government to manage immigration, but not by infringing on the rights of minority populations as guaranteed in Cambodia’s Constitution and various human rights treaties to which Cambodia is a party. There are signs that the Cambodian government has recognised that more regulatory action is necessary. In 2014, the Cambodian government reorganised the organisational structures responsible for administering its citizenship regime. It created within the Ministry of Interior two new departments: the General Department for Immigration and the General Department for Identification, the latter being in charge of handling civil registration and the provision of legal identity documents.²² The Department for Identification adopted a new National Strategic Plan of Identification (2017-2026), which is guided by a rationale of improving civil registration and vital statistics across the Kingdom of Cambodia.²³ The main objective of the Plan is to build an integrated universal civil registration and population identification system, as a single source of information on individuals and the population. One initial step under the Plan will be to ‘develop an enabling legal environment for personal identification’, mainly by reviewing and amending legislation on civil registration and identification. This could potentially be an opportunity to address some of the deficiencies in the current legal framework and its operation in practice.²⁴ A centralised citizenship management system could also contribute to reducing corrupt practices at local levels and establish a more reliable official record of a person’s legal status in Cambodia – both for citizens and long-term resident non-citizens. Thus, while seemingly driven by technocratic imperatives over registering populations, these policies could bring a new momentum into the citizenship debate, but only if they also consider the socio-political realities and rights of minority, stateless or other marginalised populations. Otherwise, these initiatives risk manifesting existing practices of exclusion and discrimination.

²¹ Hyde, M. (2016), ‘Report on Access to Birth Registration for Marginalised or Vulnerable Populations: A Case Study on Ethnic Vietnamese Minority Communities in Cambodia’, report prepared for the Minority Rights Organization (MIRO), August 2016.

²² Aun P. (2014), ‘Departments of Migration and Identification to Be Created’, *Cambodia Daily*, 16 April 2014.

²³ An earlier version of the draft national strategic plan is available at http://www.crvscambodia.org/upl/announced/KHM_NSPI_StrategicPlan_2015_2024_vF_EN_02_12_15.pdf (accessed 29 November 2016)

²⁴ Mudrick, J. (2014), ‘Revisiting Cambodia’s Laws on Nationality and Immigration’, *Cambodia Daily*, 30 April 2014.