

**A 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**

**FULL ANNEX**

**RELEVANT LAWS, GUIDELINES AND CONVENTIONS**

*Disclaimer: Most of the laws and regulations published in this report are unofficial translations of the original documents. The authors are not responsible for the content or accuracy of these translations. Where there is doubt, please refer to the version of the law in its original language, which, in most cases, is also the official version of the document.*

## **I CAMBODIAN NATIONALITY LAWS**

1. *Royal Ordinance No. 66*, 5 June 1934  
(French version from revised 1920 Cambodian Civil Code)
2. *1954 Nationality Law*, Kram No 913-NS, 30 November 1954 (French version)
3. *1954 Law on Naturalisation*, Kram No 904-NS, 27 September 1954  
(French version) (combined 1954 Flow Chart included)
4. *1996 Law on Nationality*, 9 October 1996 (unofficial English translation)  
(Flow Chart included)

## **II OTHER CAMBODIAN LEGAL INSTRUMENTS**

5. *1994 Law on Immigration*, 22 September 1994 (unofficial English translation)
6. *Sub-decree No 30 on the Formalities of Application for the Authorisation of Immigrant Aliens to Enter, Exit and Reside in the Kingdom of Cambodia*  
(21 June 1996) (unofficial English translation)
7. *Sub-decree No 36 on Khmer Nationality Identity Cards* (26 July 1996) (English translation prepared by MLMUPC Cambodia)
8. *Sub-decree No 60 on Cambodian Nationality Identity Cards* (12 June 2007)  
(unofficial English translation)
9. *Prakas No. 2473 on Procedures and Terms of Application for Issuance and Usage of Khmer Identity Cards*, Royal Government of Cambodia, Ministry of Interior (14 July 2007) (unofficial English translation)

10. *Proclamation No 555 on the Management of the Issuance of Residence Cards to Aliens* (10 November 1995) (unofficial English translation)  
Includes: *Declaration No 555 on the Management of Foreigners Work Permits* (10 November 1995) (unofficial English translation)
11. *Sub-decree No 103 on Civil Status* (29 December 2000)  
(English translation prepared by MLMUPC Cambodia)
12. *Sub-decree No 62 on Fee of Civil Registration Paper and Stamp* (24 June 2002)  
(unofficial English translation)
13. *Sub-decree No 60 on Amendment to Article 8 and 59 of the Sub-decree on Civil Registration* (24 June 2002) (unofficial English translation)
14. *Sub-decree No 17 on Amendment to Sub-decree on Civil Registration* (14 July 2004) (unofficial English translation)

### **III VIETNAMESE NATIONALITY LAWS**

15. *Law No. 24/2008/QH12 on Vietnamese Nationality*, 13 November 2008, Law came into effect on 1 July 2009 (unofficial English translation)  
Available at: <http://www.unhcr.org/refworld/docid/4ac49b132.html>  
[accessed 13 November 2012]
16. *Law No. 07/1998/QH10 on Vietnamese Nationality*, 20 May 1998, Law came into effect on 1 January 1999 (official translation, published in the Official Gazette No. 21 dated 31 July 1998)
17. *Nationality Law* (Viet Nam), 15 July 1988 (unofficial English translation)

### **IV CONVENTIONS**

18. Convention relating to the Status of Stateless Persons, New York, United Nations, 28 September 1954
19. Convention on the Reduction of Statelessness, New York, United Nations, 30 August 1961

### **V UNHCR GUIDELINES**

20. UNHCR Guidelines on Statelessness No 1: The Definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons, UN doc. [HCR/GS/12/01 of 20 February 2012]
21. UNHCR Guidelines on Statelessness No 3: The Status of Stateless Persons at the National Level, UN doc. [HCR/GS/12/03 of 17 July 2012]

## LIVRE PREMIER

### DES PERSONNES

#### TITRE PREMIER

##### **Des droits civils**

**Art. 20.** Toute personne possède des droits qui résultent de sa nationalité et de la situation qu'elle occupe dans sa famille. L'ensemble de ces droits constitue ce que l'on appelle droits civils.

#### CHAPITRE PREMIER

##### **De la nationalité**

**Art. 21.** (nouveau : ordonnance royale n° 66 du 5 juin 1934). – En raison du Protectorat exercé par la France au Cambodge, la nationalité cambodgienne n'a d'effet qu'en ce qui concerne le Gouvernement interne du Royaume. Elle détermine les personnes soumises à la loi et aux juridictions cambodgiennes et se confond avec le statut de l'individu en tant que justiciable régnicole. Elle ne saurait influencer sur la qualité de ressortissant français du Cambodgien en territoire étranger notamment dans les autres pays de l'Union indochinoise où il est assimilé, en toute maîtrise, aux indigènes sujets français.

**Art. 22.** (nouveau). – Est Cambodgien :

- 1° – tout individu né de parents cambodgiens ;
- 2° – tout individu né de père cambodgien, quelle que soit la nationalité de la mère, sauf si celle-ci est française, auquel cas l'enfant suit la nationalité française ;
- 3° – tout individu né de mère cambodgienne, quelle que soit la nationalité du père, sauf si celui-ci est français, auquel cas l'enfant suit la nationalité française ;
- 4° – tout individu né de père inconnu et de mère cambodgienne, à moins que la nationalité française ne lui soit attribuée par l'autorité française compétente, lorsque le père, bien que demeuré légalement inconnu, est présumé français dans les conditions prévues par la loi française ;
- 5° – tout individu né au Cambodge de parents inconnus, à moins que la nationalité française ne lui soit attribuée par l'autorité française compétente, lorsque les parents ou l'un d'entre eux, bien que demeurés légalement inconnus, sont présumés français dans les conditions prévues par la loi française ;
- 6° – tout individu faisant partie d'un groupement ethnique fixé au Cambodge et ne formant pas une unité politique indépendante tels que les Malais, Cham, Kha, Kouy, Phnong, Por, Stieng, etc ...
- 7° – tout individu ressortissant siamois antérieurement au traité du 23 Mars 1907, demeuré sur les territoires rétrocédés après leur rétrocession ;
- 8° – tout individu de race tagale ou originaire des Philippines, fixé au Cambodge, ne justifiant pas avoir conservé ou acquis la nationalité française ou une nationalité étrangère, dans les conditions prévues par la loi française ou la loi étrangère ;
- 9° – tout individu qui, après avoir été inscrit au Cambodge sur les contrôles de la population cambodgienne est inscrit, au bénéfice d'un séjour à l'étranger, sur les contrôles

*Royal Ordinance No. 66 of 1934 (1934 Nationality Law), from revised version of the 1920 Cambodian Civil Code (available in French language). See 'Code Civil Cambodgien', Société d'Éditions Khmer: Phnom Penh (1936).*

tenus à l'étranger et qui revient au Cambodge, avec ou sans intention de s'y fixer, même s'il ne s'y trouve que de passage ;

10° – tout individu de race cambodgienne domicile à l'étranger qui réintègre le Cambodge dans l'intention de s'y fixer .

L'intention doit être manifestée par une déclaration formulée devant le mékhum du nouveau domicile, qui en dresse procès-verbal immédiatement transmis, par la voie hiérarchique, au Résident, Chef de Province, chargé, s'il échet, d'assurer la régularisation de la situation de l'intéressé à l'égard des autorités administratives et communales de l'ancien et du nouveau domicile.

11° – tout individu de nationalité inconnue se trouvant sur le territoire du Cambodge, lorsque nul titre, ni présomption ne permettent de le considérer comme étant d'une nationalité étrangère déterminée.

La preuve d'une nationalité étrangère incombe à celui qui en excipe. En cas de doute ou à défaut de toute présomption suffisante, la détermination de la nationalité est établie, après entente entre les autorités françaises et cambodgiennes, celles-ci ne décident leur compétence qu'après que celles-là ont déclaré ne pas évoquer la leur.

**Art. 23.** (nouveau). – La femme étrangère, légitimement mariée à un Cambodgien, devient Cambodgienne, sauf si elle est française, auquel cas elle conserve sa nationalité et la transmet aux enfants issus du mariage.

A la dissolution du mariage, la femme étrangère recouvre sa nationalité, si elle la revendique par requête, adressée à l'autorité française dans le délai de trois mois, à dater du jour de la dissolution. Elle perd la nationalité cambodgienne lorsqu'elle contracte un nouveau mariage avec un étranger.

**Art. 24.** (nouveau). – La femme cambodgienne légitimement mariée à un étranger, conserve sa nationalité et la transmet aux enfants issus du mariage, sauf si l'époux est français, auquel cas elle devient française pendant la durée du mariage et recouvre, à la dissolution de celui-ci, la nationalité cambodgienne.

La femme cambodgienne, légitimement mariée à un étranger, ne peut valablement contracter ou ester en justice sans autorisation maritale.

**Art. 25.** Abrogé par ordonnance royale n° 66 du 5 juin 1934 précitée.

**Art. 26.** Perdent la qualité de Cambodgien :

1° Le cambodgien qui acquiert une nationalité étrangère sur sa demande et après autorisation des Gouvernements cambodgien et français ;

2° Le cambodgien qui, sans autorisation des Gouvernements cambodgien et français, prend du service militaire hors de l'Indochine française, pour un gouvernement autre que le gouvernement français ;

3° Le cambodgien qui, ayant accepté des fonctions publiques conférées par un gouvernement étranger, les conserve nonobstant l'injonction des gouvernements cambodgien et français de les résigner dans un délai déterminé.

**Art. 27.** Abrogé par ordonnance royale n° 66 du 5 juin 1934 précitée.

K R A M

N° 913-NS

NOUS

Préah Bat Samdach Préah NORODOM SIHANOUK VARMAN

ROI DU CAMBODGE

Vu la Constitution du Royaume ;  
Vu le Kret n° 521-NS du 26 Août 1951, portant formation du Cabinet Ministériel ;  
Vu l'Ordonnance Royale n° 17 du 25 Février 1920, portant promulgation du Code Civil ;  
Vu l'avis du Conseil Consultatif National ;  
Le Conseil des Ministres entendu :

ORDONNONS :

ARTICLE PREMIER. — Les articles 2, 3, 4 et 12 du Code Civil sont abrogés et remplacés comme suit :

ART. 2 (nouveau). — Le droit de légiférer appartient aux organismes compétents.

ART. 3 (nouveau). — Les lois sont exécutoires dans l'étendue du Royaume en vertu de la promulgation qui en est faite par SA MAJESTE LE ROI du Cambodge.

ART. 4 (nouveau). — La promulgation de chaque loi résulte d'un Krâm attestant l'existence et la régularité de la loi, invitant les autorités à la publier. Elle rend la loi exécutoire sur tout le territoire du Royaume.

ART. 12 (nouveau). — La loi est générale. Elle oblige tous les habitants du Royaume à s'y conformer sous la seule réserve de l'application des règles du droit international. L'égalité des justiciables devant elle est au Cambodge un principe d'ordre public.

ART. 2. — L'article 21 du Code Civil est abrogé et remplacé comme suit :

ART. 21 (nouveau). — La nationalité cambodgienne est le lien à la fois spirituel et politique qui unit une personne physique ou morale à l'état cambodgien. La loi cambodgienne est seule compétente pour déterminer les conditions d'acquisition et de perte de nationalité cambodgienne. En particulier toute acquisition par un Cambodgien d'une nationalité étrangère en violation des dispositions légales cambodgiennes est rigoureusement inopposable aux autorités cambodgiennes.

La loi ne reconnaît tant pour l'acquisition de la nationalité et pour sa perte, que pour l'exercice des droits civils et politiques aucune distinction fondée sur l'origine raciale exacte ou supposée des citoyens ou sur leurs opinions philosophiques ou religieuses.

Notamment aucune distinction n'est faite en faveur ou au préjudice des Cambodgiens appartenant aux minorités ethniques habitant le territoire du Royaume, tels les Malais, Chams, Birmans, Lao, Kha, Kouy, Phnong, Por, Stieng, etc... ainsi qu'en faveur ou au préjudice des Cambodgiens de race tagale, de ceux originaires des Philippines et sans autre nationalité que la cambodgienne, des anciens ressortissants thaïlandais demeurés sur les territoires rétrocédés au Cambodge par le Traité du 23 Mars 1907.

ART. 3. — Les articles 22, 23, 24, 25 et 26 du Code Civil sont abrogés à compter de la promulgation du présent Krâm et ainsi remplacés :

ART. 22 (nouveau). — 1<sup>o</sup> — Est Cambodgien quelque soit le lieu de sa naissance :

- a) l'enfant légitime né de père cambodgien ;
- b) l'enfant légitime né de mère cambodgienne ;
- c) l'enfant naturel lorsque sa filiation est légalement établie à l'égard d'un auteur de nationalité cambodgienne.

2<sup>o</sup> — Est Cambodgien lorsqu'il est né au Cambodge :

- a) l'enfant né d'un père né lui-même au Cambodge ;
- b) l'enfant né d'une mère elle-même née au Cambodge ;
- c) l'enfant né de parents inconnus. Tout enfant nouveau né trouvé au Cambodge est censé y être né.

ART. 23 (nouveau). — L'étrangère épouse légitime d'un Cambodgien, devient de plein droit et nonobstant toute stipulation contraire, cambodgienne à compter du jour de son mariage.

La cambodgienne ne perd en aucun cas sa nationalité du fait de son mariage avec un étranger.

ART. 24 (nouveau). — Le contentieux de la nationalité relève des Tribunaux civils compétents pour connaître ainsi qu'il est dit ci-après des actions en revendication, renonciation et déchéance de la nationalité cambodgienne.

Le Ministère Public est toujours partie principale et doit obligatoirement et à peine de nullité conclure par écrit.

ART. 24-bis. — Peuvent renoncer à la nationalité cambodgienne :

1<sup>o</sup> — L'épouse d'origine étrangère d'un Cambodgien, lorsque son mariage est dissous par veuvage ou divorce à condition d'établir qu'aucun enfant n'est né du mariage et en outre que sa loi d'origine ne l'avait jamais privée de sa nationalité d'origine du fait de son mariage, ou lui redonne cette nationalité du fait de son veuvage ou divorce :

2<sup>o</sup> — L'individu né au Cambodge d'une mère également née au Cambodge à condition d'établir :

- a) la nationalité étrangère de son père et de sa mère ;
- b) que la loi nationale de son père ou de celle de sa mère lui donne l'une de ces nationalités soit de plein droit du fait de sa filiation, soit du fait de sa renonciation à la nationalité cambodgienne ;
- c) que son père n'était pas né lui-même au Cambodge.

3<sup>o</sup> — L'individu né au Cambodge de parents inconnus lorsque sa filiation est ultérieurement établie à l'égard de ses auteurs et qu'il peut faire les mêmes preuves que l'individu né au Cambodge d'une mère née elle-même au Cambodge.

Toutefois, sans préjudice aucun de sa nationalité cambodgienne, cet individu, ou quand il est mineur, la personne physique ou morale ayant autorité sur lui ou en ayant la garde pourra demander au tribunal de lui donner acte par jugement que l'un de ses auteurs demeuré légalement inconnu, avait une autre nationalité que la cambodgienne. La procédure est celle de l'article 26 nouveau du Code Civil. Le Tribunal pourra, à toutes fins, indiquer la nationalité que cet auteur possédait de notoriété publique.

**ART. 24 ter.** — Peuvent revendiquer la nationalité cambodgienne :

1° — Tout individu de race cambodgienne domicilié au dehors du Royaume et qui revient au Cambodge dans l'intention de s'y fixer ;

2° — Tout individu né antérieurement à la promulgation du présent Krâm et dont l'un des auteurs au moins était cambodgien ou métis cambodgien, lorsque les textes en vigueur au moment de sa naissance ne lui donnaient pas la nationalité cambodgienne ;

3° — Tout individu né au Cambodge avant la promulgation du présent Krâm et dont l'un des auteurs était lui-même né au Cambodge.

Le revendiquant devra en outre prêter le serment imposé aux naturalisés en y remplaçant le mot « naturalisation » par celui de « revendication ».

Le Tribunal pourra en outre munir l'intéressé, sur sa demande, d'un nom patronymique à consonnances cambodgiennes. La revendication a pour effet de donner la nationalité cambodgienne non seulement à l'intéressé mais encore à ses enfants mineurs au moment de cette revendication et à son conjoint sauf le droit de ce dernier de faire, dans les six mois du jour où il aura eu connaissance de la revendication, opposition en ce qui le concerne aux effets de la revendication. Cette opposition se fait dans les mêmes formes que la renonciation à la nationalité cambodgienne, le jugement en donnant acte est soumis à la même publicité. Elle n'est possible qu'à charge pour l'opposant d'établir que la revendication faite par son conjoint ne l'a pas privé de sa nationalité.

**ART. 25 (nouveau).** — Perd sa nationalité, le Cambodgien qui, avec l'autorisation du Gouvernement, acquiert par naturalisation une nationalité étrangère. La perte de la nationalité cambodgienne est effective le jour où la nationalité étrangère est accordée.

Toutefois cette perte de nationalité est sans effet sur le conjoint et les enfants qui restent cambodgiens.

**ART. 25-bis.** — Peut-être, par jugement du Tribunal civil de Phnom-Penh, déclaré déchu de la nationalité cambodgienne, sans préjudice s'il y a lieu des sanctions pénales que prononcera le Tribunal répressif compétent :

1° — Le Cambodgien qui, sans autorisation, prend volontairement du service dans des forces armées ne relevant pas du Gouvernement Cambodgien. Cette autorisation peut résulter, entre autres, d'un traité international ;

2° — Le Cambodgien qui conserve des fonctions publiques étrangères malgré l'injonction du Gouvernement de les résigner dans un délai déterminé.

L'action en déchéance est intentée par le Procureur du Roi près le Sala-Lukhun de Phnom-Penh agissant exclusivement sur l'ordre écrit du Ministère de la Justice.

L'intéressé dûment convoqué peut présenter soit oralement, soit par écrit, soit par le canal d'un avocat ses explications. Le tribunal ne peut que vérifier si les conditions de déchéance sont bien remplies, dans l'affirmative prononcer la déchéance, dans la négative débouter le Ministère public. Ses décisions sont susceptibles de toutes les voies de recours ouvertes par le Code de procédure en matière civile.

**ART. 26 (nouveau).** — L'action en renonciation ou revendication est intentée par l'intéressé qui saisit le Procureur du Roi de son domicile, ou en cas de domicile à l'étranger celui de Phnom-Penh d'une requête écrite donnant toute précision.

Après telle enquête qu'il jugera opportune, le Procureur du Roi saisit avec les réquisitions le Tribunal qui doit statuer dans un délai qui n'excède pas quatre mois depuis le dépôt de la demande.

Le Tribunal n'a aucun pouvoir pour apprécier l'opportunité de la renonciation ou revendication. Il ne peut que vérifier si l'intéressé en remplit les conditions et lui donner acte de sa renonciation ou revendication, ou le débouter purement et simplement.

La décision du Tribunal est susceptible de toutes les voies de recours ouvertes par le Code de procédure en matière civile.

Art. 26 bis. — Les décisions judiciaires en matière de déchéance, les jugements donnant acte d'une renonciation, d'une revendication ainsi que dans ce dernier cas du prononcé du serment prévu à l'article 24-ter ci-dessus seront enregistrés gratis au Bureau de l'Enregistrement à Phnom-Penh. Ils seront en outre publiés par extrait au Journal Officiel. Enfin copie en restera affichée pendant trois mois au Tribunal et à la Sala-Khét de la province où le Tribunal a son siège.

Art. 4. — Il est ajouté au chapitre premier du titre premier du Code Civil, un article 27 ainsi conçu :

Art. 27. — La renonciation n'a d'effet qu'en ce qui concerne le renonçant lui-même.

La déchéance n'a effet que vis-à-vis du déchu. Elle n'affecte pas la qualité de cambodgien du conjoint et des enfants. Le déchu ne peut recouvrer sa nationalité cambodgienne que par naturalisation.

La nationalité cambodgienne peut également s'acquérir par naturalisation suivant la législation en vigueur.

Fait en Notre Palais Royal à Phnom-Penh, le 30 Novembre 1954.  
Sa Majesté a signé : N. SIHANOUK.

*Présenté à la signature  
de Sa Majesté le Roi  
par le Ministre de la Justice.*  
Signé : POC THUON.

Par Sa Majesté le Roi :  
*Le Président du Conseil des Ministres,*  
Signé : PENN NOUTH.

K R A M

N° 904-NS

NOUS

*Préah Bat Samdach Préah NORODOM SIHANOUK VARMAN*  
*ROI DU CAMBODGE*

Vu la Constitution du Royaume ;  
Vu le Kret n° 521-NS du 26 Août 1954, portant nomination du Cabinet Ministériel ;  
Vu l'Ordonnance Royale n° 17 du 25 Février 1920, portant promulgation du Code Civil ;  
Vu l'avis du Conseil Consultatif National ;  
Le Conseil des Ministres entendu ;

ORDONNONS :

ARTICLE PREMIER. — La naturalisation n'est jamais de droit. Elle constitue une faveur qui doit toujours être demandée et peut être, quels que soient les titres du requérant, discrétionnairement refusée.

ART. 2. — Tout étranger peut demander à être admis au nombre des sujets de SA MAJESTE LE ROI du Cambodge, sous les conditions suivantes :

1° — ne pas être dans l'un des cas où la revendication de cette nationalité peut être faite ;

2° — être de bonnes vie et mœurs ;

3° — justifier d'une assimilation suffisante de la langue cambodgienne ;

4° — justifier d'une résidence sur le territoire du Royaume pendant les cinq années qui précèdent le dépôt de la demande ;

5° — résider au Cambodge au moment du dépôt de la demande ;

6° — ne pas constituer de par son état physique ou mental un danger ou une charge pour la nation.

ART. 3. — Le stage de cinq ans prévu à l'article 2 est ramené à deux ans :

1° — pour tous les étrangers nés au Cambodge ;

2° — pour les étrangers mariés à une Cambodgienne.

ART. 4. — Peut être naturalisé sans autres conditions que celles prévues au 5° et 6° de l'article 2, sauf au cas d'infirmité contractée au service du Cambodge :

1° — toute personne titulaire d'un diplôme d'études supérieures au moins égal aux termes des accords culturels à la licence ;

2° — toute personne ayant rendu des services importants au Pays tels que l'introduction au Cambodge d'industries ou d'inventions utiles, la création d'établissements industriels ou exploitations agricoles, en bref celui qui a rendu au Cambodge un service exceptionnel ou dont la naturalisation présente pour le Cambodge un intérêt incontestable.

ART. 5. — Par exception, peut être naturalisé sans condition, l'étranger qui, en temps de guerre, a volontairement contracté du service militaire dans les forces armées cambodgiennes et auquel une distinction égale au moins à la citation à l'ordre du Bataillon aura été décernée pour acte de courage devant l'ennemi.

ART. 6. — L'étranger qui désire se faire naturaliser adressera une requête en ce sens à Sa Majesté le Roi sous couvert du Gouverneur de la Ville ou de la Province.

Le Gouverneur fera procéder à une enquête administrative qui portera sur le point de savoir si le requérant réunit les conditions requises de résidence au Cambodge et de moralité. Il désignera un médecin qui examinera le requérant. Des circulaires conjointes des Ministres de la Justice, de l'Intérieur et de la Santé Publique fixeront les modalités d'application du présent article.

ART. 7. — Le Gouverneur transmet dans les trois mois la requête et le dossier avec son avis au Ministre de la Justice. La naturalisation résulte d'un Kret. Elle entraîne de droit la naturalisation du conjoint et des enfants mineurs sauf droit du conjoint à la renonciation dans les conditions fixées par l'article 24 (ter) du Code Civil et si en outre il n'avait pas fait une demande jointe de naturalisation.

ART. 8. — Le rejet de la demande de naturalisation résulte de l'exercice d'un pouvoir discrétionnaire, mais ne peut être prononcée que par Kret.

ART. 9. — Le Kret de naturalisation peut être assorti de dispositions donnant au nouveau naturalisé un nom patronymique à consonnances cambodgiennes.

ART. 10. — L'acquisition de la nationalité cambodgienne est effective à partir du jour où le requérant auquel l'agrément de sa demande sera signifiée par le Procureur du Roi de sa résidence qui le cite en même temps à la plus prochaine audience civile, aura prêté devant le Tribunal le serment suivant : « Je jure fidélité, amour et dévouement à ma PATRIE CAMBODGIENNE, à sa Constitution et à ses Lois. Je m'engage à me comporter en loyal citoyen dévoué et fidèle sujet de Sa Majesté le Roi, à accepter toutes les conséquences de ma naturalisation, et défendre, s'il le faut au prix de ma vie, la liberté, l'intégrité et l'honneur du Cambodge ».

ART. 11. — Ce serment est prêté dans les formes prescrites par le Code de Procédure en matière pénale. Le Tribunal ne peut sous aucun prétexte refuser de le recevoir. Il en donne acte au naturalisé par jugement, enregistré gratis au Bureau de l'Enregistrement à Phnom-Penh et dont copie restera affichée pendant trois mois à la Salakhèt, au Tribunal, à la Salakhum de la résidence du naturalisé.

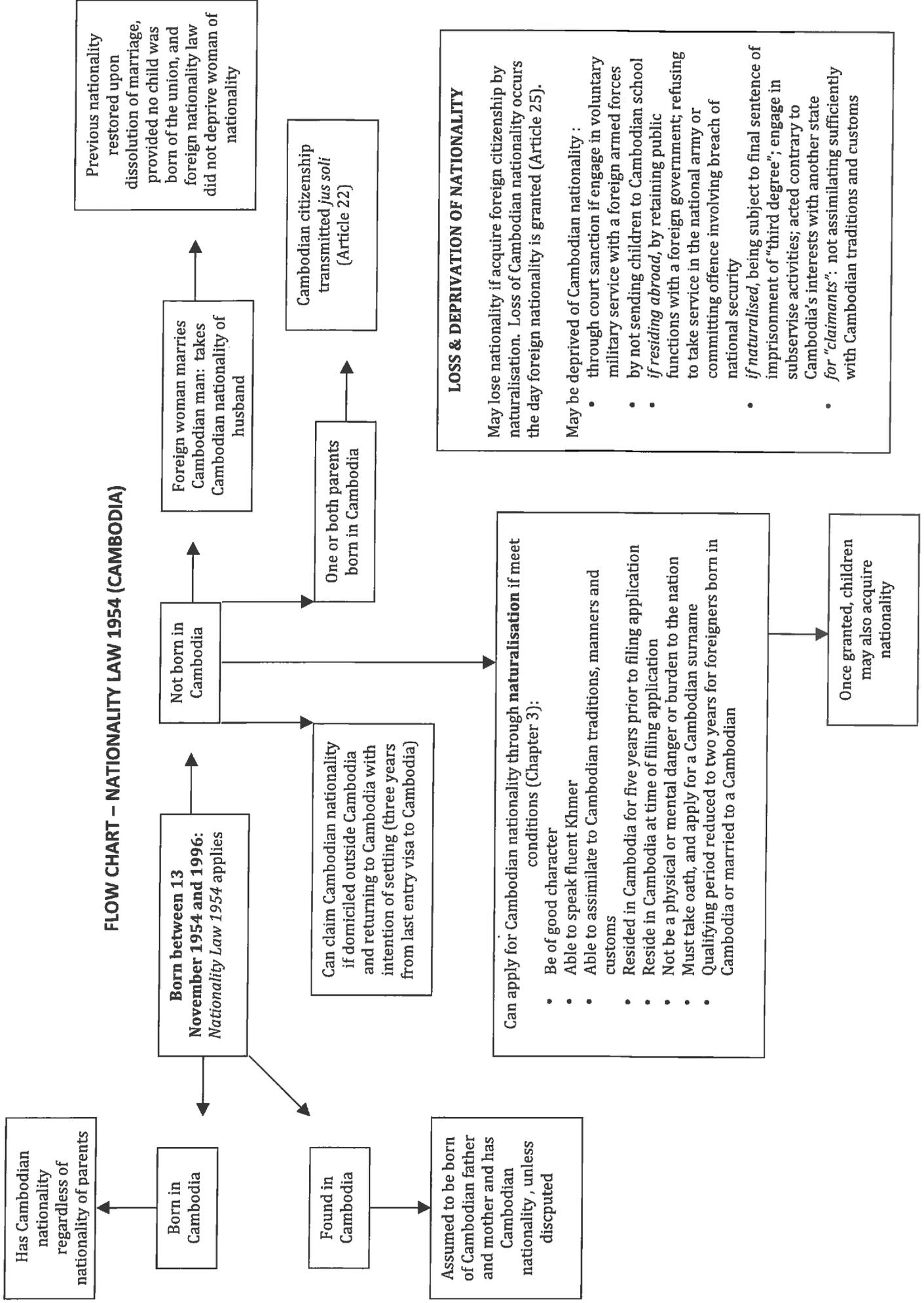
Fait en Notre Palais Royal à Phnom-Penh, le 27 Septembre 1954.

Sa Majesté a signé : N. SIHANOUK.

Présenté à la signature  
de Sa Majesté le Roi  
par le Ministre de la Justice,  
Signé : POC THUON.

Par Sa Majesté le Roi :  
Le Président du Conseil des Ministres,  
Signé : PENN NOUTH.

## FLOW CHART – NATIONALITY LAW 1954 (CAMBODIA)



The Khmer version is the official version of this document.

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Preah Reach Kram NS/RKM/1096/30

Promulgated on 09 October 1996

## LAW ON NATIONALITY

### CHAPTER 1: GENERAL PROVISIONS

#### Article 1 :

This law has an objective to determine the khmer nationality/ citizenship for those persons who fulfill the conditions under this law and who are living on the territory of the Kingdom of Cambodia or abroad.

#### Article 2:

Any person who has khmer nationality/citizenship, is a khmer citizen.

Khmer citizen shall not be deprived of nationality, exiled or extradited to any foreign country, unless upon there is mutual agreement.

#### Article 3:

Khmer citizens who are living in foreign countries, shall:

- 1- be protected by the State through all diplomatic means.
- 2- not lose their nationality automatically.

### CHAPTER 2: KHMER NATIONALITY/CITIZENSHIP BY BIRTH

#### Article 4:

1- Shall obtain khmer nationality/citizenship regardless of the place of birth for:

- any legitimate child who is born from a parent ( a mother or father) who has khmer nationality/ citizenship , or
- any illegitimate child who is born from and recognized by a parent (a mother or father) who has khmer nationality, or
- any child who is not recognized by the mother and father (parents), when upon the court passed a judgment stating that such child was really born from a parent ( a mother or father) who has khmer nationality/citizenship, or

2- shall obtain khmer nationality/citizenship, by having been born in the Kingdom of Cambodia:

- a- any child who is born from a foreign mother and father (parents) who were born and living legally in the Kingdom of Cambodia.
- b- any child who is born from an unknown mother or father ( a parent) and a newly born child who is found in the Kingdom of Cambodia, shall also be considered as having been born in the Kingdom of Cambodia.

### CHAPTER 3: KHMER NATIONALITY/CITIZENSHIP BY MARRIAGE

#### Article 5:

A foreign man or woman who got married with a khmer wife or husband, may demand for khmer nationality/citizenship only if upon such man or women have been living together for a period of three (3) years, after registration of a marriage certificate.

The Khmer version is the official version of this document.

A formality and procedure for the demand of khmer nationality/citizenship, shall be determined by Sub-decree.

The grant of khmer nationality/citizenship following the case of demand for it, shall be decided by Royal-decree.

**Article 6:**

Khmer citizens shall not lose their khmer nationality/ citizenship because of they got married with foreigners.

#### CHAPTER 4: NATURALIZATION

**Article 7:**

Foreigners may apply for khmer nationality/citizenship through naturalization.

Naturalization is not a right of the applicant, but only a favour of the Kingdom of Cambodia. In any case, such application may also be rejected by a discretionary power.

**Article 8:**

A foreigner who may apply for naturalization shall fulfill the following conditions:

- 1- shall have a paper certifying that he/she has good behaviour and moral conduct issued by the chief of the commune (Khum) or quarter (Sangkat) of his/her own residence.
- 2- shall have a letter of certification of the past criminal record which stated that he/she had never been convicted for any criminal offence before.
- 3- shall have a paper certifying that such person has his/her residence in the Kingdom of Cambodia and who has been living continuously for seven (7) years from the date of reception of a residence card which was issued under framework of the Law on Immigration.
- 4- shall have residence in the Kingdom of Cambodia at the time when he/she is applying for naturalization.
- 5- shall be able to speak khmer, know khmer scripts and has some knowledges of khmer history, and prove clear evidence that he/she can live in harmony in khmer society as well as can get used to good khmer custom and tradition.
- 6- shall have his/her mentality and physical attitude, which will cause neither danger nor burden to the nation.

**Article 9:**

For any foreigner who is born in the Kingdom of Cambodia, the 7 years period of continuously living as stated in the sub-para. 3 of the article 8 of this law, shall instead be decreased to 3 years.

**Article 10:**

For any foreigner who had received a letter of authorization for investment from the Cambodian Development Council (CDC.) and who had implemented concretely the actual project cost by spending an initial capital of from 1,250,000,000 riels and up, the period of living as stated in the sub-para. 3 of the article 8 of this law, shall be exempted.

**Article 11:**

For any foreigner who has no letter of authorization for investment from the Cambodian Development Council (CDC.), but who had received authorization for investment legitimately from the Royal Government and who had spent initial capital of from 1,250,000,000 riels and up, the period of living as stated in the sub-para 3 of the article 8 of this law, shall be exempted.

The Khmer version is the official version of this document.

**Article 12:**

Any foreigner who has made a donation in cash, to the national budget of from 1,000,000,000 riels or more, for the interest of restoration and rebuilding of economy of the Kingdom of Cambodia, may have right to file an application for khmer nationality, in case when upon he/she has fulfilled the conditions as stated in the sub-paragraphs 1, 2, 5 and 6 of the article 8 of this law.

**Article 13:**

A foreigner who has shown evidence that he/she had offered any special merit or achievement for the interest of the Kingdom of Cambodia, may file an application for khmer nationality and with no need to fulfill the conditions as stated in the sub-para.3 of the article 8 of this law.

**Article 14:**

A foreigner who has a spouse or child/children of under 18 years of age, who also intend(s) to apply for khmer nationality/ citizenship, may file an application for naturalization in term as a family as a whole.

A family consists of a husband, wife and child/children of under 18 years old.

**Article 15:**

A foreigner may apply to change to a khmer name. In such case, he/she shall specify such name in writing in his/her application for naturalization.

**Article 16:**

Naturalization which is granted to any person, shall be decided by a Royal-Decree.

The formality and procedure for applying for naturalization, shall be determined by a Sub-decree.

**Article 17:**

Those who got authorization to acquire khmer nationality, shall take an oath before the Supreme Court.

The substance of this above oath will be provided for in a Sub-decree.

## **CHAPTER 5: LOSS OF KHMER NATIONALITY**

**Article 18:**

Any person who has khmer nationality and who is at least 18 years old, may request without coercion to renounce his/her khmer nationality, if upon such person has got another nationality. Procedure and conditions for requesting the renunciation of nationality, shall be determined by a Sub-decree.

## **CHAPTER 6: PENALTIE**

**Article 19 :**

Only those persons of khmer nationality, may have right to receive and hold identity cards of khmer nationality and passports of the Kingdom of Cambodia.

**Article 20:**

Any foreigner who holds or uses identity card of khmer nationality or passports of the Kingdom of Cambodia, shall be punished to imprisonment from 5 (five) years to 10 (ten) years.

The Khmer version is the official version of this document.

**Article 21:**

Any person who fakes, scratches to erase, rewrite over or lends to someone or write a falsified name on the identity card of khmer nationality or passport of the Kingdom of Cambodia or who uses these documents, shall be punished to imprisonment from 5 (five) to 10 (ten) years.

**Article 22:**

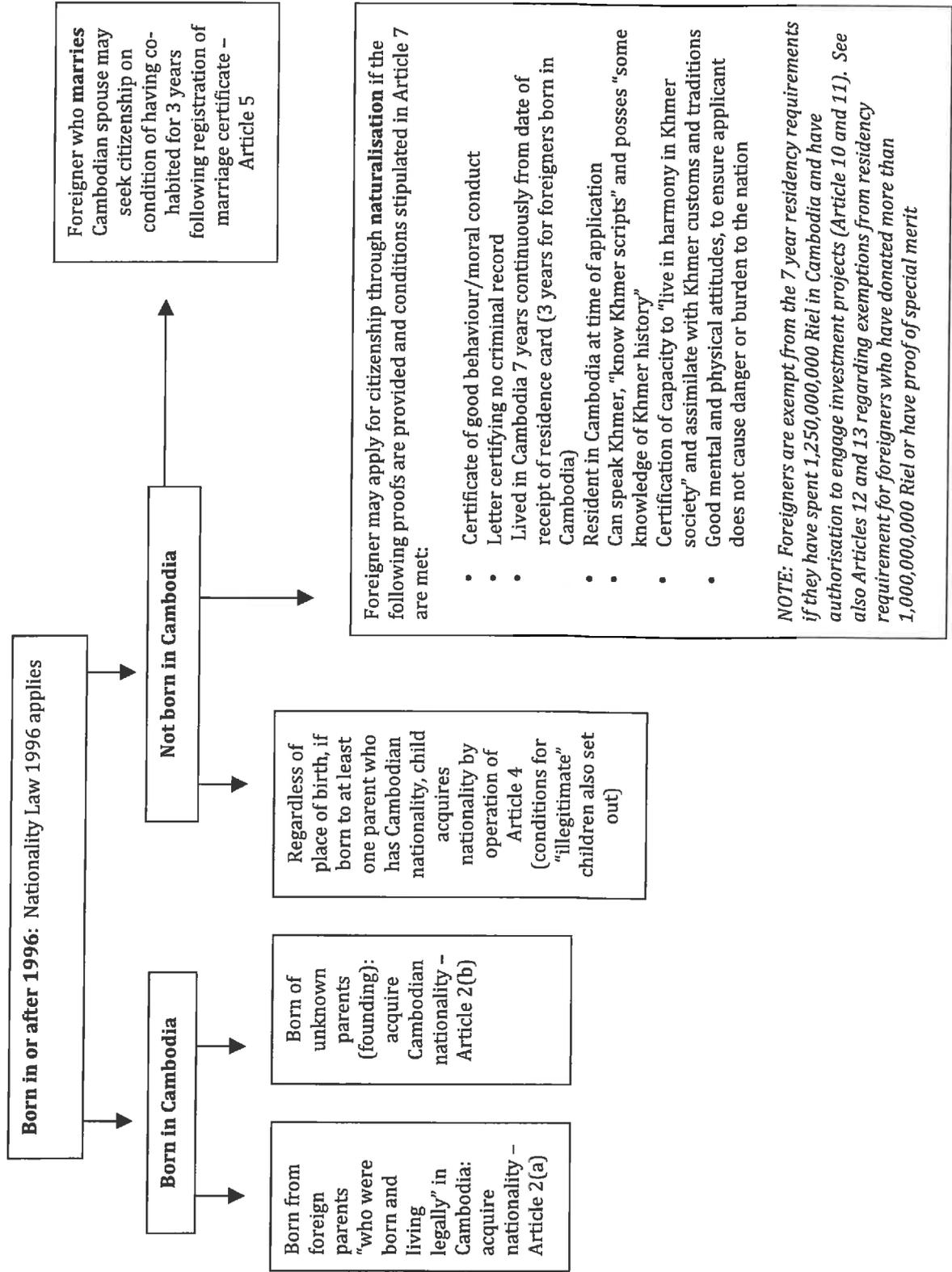
Any official or government agent or any person who conspires, helps dissimulating or provides identity card of khmer nationality or passport to any person who has no khmer nationality/ citizenship, shall be subject to the same punishment term as of the case of a person who is illegally holding the identity card of khmer nationality or passport as stated in the article 20 and 21 of this law.

**CHAPTER 7: FINAL PROVISIONS**

**Article 23:**

Any provisions which is contrary to this law, shall be hereby repealed./.

**FLOW CHART – NATIONALITY LAW 1996 (CAMBODIA)**



**NOTE**

**Article 2: Definition**

Any person who has Khmer nationality / citizenship is a Khmer citizen – *fails to define "Khmer nationality / citizenship"*

**Article 19: ID Cards & Passport**

Only persons of Khmer nationality are entitled to receive and hold Khmer Identity Cards and Cambodian passports

**Article 18: Renunciation**

A Khmer national who is 18 years or over may apply to renounce his or her Khmer nationality upon acquisition of another nationality

**KRAM DATED SEPTEMBER 22, 1994**

**ON IMMIGRATION**

We,

His Majesty Norodom Sihanouk,

King of Cambodia,

- having seen the 1993 Constitution of the Kingdom of Cambodia;
- having seen Kret dated November 1, 1993 on the appointment of the Royal Government of Cambodia;

upon the proposal of the Council of Ministers;

promulgate;

the Law on Immigration adopted by the National Assembly of the Kingdom of Cambodia on August 26, 1994, the text of which is as follows:

**CHAPTER 1**

**GENERAL PROVISIONS**

Article 1:

This law is for the purpose of administering, all the aliens who come to stay in the territory of the Kingdom of Cambodia.

Article 2:

Shall be considered as alien, any person who got no Cambodian nationality, without discrimination as to whether what nationality, belief, religion or what he/she has originated from.

Article 3:

This law shall be applicable for all the aliens, except only for the case where it is required to comply with the norms of International Laws, which the Kingdom of Cambodia is a signing party thereof, even though those aliens have come to settle their residences since before this law comes into force.

Article 4:

According to the conditions for the immigration and for the admission to stay in Cambodia of aliens, shall be divided into 3 types:

1. The non-immigrant aliens.
2. The immigrant aliens.
3. The immigrant aliens as private investors.

Article 5:

The administration of the aliens is the competence of the Ministry of Interior. The Ministry of Interior shall organize an institution to be responsible for the immigration affairs.

Article 6:

The Ministry of Interior shall specify a procedure for the registration, issuance and check and control of the resident -cards, the outgoing and incoming visas, laissez-passez and passports and other equivalent documents for the aliens.

**CHAPTER 2**

**NON-IMMIGRANT ALIENS**

Article 7:

Non-immigrant aliens are:

1. Agents who are working in the foreign Consulates or Embassies or Foreign Mission Representative bodies, international experts and other persons who come to the Kingdom of Cambodia following the requests or agreements made with the Royal Government of Cambodia, including their families and staff members during their sojourns in Cambodia.
2. Military members, officers, civil servants, and foreign agents, students, and their families who enter the Kingdom of Cambodia with the permission from the Royal Government of Cambodia.
3. Travelers who are only in transit, who are awaiting for the means of transports before continuing their ways towards their final destinations. For such case, their stays must not be more than one week; except only for the case of force majeure.
4. Tourists who have their return tickets, and whose durations of sojourns shall be specified by a Anukret.
5. Commercial representatives, bankers, and other businessmen, who enter the kingdom of Cambodia for the purpose of establishing relationships in their respective businesses as above. In this above case their stays may not be over 3 months. In other cases where there are necessary reasonable grounds, they may be allowed to extend their stays for 3 more months in maximum, according to the permission granted by the Royal Government of Cambodia.
6. Foreigners who are living along the borders connecting with the provinces of the Kingdom of Cambodia, who have received permissions to cross the border for several times, or for instantly. Conditions for the application of this paragraph 6 of the Article 7 shall be specified by an Anukret.
7. Travelers, ships' crews, air-pilots, who berth in transit at seaports and airports, to get food supplies.
8. Foreigners who come to do fishing along the seacoasts of Cambodia, who got permissions from the Royal Government of Cambodia.

Article 8:

Non- immigrant aliens may be allowed to stay in the Kingdom of Cambodia:

1. shall be required to get incoming visas before hand from the Royal Government of Cambodia, through any diplomatic authorities or Consulates of the Kingdom of Cambodia; or either through any foreign authority which represents the interests of the Kingdom of Cambodia in the out-countries. For the persons who are in transit and the ship and aircraft crews, this permission shall be delivered to them by the competent authority of the Kingdom of Cambodia, at the time when they get out of their ships or out of the airport.
2. shall have to bring with them their own passports or any other equivalent document which bear incoming visas granted by the authorities thereon, as specified in paragraph 1 above.
3. shall have to pay charges for the visas, and airport and water-port' fees. The conditions for these payments of the charges and fees, shall be specified by an anukret .

Article 9 :

Any non-immigrant alien who fails to fulfil the conditions as stipulated in Article 8 of this Law, shall not be allowed to enter the Kingdom of Cambodia; except only when the Royal Government granted authorizations other than this.

In case if it effects to the national security, the competent authority may then forbid non-immigrant aliens from entering the country, even though upon those non-immigrant aliens had completed all the conditions mentioned in Article 8.

### **CHAPTER 3**

#### **IMMIGRANT ALIENS**

Article 10 :

Aliens, who could be considered as immigrants are:

1. Aliens who are legally reaching the Kingdom of Cambodia in order to perform their professions or conduct activities relating to the industry, commerce, agriculture or services.

2. Those aliens who have not been included in any of the categories as related in Article 7 of this Law.

Article 11 :

Those immigrant aliens who have fulfilled the conditions mentioned in Article 8 of this law shall be allowed to stay in the Kingdom of Cambodia, and but beside this they shall have to fulfil also the following obligations:

1. to show up an aptitude which benefits to the economy or social affairs or technique and sciences, or culture for the Kingdom of Cambodia.
2. to deposit an appropriate amount of money as a bond/guarantee necessary to pay for the fares when travelling back home, or when in case of any eventual repatriation, and besides they shall have to have enough money to assure that they can live by their own properties. The amount of money to be deposited above, shall be specified by an Anukret.
3. to have sufficient physical aptitudes for performing their own professions, which proved by medical certificates issued by doctors of the countries from which the persons have emigrated; and labor contracts in written.
4. to have letters of imputation granted by the competent authorities of the countries they are originated.
5. Even though the immigrant aliens have already completed all the conditions set forth in above paragraphs, but still each of them shall also have to necessarily fulfil the conditions concerning the national security, as required by the Kingdom of Cambodia.

Article 12 :

The recognition of any alien as an immigrant alien, shall be decided by a Proclamation ( Prakas) of the ministry of Interior.

Article 13 :

All immigrant or non-immigrant aliens who have been authorized to come to the Kingdom of Cambodia, shall have to present themselves at the Immigration Police check points, both during their arrival and when leaving. Every exit or entrance gateways of the aliens shall be specified and governed by the Ministry of Interior.

Article 14 :

All immigrant aliens shall have to present themselves at the Alien Office of the Municipal or Provincial Police Commissariats at the place where they are willing to stay, within 48 hours after their arrivals, to complete applications for the Resident-cards. Receipts shall be given to concerned persons after receiving such above applications.

Article 15 :

In case of changing of their residences, immigrant aliens shall have to request for certification on their Resident - Cards from the Alien office of the Municipal or Provincial Police Commissariats, at the places of their residences, before moving out. Beside this, alien immigrants within 48 hours after reaching to their new residences, shall have to fulfil the same formality as above.

Article 16 :

This Resident -Card must be shown, when during any search conducted by the competent authority of the Kingdom of Cambodia. This Resident- Card may be removed from any holder, when he/she fails to comply with the provisions of this law. In the case when upon the Resident-Card is removed from any immigrant alien, such alien shall have to leave the territory of the Kingdom of Cambodia within 7 days. But in real circumstances this time limit may be changed by the Minister of Interior, upon the requests from the competent Municipal or Provincial Police Commissariat. But this period must not be extended over 3 months.

The ceasing to recognize any alien as immigrant alien, shall be decided by a Proclamation (Prakas) of the ministry of Interior.

Article 17 :

In principle, foreigners may freely travel in the territory of the Kingdom of Cambodia. But, in necessary cases, the Minister of Interior may proclaim provisions to prohibit the travelling of foreigners, and to ban all immigrant or non-immigrant aliens from entering or residing in the zone, or to leave far from the zone, or any place within the Kingdom of Cambodia.

Article 18 :

Owners or possessors of residences of all kind, shall inform the competent police institutions within 24 hours, of the presence of the immigrant or non-immigrant aliens who came to stay.

Article 19 :

When accepting to offer job to any alien, one shall have to comply with the Labor Law of the Kingdom of Cambodia. The Ministry of Interior shall have power to conduct checks and controls, in collaboration with the Ministry of Social Actions, Labor and Veteran Affairs, of the labor/working cards of the foreign workers in every factory, enterprise, company and establishment .

Article 20 :

The Municipal and Provincial Police Commissariats shall have to inform the Alien Department, of the deaths and the disappearances of the immigrant aliens who stay in the area within their respective competencies.

Article 21 :

The initial Resident-Card granted, shall be valid for a period of two years, and may be applied for extension once every two years. The filling of the application forms for new Resident-Cards or for the extension thereof, are to be done in front of the authorities as specified in Article 14 of this law.

If over this above period, the holders of the Resident-Cards who failed to apply for new resident- cards, or for the extension thereof, shall then be considered as staying in an illegal conditions. The Ministry of Interior shall specify by a ministerial proclamation, of the actions to be taken relating to the administration , the issuance of the Resident-Cards, and the applications and the conditions to be applied in this field.

Immigrant aliens shall pay fees/taxes for the issuance of the original Resident-Cards or duplicates or equivalent documents in conformity with what specified in the Anukret.

Article 22 :

The Municipal/Provincial Police Commissariats shall be responsible for the checks and controls of all the foreigners who set up their residences or intending to settle down in the area under their respective competencies.

Article 23 :

Those immigrant aliens who intend to leave the Kingdom of Cambodia for some period of time, shall have to request for the permissions to leave and to return, from the Ministry of Interior. In principle, this period of stay in foreign countries shall not exceed three months. But this period may be extended up to 6 months upon there are reasonable grounds. The fees/taxes to be levied when delivering the exit and entry permits, shall be specified by an Anukret.

Article 24 :

In case when the return is beyond the delay permitted, the concerned person shall have to apply anew for an entry visa, and he/she shall be deemed as a new immigrant alien who just come.

#### **CHAPTER 4**

#### **IMMIGRANT ALIENS AS PRIVATE INVESTORS**

Article 25 :

Immigrant aliens who are private investors, are those foreigners who are entering into the Kingdom of Cambodia for conducting investments under the provisions of the Law on Investment of the Kingdom of Cambodia.

Article 26 :

Immigrant aliens as private investors are divided into two types that are :

- 1- the foreigners who come to Cambodia for studying the possibility/feasibility for their investments, and
- 2- the foreigners whom already received the " letters of authorization for investment", from the Cambodian Development Council.

Article 27 :

Those foreigners who come to Cambodia for studying the possibility/feasibility for their investments, shall have to comply with the conditions as set forth in the chapter 3 about the "Immigrant aliens"; except only for the validity of the period to stay for temporary , is for one year. Upon staying for one year, if they could not have possibility to make investment in any field, such foreigners shall then be allowed to withdraw their money so far deposited as bonds/ guarantees as above, but they are not allowed to stay any longer.

Article 28 :

Those foreigners who have already received the "letters of authorization for investment", from the Cambodian Council of Development, including their own families, shall be allowed to stay permanently in the Kingdom of Cambodia, or in conformity with the period stated in the letters of authorization for investment which have been granted; and besides, such foreigners shall be entitled to hold the travel documents of the Kingdom of Cambodia.

The procedure for application of this Article 28, shall be specified in an Anukret.

## **CHAPTER 5**

### **PENALTIES**

Article 29 :

Any alien who without authorization, entered the Kingdom of Cambodia by clandestine means or fraud or by any other forms whatsoever, contrary to the provisions of this law, shall be subjected to condemnation from three to six months imprisonment, before he/she is expelled.

Shall be subjected to the same term of condemnation, for those that assisted, or helped concealing, in order to bring those foreigners who got no authorization into the Kingdom of Cambodia.

Any competent official or agent of the royal government, who conspires or helps facilitating to commit the offense/crime above, shall be subjected to imprisonment from six (6) months to one (1) year.

Any competent official or agent of the government, who by negligence or by lack of attention or by non-observance of the regulation, shall be subjected to administrative penalties.

All kinds of means of transport and materials used for committing such above offenses/crimes, shall be confiscated and kept as state's property by the court.

Article 30 :

Shall be subjected to a transactional fine penalty from 50,000 to 1,000,000 Riels, for those foreigners who breached the provisions of the Articles 14, 15, 16, 17, 21 and 23, of this law.

In case of not giving up such above abuses, shall pay a transactional fine penalty from 1,000,001 to 2,000,000 Riels.

Article 31 :

Shall be subjected to a transactional fine penalty from 10,000 to 30,000 Riels, for any person who abused the Articles 18 of this law.

In case of not giving up such above abuses, shall pay transactional fine penalty from 30,001 to 60,000 Riels.

Shall be subjected to a transactional fine penalty from 200,000 to 500,000 Riels, for any person who breached the Article 19, of this law.

In case of not giving up, shall be penalized from one (1) to three (3) months imprisonment.

Article 32 :

Anyone who scratches, erases and makes carbon copy, fakes, or lends, or writes false name in the resident- card, labor/working card, labor/employment contract, or uses those documents with a name different than his own, or files a fake application for these above documents, shall be condemned to imprisonment for a term from five (5) to fifteen (15) years.

The accomplices in such above acts, shall be subjected to the same penalty.

Article 33 :

The imposition of all the transactional fine penalties as specified in the provisions of this law, shall be the competence of the Ministry of Interior.

Article 34 :

Beside the principal punishments as provided for in this law, there shall be also sub-punishments in addition to them respectively, which will be the expulsion from the territory of the Kingdom of Cambodia.

## **CHAPTER 6**

### **EXPULSION**

Article 35 :

The Minister of Interior shall order for expulsion from the Kingdom of Cambodia of every immigrant alien, who violates the provisions of this Immigration Law.

Article 36 :

The Minister of Interior shall have power to order for expulsion from the Kingdom of Cambodia of every alien who :

- a) have his/her behavior or activity which is dangerous to the national security of the Kingdom of Cambodia, or
- b) that the competent ministries have collected all specific evidences, which prove that the person is dissident to the national security of the Kingdom of Cambodia, or
- c) such is working in the Kingdom of Cambodia with no labor/ working card.

Article 37 :

The Minister of Interior shall expel from the Kingdom of Cambodia, every alien who entered illegally in the Kingdom of Cambodia.

Article 38 :

Decision for the expulsion must be carried out immediately from the date of signature of the Minister of Interior. The concerned person shall have rights to file complaint to the court within a period of two (2) months.

Article 39 :

The expulsion shall have to be carried out within 7 days, after an official decision is made by the Minister of Interior; except only when upon there is a court decision to cease instantly such implementation.

## **CHAPTER 7**

### **ENDING CLAUSES**

Article 40 :

Any other provisions stipulated otherwise contrary to this law shall be considered as null and void.

Article 41 :

This law shall be proclaimed as urgent.

This law has been adopted by the National Assembly of the Kingdom of Cambodia.

Adopted on August 26th, 1994, during the Extra-ordinary Session of its First Legislature.

Phnom Penh, on August 26th, 1994.

The Acting Chairman of the National Assembly.

Son Soubert.

**Sub-Decree No. 30**  
**on Formalities of Application for Authorization to Enter, Exit and Reside**  
**in the Kingdom of Cambodia, of Immigrant Aliens**

**21 June 1996**

[Unofficial translation]

The Sub-Decree, dated 21 June 1996, was published in the Official Gazette, ref. 1996-988.

Cited from: <http://www.unhcr.org/refworld/docid/3ae6b51c18.html> (accessed 17 April 2011)

THE ROYAL GOVERNMENT OF CAMBODIA,

- Having seen the Constitution of the Kingdom of Cambodia.
- Having seen the Royal-Decree dated 24 September 1993, on Appointment of the 1st and 2nd Prime Ministers.
- Having seen the Royal-Decree, dated 01 November 1993, on Appointment of the Royal Government of Cambodia.
- Having seen the Royal-Kram (Law) n 02 NS-94, dated 20 July 1994, which is promulgated the Law on Organization and Functioning of the Council of Ministers,
- Having seen the Royal-Decree n NS-Roy-Decr.-1094-83, dated 24 October 1994, on Rectification of the Composition of the Royal Government of Cambodia.
- Having seen the Royal-Decree n NS-Roy-Decr.-1094-90, dated 31 October 1994, on Rectification of the Composition of the Royal Government of Cambodia.
- Having seen the Royal-Kram(Law) n NS- Roy-KR.-0196-08, dated 24 January 1996, which promulgated the Law on Establishment of the Ministry of Interior.
- Having seen the Law on Immigration, which was promulgated by the Royal-Kram (Law) n 05-NS-94, dated 22 September 1994.
- Having the Sub-Decree n 16 Sub-Decr. dated 20 December 1993, on the Organization and Functioning of the Ministry of Interior.
- Following the proposal of the Co-Ministers of Interior.
- Following the approval of the Council of Ministers.

DECIDES:

### **Chapter I General Provisions**

**ARTICLE 1:**

An immigration alien, is a person as determined in the Chapter 3 of the Law on Immigration.

**ARTICLE 2:**

This present Sub-Decree determines the formalities to apply for authorization to enter, exit and reside in the Kingdom of Cambodia, of immigrant aliens .

### **Chapter II Formalities of application for the entry into the Kingdom of Cambodia**

**ARTICLE 3:**

An alien who wishes to come and stay in the Kingdom of Cambodia as an immigrant alien, may file an application with the Ministry of Interior only through diplomatic or consulate authority of the Kingdom of Cambodia, or only through any foreign authority which represents the interests of the Kingdom of Cambodia abroad, of which he/she shall:

1 fill up an application form for a visa.

2 enclose a copy of his/her own passport or any travel document of equivalent which has validity for at least 6 months, before to the date of entry into the Kingdom of Cambodia.

3 provide 3 (4x6cm) photos ( photos taken directly from the front, with no hat or colour eyes-glasses).

4 provide a health certificate which was issued by a medical doctor of his/her country of origin. The certified date on the Certificate should not be over 3 months old to the time of submission of the application.

5 provide enough evidences to prove that the concerned person has sufficient means to sustain his/her own cost of living as well as which of his/her dependents and has had a local sponsor who has enough capability and possibility to take responsibility with regards to his/her living condition and provision of other means.

6 provide a certification of his/her past criminal record issued by the competent authority of his/her country of origin.

7 provide a copy of a labour contract with the private and which is certified by the competent authority of the Kingdom of Cambodia, if any.

8 provide a certified slip, stating that he/she had deposited a bond for guaranteeing the travel costs, in case when he/she is to return to his/her country or for any eventual repatriation, at the rates of:

A 500,000 Riels, for those aliens who come from a neighboring country of adjacent border with the Kingdom of Cambodia .

B 1,250,000 Riels, for those aliens who come from an Asian or Oceanian country.

C 2,500,000 Riels, for those aliens who come from a country of the Middle-East or African.

D 3,370,000 Riels, for those aliens who come from European or American country.

This above money shall be deposited at the National Bank of Cambodia, and which may not be withdrawn unless upon there is authorization from the Ministry of Interior.

An alien who has a spouse or child of under 18 years old and who wishes to apply (for authorization) to be as an immigrant alien, may file an application in term of a whole family.

In case when upon such application was approved, the concerned person shall pay visa tax at the rate of 250,000 Riels for each member of family, except for a child of 12 years old and below who shall pay only 125,000 Riels each.

**ARTICLE 4:**

For minor(s) and spouse who had been living together and who depend on each other physically and financially in term as close members of a family, may also be entitled to receive authorization to be immigrants, when after an immigrant alien has been already recognized.

**ARTICLE 5:**

A decision of recognition of an alien as an immigrant alien, shall be done through a Proclamation of the Ministry of Interior.

**Chapter III Residing, Labour, Entry and Exit**

**ARTICLE 6:**

An alien who had been recognized as an immigrant alien by a Proclamation of the Ministry of Interior, shall file an application for a resident card with the Alien Office of the Provincial or Municipal Police Commissariat within 48 hours, after his/her arrival in the Kingdom of Cambodia.

**ARTICLE 7:**

An immigrant alien, shall file an application for a Labour Card as provided for under the Law on Labour of the Kingdom of Cambodia.

**ARTICLE 8:**

Any immigrant alien who wishes to leave the Kingdom of Cambodia for temporary, shall apply for authorization from the Ministry of Interior. The formalities for this application consist of as follows:

1 shall fill up an application form for leaving the Kingdom of Cambodia and to submit it through the Provincial or Municipal Police Commissariat.

2 with a copy of his/her Passport or travel document enclosed.

3 shall provide a copy of the resident card of the Kingdom of Cambodia.

4 shall provide a (4x6) photo ( photo taken directly from the front with no hat or colour eye-glasses).

5 shall pay an entry or exit visa tax of 50,000 Riels, for each visa.

For a child of 12 years old or below who is travelling with his/ her parent(s) or a guardian, needs not complete a separate formality, but he/she shall register and attached his/her photo with which of his/her parent(s) or guardian.

A minor child who is travelling alone, shall show up a letter of permission for travelling which is signed by his/her parent(s) or lawful guardian.

**ARTICLE 9:**

An immigrant alien who has completed the formalities as stated in the article 8 above, may be entitled to get sealed " a multiple entry and exit authorization", on his /her passport or travel document. The duration of such multiple entry and exit authorization, shall not be exceeding 3 months.

Visa tax for such "multiple entry and exit authorization" , shall be 300,000 Riels.

**ARTICLE 10:**

All kinds of the above taxes, shall be paid into the National Budget.

Procedure for collection of above taxes, shall be determined by an inter-ministerial Proclamation of the Ministry of Economy and Finance and Ministry of Interior.

**Chapter III Removal of Status of Immigrant Alien**

**ARTICLE 11:**

The immigrant alien status may be removed through a Proclamation of the Ministry of Interior, for those immigrant aliens who violated the provisions of the law of the Kingdom of Cambodia and who have been sentenced by the court for a criminal offence from 5 years or over.

**Chapter IV Final Provisions**

**ARTICLE 12:**

Any provisions which are contrary to this present Sub-Decree, shall be hereby considered as null and void.

**ARTICLE 13:**

The Co- Ministers in charge of the Council of Ministers, Co- Ministers of Interior, Minister of Foreign Affairs and International Cooperation, Minister of Economy and Finance, Secretary of State for

Social Affairs, Labour and Veterans, Secretary of State for Public Functions and all the Heads of the relevant institutions, shall implement this Sub-decree from the date of signature and forth.

Made in Phnom Penh, on 21 June 1996.

THE 1st PRIME MINISTER, THE 2nd PRIME MINISTER.

Signatures and seals of:	NORODOM RANARIDTH, HUN SEN.
This is to be submitted to	Samdech Krom Preah, 1st Prime Minister and to Samdech the 2nd Prime Minister.
THE CO-MINISTERS OF INTERIOR, Signatures and seals of:	SAR KHENG, YOU HOC KRY.
SENT TO:	- Royal Cabinet of HM. the King.
	- General Secretariat of the National Assembly.
	- General Department of Royal Palace.
	- Cabinet of Samdech Krom Preah 1st Prime Minister.
	- Cabinet of Samdech the 2nd Prime Minister.
	- Same as stated in article 3 above.

The Khmer version is the official version of this document.

Document prepared by the MLMUPC Cambodia,  
supported by ADB TA 3577 and LMAP TA GTZ.

**Royal Government of Cambodia**

**N° 36 ANK/BK/ JULY 26, 1996**

**SUB-DECREE ON KHMER NATIONALITY IDENTITY CARDS**

- Referring to the Constitution of the Kingdom of Cambodia.
- Referring to Royal Decree of September 24, 1993 on the Appointment of the First and the Second Prime Ministers.
- Referring to Royal Decree of November 01, 1993 on the Formation of the Royal Government of Cambodia.
- Referring to Royal Kram (Law) No 02 NS.94 of July 20, 1994 promulgating the on the Law on the Organization and Functioning of the Council of Ministers.
- Referring to Royal-Decree No NS-RDECR-1094-83 of July 20, 1994 on Reorganisation of the Composition of the Royal Government of Cambodia,
- Referring to Royal-Decree No 1094-90 of October 31, 1994 on Reorganisation of the Composition of the Royal Government.
- Referring to Royal Kram (Law) no NS-196-08 of January 24, 1996 promulgating the Law on the Establishment of the Ministry of Interior.
- Referring to Sub-Decree No 16 ANK.BK of December 20, 1993 on the Organization and Functioning of the Ministry of Interior.
- Pursuant to the Proposal of the Ministry of Interior,
- Following the approval of the Council of Ministers.

**IT IS HEREBY DECIDED**

**Article 1:**

Khmer nationality identity cards shall be created following the sample as mentioned in the Annex of this Sub-Decree.

**Article 2:**

Khmer nationality identity cards have a validity of 10 years from the date of its issuance.

**Article 3:**

Khmer nationality identity cards may be only delivered to Khmer citizens of both sexes of 18 years of age and up.

**Article 4:**

In delivering the Khmer nationality identity cards, the competent authority shall consider the following:

- Birth certificates, or
- Judgments of the court which stated that such persons were born from fathers or mothers who have Khmer nationality, or
- Royal-Decrees proclaiming the recognition of the request for Khmer nationality by the concerned persons, or
- Royal-Decrees proclaiming the recognition of the application for Khmer nationality by the concerned persons, or

The Khmer version is the official version of this document.

- The documents or evidence proving that the concerned persons were born in Cambodia from fathers or mothers who were born in Cambodia, or
- The documents or evidence proving that the concerned persons used to have Khmer nationality, or
- the documents or evidence proving that the concerned persons were born from fathers or mothers who had Khmer nationality, or
- Any document which could prove that such person is a Khmer citizen.

In delivering Khmer nationality identity cards, the competent officials shall be personally responsible for those penalties as set forth in the Law on Nationality, if he/she had granted a Khmer nationality identity card to any person who has no Khmer nationality.

**Article 5:**

With regard to the formality for application for Khmer nationality identity cards, the admission of evidences to prove of nationality shall be determined by a Proclamation of the Ministry of Interior with approval from the Royal Government.

**Article 6:**

Only those officials whose titles are provincial or municipal governors, may have the competence to grant Khmer nationality identity cards.

These officials may not transfer or delegate this power to any other official.

**Article 7:**

Those who apply for Khmer nationality identity cards shall be subjected to duty fees as determined by an Inter-ministerial Proclamation of the Ministries of Interior and of Economy and Finance.

**Article 8:**

Such above mentioned duty fees shall be paid into the national budget. The procedure for the collection of this duty shall be specified by an inter-ministerial Proclamation of the Ministries of Economy and Finance and of Interior.

**Article 9:**

All provisions contrary to this present Sub-Decree shall be hereby repealed.

**Article 10:**

The Co-Ministers in charge of the Office of the Council of Ministers, the Co-Ministers of Interior, the Minister of Justice, the Co-Ministers of National Defense, the Minister of Foreign Affairs and International Co-operations, the Minister of Economy and Finance and all the chiefs of relevant institutions shall implement this present Sub-Decree from this day of its signature herein.

**KINGDOM OF CAMBODIA  
NATION RELIGION KING**

**SUB-DECREE  
ON  
CAMBODIAN NATIONALITY IDENTITY CARDS**

-----  
**ROYAL GOVERNMENT**

- Having seen the Constitution of the Kingdom of Cambodia,
- Having seen the Royal-decree NS/RKT/0704/124, dated 15 July 2004 on the domination of the Royal Government of Cambodia
- Having seen the Royal-kram 02/NS/94, dated 20 July 1994 on the creation and the functions of the Council of Ministers,
- Having seen the Royal-kram NS/RKM/0196/08, dated 24 January 1996 on promulgation of the creation of the Ministry of Interior,
- Having seen the Royal-kram NS/RKM/1096/30, dated 09 October 1996 on promulgation of nationality law,
- Having seen the Sub-decree No 16, dated 20 December 1993 on organization functioning of Ministry of Interior,
- Following the proposal of Minister of Interior.

**DECIDED**

**ARTICLE 1:** Cambodian nationality identity card is newly edited following the sample as mentioned in Annex of this Sub-decree. Cambodian national identity cards, which have been given to Cambodian citizens in according with the content in Sub-decree No 36 dated 26 July 1996, are still valid till the expiry date of those.

**ARTICLE 2:** Cambodian citizens of both sexes at the age of 15 years and over shall have Khmer nationality identity cards to use to fulfill administrative documents or to implement other rights and obligations stated by law.

**ARTICLE 3:** Cambodian nationality identity cards are yet to be issued to the following persons who are:

- in Buddhist monk hood
- in serving punishment according to verdict of the court
- in re-education center
- having mental problems
- not having enough formal documents to identify as a Cambodian national.

**ARTICLE 4:** Cambodian nationality identity cards have a validity of 10 years from the date of issuance.

**ARTICLE 5:** Cambodian citizens of both sexes have obligation to make Cambodian nationality identity cards and to write or to report about their backgrounds, and or shall have:

- birth certificates identifying Cambodian nationality,
- family books (K4) identifying Cambodian nationality marriage, or
- final verdict of the court which recognizes that such persons were born from fathers or mothers who have Cambodian nationality, or
- Royal-decrees on the recognition of Cambodian nationality through the request or the naturalization of the applicants, or
- formal documents or evidence identifying that concerned applicants were born from fathers or mothers who have Cambodian nationality.

**ARTICLE 6:** Procedure, qualification for applying, issuance and usage of the Cambodian nationality identity cards shall be determined by proclamation of Ministry of Interior.

**ARTICLE 7:** Provincial and municipal governors shall be responsible for leading, arranging, implementing works granting of Cambodian nationality identity cards in their own competency.

**ARTICLE 8:** Competent officials who grant Cambodian identity cards to persons who do not have Cambodian nationality will be punished as stated in the article 20 of Nationality Law.

**ARTICLE 9:** Any person, who fakes, scratches to erase, reports, writes unreal name, lends to someone, or uses fake identity card, will be punished as stated in article 21 of Nationality Law.

**ARTICLE 10:** Citizens who apply for Cambodian nationality identity cards on their first or second time shall pay fees into the national budget. Starting duration and identity card fees shall be determined by inter-ministerial proclamation of the Ministry of Economy Finance and Ministry of Interior.

**ARTICLE 11:** Any provision which is contrary to this Sub-Decree shall be abrogated.

**ARTICLE 12:** The Minister in charge of the Office of the Council of Ministers, the Minister of Interior, the Minister of National Defense, the Minister of Foreign Affairs and International Co-operations, the Minister of Economy and Finance, Minister of Justice, Secretary of State of State Secretariat of Public Functions, all Ministers and State Secretaries of all the ministries and institutions shall implement this Sub-decree from this day of its signature herein.

Phnom Penh, June 12<sup>th</sup>, 2007

Prime Minister

(Sealed and Signed)

**Hun Sen**

**To**

**Samdech Prime Minister**

**H.E. Deputy Prime Minister, Minister of Interior**

(Sealed and Signed)

**Sar Kheng**

**CC:**

- Ministry of Palace
- General Secretariat of the Senate
- General Secretariat of the National Assembly
- Cabinet of Samdech Prime Minister
- As article 12
- Archives - Documents

Royal Government of Cambodia

Kingdom of Cambodia

Ministry of Interior

(Logo)

Nation Religion King

No.2473 ប្រកាស

Prakas

On

**Procedures and Terms of Application for  
Issuance and Usage of Khmer ID**

**Minister of Interior**

- Having seen the Constitution of the Kingdom of Cambodia;
- Having seen the Royal Decree No. ស្តី/រក្សា/0704/124 dated July 15, 2004 on the Appointment of the Royal Government of the Kingdom of Cambodia;
- Having seen the Royal Krom No.02/ស្តី/94 dated July 20, 1994, promulgating the Laws on the Organization and Functioning of the Council of Ministers;
- Having seen the Royal Krom No. ស្តី /រក្សា/0196/08 dated January 24, 1996, promulgating the Law on the Establishment of the Ministry of Interior;
- Having seen the Royal Krom No.ស្តី/រក្សា/១096/ dated October 09, 1996, promulgating the Law on the Nationality;
- Having seen the Sub-decree No.16 អនុក្រឹត្យ.ប្រកាស dated December 20, 1993 on the Organization and Functioning of the Ministry of Interior;
- Having seen the Sub-decree No.60 អនុក្រឹត្យ.ប្រកាស dated June 12, 2007 on the Khmer ID;
- According to the necessities of issuance of the Khmer ID.



**It is hereby decided as follows:**

**Article 1 :** Cambodian population of both sexes aged from 15 years up shall have their Khmer ID done with the commune or quarter office or mobile station of their own commune or quarter;

**Article 2 :** Police officers in authority shall carry out inspections over application forms for the issuance of the Khmer ID for local villagers meeting the requirements as mentioned hereunder:

- Birth certificate proving that he or she is a Cambodian national;
- Residence book, Kor 2 or Family record book, Kor 4;
- Decision legally recognized by the laws in naturalization or nationality claim or;
- Final verdict issued by the court of law, proving that he or she was born from Cambodian mother or father or;
- Official documents or proof proving that person concerned was born from Cambodian father or mother.

**Except for:**

- He or she is servicing his or her monkhood in Buddhism;
- He or she is being prosecuted, in compliance with the court of law's verdict;
- He or she is being detained in the Correction Center;
- He or she is suffering from mental illness;
- Those who do not meet documentation requirements, proving that he or she is a Cambodian national.

**Article 3:** Each concerned person shall fill out application forms in compliance with the standard approved by the Ministry of Interior and shall:

- Properly report his or her registration; provide clear information in accordance with contents of the slip requesting for the issuance of the Khmer ID;
- Affix his or her finger print.
- Pay tax in exchange for the issuance of the Khmer ID in accordance with Prakas from the Inter-Ministry; the Ministry of Economy, and Finance and the Ministry of Interior.

**Article 4:** Authorities, who are obliged to deal with making the written summary of, setting up application forms and affixing signature on the Khmer ID;

- Village chief, administration station police, and commune or quarter clerk joint together to make a written summary of the villagers' name list, aged from 15 years of age up from the birth certificate, residence book, Kor 2 or family record book, Kor 4 and properly check the spelling as well as checking contents to be recorded into application forms as provided by the ministry before forwarding such the name list to the chief of the administration post police, and commune chief for signature affixed on it;
- District police chief inspects and signs the villagers' name list and then forward it to the district governor for his or her inspection and approval;
- Provincial or municipal police commissioner shall assign mobile groups to visit and deal with filling out forms for local villagers and then forward them to permanent groups dealing with the production of papers of the Khmer ID.
- Provincial or municipal governor shall be obliged to inspect and decide to sign the papers of the Khmer ID, which have been filled in by the involved police and subject to terms and



conditions as speculated in Articles 1 and 3 of this Prakas and he or she shall bear the rights to assign his or her deputy to sign the papers of the Khmer ID on his or her behalf.

- The Ministry of Interior shall form a commission to lead and inspect the affair of issuance of the Khmer ID.

**Article 5:** Provincial or municipal governor shall be responsible for production process of the Khmer ID in regular and timely manner in 30 days period, being effective from the date of forms filled out until the issuance of the Khmer ID for the villagers. In the meantime, enough measures shall be taken to control and maintain technical equipment and facilities for the production of the Khmer ID in good conditions.

**Article 6:** The Khmer ID shall be valid for 10 years period upon its issuance and upon its expiry date, the person concerned shall apply for its renewal.

**Article 7:** The Khmer ID received and used by the person concerned shall be used and well, carefully maintained, avoiding its loss and he or she shall bring it with him or her while traveling to prove that he or she is Cambodian national and using to fill in forms in accordance with the laws and legal instruments in force, including name registration or ballot candidacy, application for marriage, application for birth certificate, application for work, application for business opening, application for passport issuance, application for property owner, contacts with banks as well as various other sale and purchase agreements.

**Article 8:** His or her Khmer ID is temporarily or permanently confiscated should;  
- He or she is dispatched to the prison or he or she is temporarily detained.  
- He or she is not a Cambodian national, yet possessing the Khmer ID.

**Article 9:** Those losing the Khmer ID following 01 month of its issuance shall be allowed to be reissued should the competent authorities inspect that he or she is properly registered and truly loses it with stamp affixed, proving its duplicate and he or she shall be required to pay 1x 2 tax.

- Should any losses occur arising from the force majeure which is clearly expressed by the authorities, Khmer ID shall be reissued with the usual rate charged.

- Those citizens holding Khmer ID provided by the Sub-decree No36អនក្រឹត្យ.បក្សី dated July 26, 1996 shall continue using it until it is invalid.

**Article 10:** Anyone who wrongly reports the truth in filling out application forms for the issuance of Khmer ID shall be responsible for it before the laws in force.

**Article 11:** Any official or agent having the authority to inspect forms and issue the Khmer ID shall be accountable for before the laws in force in the event that he or she intentionally conspires to provide the Khmer ID to any individual who is not Cambodian national.

**Article 12:** Expenses for the operation of providing new model Khmer ID shall be separately determined.

**Article 13:** Any provisions contrary to this Prakas shall be abrogated.

**Article 14:** Secretary General of General Secretariat, Commissioner General of National Police, Director-General of General Department of Local Administration, Director-General of General Department of Logistics and Finance, Inspector of Inspectoriat of Political Affairs, Administration and Police, Principal of Royal School of Administration, Director-General of General Department of Prison, Provincial or Municipal Governor and relevant units shall implement this Prakas from the date of signature affixed.



Phnom Penh, July 14, 2007

Minister of Interior  
(Signature and Stamp)

**SOR KHENG**

**Receiving places:**

- General Secretariat of Senate
- General Secretariat of National Assembly
- Council of Ministers
- Cabinet of Samdech, Prime Minister
- All ministries and institutions
- Files and archives



## Proclamation No. 555

### On the Management of the Issuance of Residents Cards to Aliens

10 November 1995

[Unofficial translation]

Please note that another version of the text with the title Declaration No. 555 on the Management of Foreigners Work Permits is attached at the end.

Available at <http://www.unhcr.org/refworld/docid/3ae6b5272b.html> (accessed 12 November 2012)

THE CO-MINISTERS OF INTERIOR,

- \* Having seen Constitution of Kingdom of Cambodia;
- \* Having seen Royal Decree of H.M. Preah Bat Samdech Preah Norodom Sihanuk Varman, King of the Kingdom of Cambodia, dated 01 November 1993, on Appointment of the Royal Government.
- \* Having seen the Law of Organization and Functioning of Council of Ministers, promulgated by the Royal Kram (Law), dated 20 July 1994.
- \* Having seen the Law on Immigration, which is promulgated the Royal Kram ( Law), dated 22 September, 1994.
- \* Having seen the Sub-decree N 16 Sub-decr., dated 20 December 1993, on the Organization and Functioning of the Ministry of Interior.
- \* Having seen the necessity of the Ministry.

#### ARTICLE 1:

The resident cards for aliens staying in the Kingdom of Cambodia consist of 2 types:

A *Temporary resident cards*: which are for issuing to the aliens who are:

- staff members and specialists in managerial works.
- technical staff members.
- specialized workers.
- sellers of services or labours.

B *Permanent resident cards*: which are for issuing to the aliens who are:

- immigrant aliens who are recognized by the Minister of Interior.

-foreign investors, their spouses and dependants who are recognized by the Cambodian Development Council (C.D.C.).

These above two types of resident cards shall not be granted to children of both sex who are under 18 years old. Children's names shall be included in the resident cards of their parents or guardians.

## **ARTICLE 2:**

Formalities for application for resident cards:

### **A. Formalities for application for temporary resident cards:**

1 An application for a temporary resident card shall be filed with the Ministry of Interior.

2 Information slip form (according to a unified sample specified by the Ministry of Interior). To fill up 3 of this form.

3 a copy of the passport or any other equivalent document with proper visa, shall be attached with the application.

4 three (4x6) photos (photos taken directly from the front with no hat or eye-glasses).)

5 a copy of medical certificate from a doctor of the country which the person is migrated from, stating of his/her good physical fitness for the performance of his/her profession and with a copy of a written labour contract attached,

6 a copy of Social Security Insurance, issued by an employer or insurance company.

7 a copy of receipt of payment of temporary resident card tax.

### **B. Formalities for application for Permanent Resident Cards:**

1 an application for a Permanent Resident Card must be filed with the Ministry of Interior.

2 a copy of the Proclamation on recognition as an immigrant alien or immigrant alien who is as a private investor.

3 a copy of the passport or any equivalent document, with proper visa, must be enclosed with the application.

4 three(4x6) photos ( photos taken directly from the front, with no hat or eye-glasses).

5 a certification from any bank in the Kingdom of Cambodia which stated that the concerned person has deposited properly his/her bond as required by the Sub-Decree.

6 a copy of receipt of payment of permanent resident card tax.

## **ARTICLE 3:**

The Provincial and Municipal Police Commissioners shall have duty to issue the receipts of reception of applications for resident cards (to the applicants) and to forward such application files through the Provincial Governors to the Ministry of Interior, for consideration and decision on granting of resident cards.

## **ARTICLE 4:**

The Chief of Cabinet (of the MOI.), National Police General Director, Administrative General Director, Chief of Inspectors and relevant institutions under the Ministry of Interior, shall implement this Proclamation with effectiveness from this date of signature and forth.

Phnom Penh, on 10 November 1995.

THE CO-MINISTERS,  
signature and seal of:  
SAR KHENG, YOU HOC KRY.

C/C:

- Council of Ministers.
- Cabinet of Samdech Krom Preah, 1st Prime Minister.
- Cabinet of Samdech 2nd Prime Minister.
- Cambodian Development Council.
- Ministry of Foreign-Affairs and International Cooperation.
- Ministry of Social-Affairs and Veteran.
- Same as in the article 8.

KINGDOM OF CAMBODIA  
Nation Religion King  
Royal Government of Cambodia  
CABINET OF THE MINISTRY OF INTERIOR  
PRAKAS (DECLARATION)

## DECLARATION NO. 555 ON THE MANAGEMENT OF FOREIGNERS WORK PERMITS

The Co-Ministers of Interior

- Seen the Constitution of the Kingdom of Cambodia;
- Seen the Royal Decree of His Majesty Samdech Preah Norodom Sihanouk Varman, King of the Kingdom of Cambodia dated 01 November 1993 on the Appointment of the Royal Government of Cambodia;
- Seen the Law on the Organization and Functioning of the Council of Ministers, promulgated by Royal Decree dated 20 July 1994;
- Seen the Sub-decree No. 16 A.N.Kr. dated 20 December 1993 on the Organization and Functioning of the Ministry of Interior;
- Seen the Law on Immigration promulgated by (Royal decree) dated September 22, 1994
- Pursuant to the needs of the ministry

HEREBY DECIDED

**Article 1:**

The work permit for foreigners in the Kingdom of Cambodia shall consist of two types:

a. Temporary work permit for foreigners shall be issued to the following persons:

- Staff and management specialist
- Technical staff
- Skilled worker
- Service providers or other labours

b. Permanent work permit for foreigners shall be issued to the following persons:

- Foreign immigrants duly recognized by the Minister Interior
- Foreign Investors, spouses, and dependents duly recognized by the Council for the Development of Cambodia.

Both work permits shall not be issued to children of either sex under 18 years old.

Children shall be registered under the work permit of their parents or guardians.

**Article 2:**

Procedures for applying for work permits shall be the followings:

a. Temporary work permit:

1. The application for temporary work permit shall be sent to the Ministry of Interior.
2. 3 sets of Application Form as issued by the Ministry of Interior.
3. Attached with passports or any equivalent documents with proper visa.
4. 3 Photographs (4x6), taken in the front without hat and glasses.
5. Certificate of Health from a physician of the immigrant country, and written work contract.
6. Insurance policy issued by employer or any insurance companies.
7. Fees for temporary work permit.

b. Permanent work permit:

1. The Application for permanent work permit shall be sent to the Ministry of Interior.
2. Photocopied document recognizing as immigrant or investor.
3. Attached with passport or any equivalent documents with proper visas.
4. 3 Photograph (4x6), taken in the front without hat and glasses.
5. Certified statement from any banks in the Kingdom of Cambodia, verifying a bank deposit as defined in the Sub-decree.
6. Fee for permanent work permit.

### **Article 3:**

Police stations of provinces and municipalities shall accept applications for work permits and forward them through their governors to the Ministry of Interior for review and approval.

### **Article 4:**

The temporary work permit shall not have a validity exceeding the approved visa.

- the permanent work permit shall be initially approved for 2 years.
- this work permit can be renewed every two years.
- 3 months prior to the expiry of the work permit an application shall be filed to the Ministry of Interior for renewal through the police station of municipality or province in their residence.

In the case of a loss of a work permit the holder must complain to the police station of the province or municipality along with explanations and apply for a duplicate work permit. The police station of the province or municipality shall issue a receipt acknowledging the application for duplicate work permit, and send their forms to the Ministry of Interior.

Work permits that had not applied for extension and expired work permits shall be considered as illegal.

Applicant of applying for extension of work permit, or for duplication shall pay taxes as defined by Sub-Decree.

### **Article 5:**

In the event of a change of address, the holder shall notify the Foreigner Office of the Police Station of province or city before his departure. The new work permit shall be obtained within 48 hours after his arrival of his address.

### **Article 6:**

Work permit can be use as identity card.

### **Article 7:**

Both kinds of work permits may revoke in the following cases:

- non compliance of the Law on Immigration, or
- non compliance of the laws of the Kingdom of Cambodia, or
- for reasons of national security and national interest, or
- contrary to public order.

### **Article 8:**

The Director of Cabinet, the General Director of National Police, the General Director of Administration and other concerned units of the Ministry of Interior shall implement this declaration from the date of its signature.

Phnom Penh, November 10, 1995

Co-Ministers of Interior  
SAR KENG YOU HOC KRY

The Khmer version is the official version of this document.

Document prepared by the MLMUPC Cambodia,  
supported by ADB TA 3577 and LMAP TA GTZ.

The Royal Government  
No. 103/ANK/BK/ December 29, 2000

### **ANUKRET On Civil Status**

- Referring to the Constitution of the Kingdom of *Cambodia*,
- Referring to Preah Reach Kret No. NS/RKT/1198/72 of November 30, 1998 regarding the Establishment of the Royal Government of Cambodia,
- Referring to Preah Reach Kram No. 02/NS/94 of July 20, 1994, promulgating the Law on the organization and functioning of the Council of Ministers
- Referring to Decree No. 56D of July 20. 1989, promulgated the Law *on* Marriage and Family
- Referring to Preah Reach Kram No. NS/RKM/1096130 of October 9, 1996, promulgating the Law on Nationality,
- Referring to Preah Reach Kram No. NS/RKM/0196108 of January 24, 1996, promulgated the Law on the Establishment of the Ministry of Interior,
- Referring to Preah Reach Kram No. NS/RKM/0196104 of January 24. 1996, promulgated the Law on the Establishment of the Ministry of Justice,
- Referring to Anukret No. 16 ANK of December 20, 1993 on the Organization and Functioning of the Ministry of Interior,
- Referring Anukret No. 19/ANK of April 7, 2000 on the Organization and Functioning of the Ministry of Justice,
- Pursuant to the approval of the Council of Ministers at its plenary session of November 17, 2000.

### *DECIDES*

#### **CHAPTER 1: General Provisions**

##### **Article 1:**

The purpose of this Anukret is to determine the procedures and formalities of civil status of the Kingdom of Cambodia,

##### **Article 2:**

Civil status is one of an attachments of nationality to State and actual status which a person has in his or her family tree in a nation and which creates the rights and duties to such person.

A certificate of civil status is a letter recording all civil citizenship of Cambodian and foreigner who legally resides in the Kingdom of Cambodia within the scope of jurisdiction of the Kingdom of Cambodia.

Certificates of civil status include birth certificate, marriage certificate, and death certificate.

##### **Article 3:**

Obligation to application for recording in a civil status register shall be borne by every Cambodian citizen.

The Khmer version is the official version of this document.

**Article 4:**

Any application for recording of birth and death shall be testified by a reporter and/or witness and/or interested person who shall appear before a civil status official.

Any application for recording of marriage shall be testified by an interested person and/or witness who shall appear before a civil status official.

**Article 5:**

Formality and certificate of civil status of the Kingdom of Cambodia shall be done in a uniform throughout the country.

A sample of certificate of civil status is an annex to this Anukret.

**Article 6:**

Recording of civil status of the royal families shall be done separately and such duties were delegated to the Minister in charge of the Royal Palace.

**Article 7:**

All photocopied certificates of civil status shall not be officially authentic.

A civil status official shall certify on any photocopied certificate of civil status.

Copying or re-script of certificate of civil status provided for in Chapter 10 of this Anukret.

## **CHAPTER 2: Civil Status Official**

**Article 8:**

Khum or Sangkat leader shall be a civil status official of his or her khum's or sangkat's territorial jurisdiction.

In any absence of khum or sangkat leader, this civil status duty shall be delegated to a deputy to khum or sangkat leader in compliance with hierarchy of rank and be officially informed to the srok or khan leader.

In case of death or removal of khum or sangkat leader and in the period during which no appointment of new khum or sangkat leader, this civil status duty shall be delegated to a deputy to khum or sangkat deputy leader in compliance with order of rank.

**Article 9:**

The roles of the civil status official are to:

- Review and record all important facts related to birth, marriage, and death of a person in the civil status;
- Issue copy or re-script of civil status book remains in the current year,
- Correct spelling errors on the civil status book of current year under the provision of Article 13 of this Anukret,
- Authorize marriage and ritual or burying ceremony;
- Be responsible for the executed certificate of civil status,
- Sign and stamp on the certificate of civil status-,
- Modify or reject the civil status under the final judgment of the court or legal provisions,
- Keep the civil status book in a proper way that facilitate any follow up or management purposes,
- Send one copy of the-last-year civil status book for filing at srok or khan office another copy to its provincial or municipal court-,

The Khmer version is the official version of this document.

- Disseminate among the khum or sangkat citizens about their duties toward civil status recording and facilitate the citizens who make contact for civil status purpose;
- Prepare monthly report on birth, marriage, death, statistics of families and citizens of his or her khum or sangkat and annual report to be sent to his or her srok or khan office at the end of each year-, and
- Cooperate with local authority regarding the civil status if necessary.

**Article 10:**

Any implementation of civil status at the embassy, general consulate office, consulate office of the Kingdom of Cambodia to a foreign country shall comply with same formality and certificate of civil status as civil status implementation in the Kingdom of Cambodia.

In case of emergency, the Minister of Interior and the Minister of Foreign Affairs and International Cooperation shall issue additional instructions in joint Prakas.

**Article 11:**

The embassy, general consulate office, consulate office of the Kingdom of Cambodia to a foreign country shall appoint one of its officials to be a civil status official under the decision of the Minister of Foreign Affairs and International Cooperation with a notification to the Minister of Interior.

A procedure for performance of such civil status official shall be consulted among the Ministry of Interior and the Ministry of Foreign Affairs and International Cooperation.

### **CHAPTER 3: Civil Status Book**

**Article 12:**

There shall be one civil status book at each khum or sangkat for recording birth, marriage, death, and certification of birth, marriage and death.

Such book shall be prepared in two identical copies under each category on a sample defined by a Prakas of the Minister of Interior.

Number of page and serial page number shall be recorded from the first page to the last one. The numbers of first and last pages shall be recorded in written words and signed by the srok or khan leader. The srok or khan leader may initial on the second and other pages and srok or khan seal may be appeared on all pages.

**Article 13:**

Any erase, striking, deletion, or insertion of word shall not be appeared on a civil status book. If any erase, striking, deletion, or insertion of word appears on any page such word shall be readable and written in red on the left margin indicating number of words approved for deletion and insertion then the civil status official, reporter and/or witness and/or interested person shall all sign or affix his/her right thumbprint.

Any page with an error shall be kept as record and shall not be torn apart.

**Article 14:**

Civil status book of each year shall be operated from the 1<sup>st</sup> of January and such operation shall be closed on the 31<sup>st</sup> of December of each year.

In January of the next year, the civil status official shall send one copy of each book to its srok or khan office for review and filing and another copy for filing at its provincial or municipal court for circulation under the law.

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The civil status book used at the embassy, general consulate office, consulate office of the Kingdom of Cambodia to a foreign country shall be sent through the Ministry of Foreign Affairs and International Cooperation to be file with the Ministry of Interior in January of the next year and another copy with the Ministry of Justice.

**Article 15:**

The civil status official shall organize, keep, and maintain a civil status book and civil status files in a proper manner and shall keep confidentiality of each individual.

If a khum or sangkat office is not secured, the civil status official shall send the civil status book to be kept at its srok or khan office. In this case, such civil status official shall conduct his/her civil status work at its srok or khan office under the same procedure implemented at the khum or sangkat office.

**Article 16:**

The Ministry of Interior has a duty to organize a uniform civil status book throughout the country and train civil status official about how to record information into each civil status book and ensure adequate and on time supply of book and certificate of civil status to the civil status official.

#### **CHAPTER 4: Birth Certificate**

**Article 17:**

A farther or mother of a new born baby has a duty to report for recording in the birth book before the civil status official at the khum or sangkat of his/her permanent residence no later than 30 days by specifying that the parents of such baby are in legitimate or illegitimate marriage. If it is a legitimate marriage, a marriage certificate of such parents shall be presented.

If the parents were unable to do this, he/she shall ask his/her relative or neighbor who actually saw and knew the birth of such baby to timely register in the birth book and a certificate of marriage of the parents shall be attached.

**Article 18:**

Family name of a baby may be a family name used by the family members inherited from great grand parents for a long period of time or may be name of father's great grand father or may be a father's name.

A father, mother or guardian shall name a baby.

**Article 19:**

If any person collect an abandoned baby shall bring to the civil status official in the khum or sangkat where the baby was collected. The civil status official shall prepare minute and record in the birth book and name the baby and in case of emergency, the civil status official shall consult with a health official to give a presumed date of birth and indicate names of parents as unknown.

If any person adopt the abandoned baby family name of adopter shall be used as family name of such baby.

If no one adopts such baby, the civil status official shall send the baby to a nearest baby rescue center or orphanage together with the baby's birth certificate and minutes of such granting to baby rescue center or orphanage.

**Article 20:**

A baby or child who is being nursed at a baby rescue center or orphanage and has no birth certificate or birth letter the director of such center shall make a statement and send such baby or

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child to the civil status official of khum or sangkat where the center locates so that the a birth certificate or birth letter shall be issued.

**Article 21:**

Adoption of baby or child from a baby rescue center or orphanage, adoption of abandoned baby and adoption of baby or child from parents shall be done in compliance with the procedures provided by the law and regulations in force.

Adoption contract shall be recorded in the civil status book.

**Article 22:**

If any convicted woman delivered a baby, the residence of the parents shall be considered as a place of birth of such baby.

**Article 23:**

A baby-born of parents having illegitimate marriage shall also be recorded in the birth book. At the time of recording a birth certificate, if the parents having illegitimate marriage has actually accepted before the civil status official that the baby is theirs, the civil status official shall consider such parents as parents of such baby.

In the case where only the father or mother who accepted, the baby shall be considered as a child of the one who made an acceptance.

After recording of a civil status, any parents who have not accepted as parents of a baby may later claim for recognition of such baby.

Illegitimate child recognized by parents shall become a legitimate child if after a birth of the same the parents got married.

A recognition may be made before a marriage or at the same time of marriage or after the marriage.

**Article 24:**

After recording of a civil status, the civil status official shall provide a reporter with one original copy of a birth certificate as evidence and issue photocopied ones at the request of interested person.

**Article 25:**

If the parents or guardian failed to report and have a baby recorded in a civil status book within 30 days after the date of birth the parents or guardian shall request for a judgment from his/her provincial/municipal court.

The parents or guardian of such baby shall present the court judgment in order to have a baby recorded in a civil status book at his/her khum or sangkat.

In case of emergency, the Minister of Interior and the Minister of Justice shall issue additional instructions,

**Article 26:**

A baby born of Cambodian parents living abroad or of Cambodian father and non-Cambodian mother or of non-Cambodian father and Cambodian mother, parents of such baby may have their baby recorded in a civil status book in that foreign country and under law of such country. When returning to the Kingdom of Cambodia, the interested person shall have his/her child recorded in a civil status book at his/her khum or sangkat based on the birth certificate issued by such foreign country and a neutralization shall be under the Law of Nationality of the Kingdom of Cambodia. The civil status official shall keep an official copy of the birth certificate and a new birth certificate shall be recorded from the book and issue to the interested person.

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If the parents of such baby have their baby recorded in a civil status book at the embassy, office of general consulate or consulate office of the Kingdom of Cambodia to such country, the interested person may officially use such birth certificate when returning to the Kingdom of Cambodia.

**Article 27:**

An immigrant or foreigner who legally lives and delivers a baby in the Kingdom of Cambodia parents of such baby may have their baby recorded at the khum or sangkat of their permanent residence or recorded at the embassy, general consulate office, or consulate office of their country to the Kingdom of Cambodia. If a baby recorded at the khum or sangkat, the family name and last name and names of the parents shall be written in Latin words followed by Khmer scripts.

Such baby shall be neutralized under the Law on Nationality of the Kingdom of Cambodia.

## **CHAPTER 5: Marriage Certificate**

**Article 28:**

Any man and woman who wish to be married shall submit a marriage application with civil status official of khum or sangkat of woman's residence. The civil status official shall examine such application based on the provisions of the Law on Family and Marriage in force of the Kingdom of Cambodia.

**Article 29:**

The civil status official shall post in public one copy of a marriage declaration at the bride's residence, khum or sangkat office. Two copies of marriage declaration shall be sent to the civil status official of the groom's khum or sangkat office to be posted at the groom's residence, khum or sangkat office.

Such marriage declaration shall include:

- 1) Name, family name, age, occupation, and residence of the prospective couple,
- 2) Name, family name, age, occupation, and residence of the prospective couple's parents, if either father or mother was deceased should be so indicated-, and
- 3) Duration for counter-claim.

A marriage declaration shall be posted ten (10) days prior to the marriage so that eligible person may file a counter-claim against such marriage if there is any objection to such marriage. If there is no counterclaim with the 10-day period, a marriage may be held. If there is a counter-claim, a marriage may be held only if the counter-claim was resolved by the authority.

**Article 30:**

A marriage shall be considered legitimate only if a man and woman voluntarily accepted each other as husband and wife under a marriage contract before the civil status official of the bride's residence.

Such contract shall be recorded in the marriage book and signed by the civil status official with thumbprint acknowledgement of spouse and witnessed by two persons who are of majority ages.

**Article 31:**

When the prospective couple report for recording in the marriage book, the civil status official shall record in the marriage book and issue one original copy of the marriage certificate to the interested couple and photocopied ones as requested by the interested couple.

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**Article 32:**

Application for marriage between Cambodian and Cambodian citizens or between Cambodian and foreigner who are legally residing abroad shall be done before the civil status official of the embassy, general consulate of consulate office of the Kingdom of Cambodia to the country of either spouse's residence.

If a marriage between Cambodian and Cambodian citizens or between Cambodian and foreigner was duly conducted in a marriage form provided in the law of the place in which a marriage is held, such marriage shall be considered legitimate in the Kingdom of Cambodia if such marriage is not inconsistent with the law of the Kingdom. A marriage certificate or copy of the same shall be recorded in the marriage book of the embassy, general consulate of consulate office of the Kingdom of Cambodia to the country of either spouse's residence or if either spouse returns to live in the Kingdom of Cambodia such marriage certificate shall be recorded in the marriage book at his/her khum or sangkat of residence.

The Cambodian embassy, general consulate of consulate office, or civil status official shall take such official copy of such marriage certificate file and recorded a new marriage certificate from a marriage book and issue to the interested person.

**Article 33:**

A marriage between Cambodian and Cambodian citizens or between Cambodian and foreigner or immigrant who is legally residing in the Kingdom of Cambodia shall be conducted in accordance with the law of the Kingdom.

**Article 34:**

A foreigner or immigrant who is legally residing in the Kingdom of Cambodia may be married to another foreigner or immigrant under the Law of Marriage of their country however, this shall be authorized by the civil status official by identifying the location and date of such marriage.

During the marriage, the couple may request for recording into the marriage book at their embassy, general consulate of consulate office to the Kingdom of Cambodia, if any, or with civil status official under the law of the Kingdom.

Registration of foreign marriage shall be recorded in Khmer scripts and followed by Latin scripts.

## **CHAPTER 6: Death Certificate**

**Article 35:**

Upon the death of any person, the family member, relatives, neighbor or a person in charge of the ministry or unit of such deceased person shall report to the civil status official of the khum or sangkat of permanent residence of the deceased.

The civil status official shall issue a permission for incineration or burying ritual if a person was died of ordinary illness, senility, natural disaster or other accidents in which no doubt occurred in relation to a manslaughter by any crime.

The recording of death and issuance of death certificate shall be made within 15 days after the date of death.

If a person was died of transmitted disease that may be endanger to the society, this shall be immediately reported to the hospital or hygiene authority. The civil status official shall issue permission for incineration or burying ritual based on the decision of the hospital or hygiene authority.

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**Article 36:**

If a person was died of any event associated a doubt occurred in relation to a manslaughter by any crime, the civil status official or any interested person shall immediately report to the competent authority of such place so that other specialized authorities can conduct an investigation and provide immediate resolution. The civil status official shall issue permission for incineration or burying ritual based on such decision.

**Article 37:**

If a Cambodian citizen of any khum or sangkat was died in a different khum or sangkat, the civil status official of such different khum or sangkat shall notify the civil official of the deceased person's khum or sangkat in order to inform the relatives to take the body for ritual ceremony and register in a death book of the deceased's permanent khum or sangkat.

If the deceased has no relatives or acquaintance, the civil status shall organize an incineration or burying ritual and register in the death book of such khum or sangkat.

**Article 38:**

If any convicted person was died in the prison, the responsible person of such prison shall notify in writing to the relevant authorities to the civil status official of the deceased's permanent residence in order for registration in the death book.

**Article 39:**

If any person who reports about a death, the civil status shall register in the death book and provide the reporter with one original copy of the death certificate and a photocopied ones as requested.

**Article 40:**

If a death was not reported for recording in the death register within 15 days, the family members shall request for a judgment from the court of the province or municipality concerned and present such judgment to the civil status official for registration of such deceased person.

**Article 41:**

If a Cambodian citizen who legally resided abroad was died in such country, family member, relatives, neighbor or anyone who have seen the dead may request for registration of a death at and under the law of such country. When returning to the Kingdom of Cambodia, the interested person shall present such death certificate for registration in death register at the deceased person's permanent khum or sangkat before moving to a foreign country.

The civil status official shall keep an official copy of the death certificate and issue a new death certificate shall be recorded from the death register and issue to the interested person.

If a death was not reported for recording in the death register with the embassy, general consulate office, consulate office of the Kingdom of Cambodia to such country and such death certificate may officially used when returning to the Kingdom of Cambodia.

**Article 42:**

An immigrant or foreigner who legally lived and was died in the Kingdom of Cambodia, the family member or responsible person may register such death with the khum or sangkat of the deceased's permanent residence before the death or may register with the embassy, general consulate office, consulate office of the deceased's country to the Kingdom of Cambodia, if any.

If it was done with the khum or sangkat's office a registration shall be recorded in Khmer scripts and followed by Latin scripts.

The Khmer version is the official version of this document.

## **CHAPTER 7: Birth Attestation Letter**

### **Article 43:**

Any Cambodian citizen was born prior to the entry into force of this Sub-decree on the Civil Status and has no birth certificate may apply for registration in accordance with a new sample at the khum or sangkat of his/her currently permanent residence with two witnesses who are of majority age and reliable person who knows about the background of the applicant and used to live in the same village, khum or sangkat of the applicant at the birth of same to testify before the civil status official.

Any civil servant who is on salary or pension payroll shall present his/her salary or pension documents or confirmation from interested institution as supporting evidence of birth certificate and the date of birth appears on the birth register shall not be different from the one appears on the official salary or pension payroll.

### **Article 44:**

The civil status official shall register in the birth register when requested by the applicant and issue one original copy of the birth attestation letter to the applicant or family member and photocopied ones as requested by the applicant and signed by the khum or sangkat civil status official.

## **CHAPTER 8: Marriage Attestation Letter**

### **Article 45:**

Any Cambodian citizen was married prior to the entry into force of this Sub-decree on the Civil Status and has no marriage certificate may apply for registration in accordance with a new sample at the khum or sangkat of his/her currently permanent residence with two witnesses who are of majority age and reliable person who knows about the applicant's background and used to live in the same village, khum or sangkat of the applicant at the birth of same to testify before the civil status official.

### **Article 46:**

The civil status official shall register in the marriage register when requested by the applicant and issue one original copy of the marriage attestation letter to the applicant and photocopied ones as requested by the applicant and signed by the khum or sangkat civil status official.

## **CHAPTER 9: Death Attestation Letter**

### **Article 47:**

A relative of any Cambodian citizen who was died prior to the entry into force of this Sub-decree on the Civil Status and has no death certificate may apply for registration in accordance with a new sample at the khum or sangkat of his/her currently permanent residence with two witnesses who are of majority age and reliable person who knows about the deceased's background and used to live in the same village, khum or sangkat of the deceased to testify before the civil status official.

### **Article 48:**

The civil status official shall register in the death register when requested by the applicant and issue one original copy of the death attestation letter to the applicant and photocopied ones as requested by the applicant and signed by the khum or sangkat civil status official.

The Khmer version is the official version of this document.

## **CHAPTER10: Extracts or Copying of Civil Status**

### **Article 49:**

Extract or copying of the civil status, include extractor coping of birth certificate, marriage certificate, death certificate, birth attestation letter, marriage attestation letter and of death attestation letter.

All contents of copying shall be the same to the content of original civil status. Extract of the civil status shall be done at the request of the applicant by extracting important content from the civil status register.

### **Article 50:**

An applicant for extract or copying of the civil status shall present the original copy of the civil status record, however, the civil status official shall extract or copy form the filed civil status records. If the original copy was lost, the civil status official shall copy from the civil status register previously recorded and being maintained in the current year at the khum or sangkat office. If the civil status register was destroyed with a proper minutes and a copying or extract from the civil status record holding by applicant shall be valid only if it was instructed by an inter-ministerial instruction between the Ministry of Interior and the Ministry of Justice.

### **Article 51:**

Application for extract or copying of the civil status record of the current year shall submitted at the khum or sangkat office and signed by the civil status official record, and such signature shall be certified by srok or khan leader with a stamp.

Application for extract or copying of the civil status record of preceding year shall submitted at the srok, khan or court concerned.

Application for extract or copying submitted to the srok or khan shall be signed by the civil status holder and such signature shall be certified by the srok or khan leader with a stamp.

### **Article 53:**

A Cambodian citizen who legally residing abroad and civil status of whom registered with the embassy, general consulate or consulate office of the Kingdom of Cambodia to such country and application for extract or copying of civil status of his/her current year may be sign by civil status official thereto and certified by the ambassador, general consular or consular with a stamp.

Application for extract or copying of the civil status record of preceding year shall submitted at the Ministry of Interior or the Ministry of Justice with the civil status register of the preceding year was filed.

## **CHAPTER11: Civil Status Responsibility under the Law**

### **Article 54:**

The applicant and/or reporter and/or witness shall honestly testify his/her representation about the facts that he/she is aware of or have seen before the civil status official concerning each type of civil status records.

### **Article 55:**

The civil status official must be honest in registration of civil status record for people. If any civil status official who intentionally conspires or falsifies any civil status records shall be punished under the law.

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Any falsified civil status records shall be collected and requested the court to refuse and be punished under the law.

## **CHAPTER12: Civil Status Budget**

### **Article 56:**

The budget for printing of certificate and training of officials about civil status throughout the country shall be covered by the State budget.

### **Article 57:**

The Ministry of Interior shall propose annual budget for printing of civil status certificate and training of civil status officials.

### **Article 58:**

An applicant for birth and death certificate shall not be required to pay any fee.

An applicant who applies for marriage permission and registration of marriage, birth attestation, marriage attestation, and death attestation shall be required to pay for a specified paper costs.

An applicant who applies for extract or copying of civil status shall be required to pay for paper and stamp costs for the benefit of khum or sangkat and State's revenues.

The costs of paper and stamp shall be determined by Anukret at the request of the Minister of Economy and Finance and the Minister of Interior.

## **CHAPTER13: Transitional Provisions**

### **Article 59:**

Application of attestation of civil status on birth register, marriage register, and death register shall be done only for Cambodian citizens and apply only three years from the date of entry into force of this Anukret. After the expiration of this period, Cambodian citizens who have no birth certificate, marriage certificate, and death certificate shall request judgment from the interested court and present such judgment to the khum or sangkat civil status official for registration of civil status. While the spouses shall be allowed to submit a voluntary application for attestation of marriage.

### **Article 60:**

Any use of another's civil status records by any person shall be prohibited.

### **Article 61:**

All previous copies of the civil status records issued in the past regimes and those issued after 1979 and were retained to date, the interested person shall present to the current civil status for registration in the civil status register under a new forms for future use.

### **Article 62:**

If any improper records were found in any previous civil status documents, the civil status shall collect such civil status documents and instruct the interested person to apply for a new ones.

### **Article 63:**

Multiple registration of any of each category of civil status and at different places in the Kingdom of Cambodia shall be prohibited.

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#### **CHAPTER14: Penalties**

**Article 64:**

Any person who reports a false civil status records before the civil status official or use another's person civil status documents or report for multiple registration of civil status at the same or different place in the Kingdom of Cambodia or use a fake civil status document shall be fined and punished under the law.

**Article 65:**

Any civil status official who supports, conspires, falsifies in registration of civil status for the applicant or demanded fees from the citizens in excess of the rate specified by the law shall be fined and punished under the law.

#### **CHAPTER15: Final Provision**

**Article 66:**

Any provisions that are contrary to this Anukret shall be deemed abrogated.

**Article 67:**

The Minister in charge of the Council of Ministers, the Minister of Interior, the Minister of Justice, the Minister of Foreign Affairs and International Cooperation, Minister of Economy and Finance, the relevant Ministers and Secretaries of Sate shall effectively implement this Anukret from the date of signature.

**Kingdom of Cambodia  
Nation Religion King**

Royal Government of Cambodia

No. 62 **Gn Rkbk**

**Sub-Decree  
On  
The fee of Civil Registration paper and stamp**

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The Royal Government

- Having seen the Constitution of Cambodia
- Having seen Royal Decree # **ns /rkt**/11/98/72, dated 30 Nov1998, on the appointment of composition of Royal Government for Kingdom of Cambodia
- Having seen Royal Krom # 02 **ns** 94, dated July 20, 1994, promulgating the Law on Organizing and Functioning of Council of Ministers
- Having seen Sub-Decree # 23 **Rk**, dated February 15, 1991, promulgating the Law on create the stamp taxation
- Having seen Royal Krom **ns<sup>1</sup>/4rkm<sup>1</sup>/40301**, dated March 19, 2001, promulgating the Law on the Commune Council Administration
- Having seen Sub-Decree # 76 **GnRk**, dated October 11, 1995, on the improvement and addition of sub-decree on Stamp tax collection.
- Having seen Sub-Decree # 103 **GnRk>bk**, dated 29 December 2000, on Civil Registration
- Having seen Royal Krom **ns<sup>1</sup>/4rkm<sup>1</sup>/40196/05**, dated January 24, 1996, promulgating the law on the establishment of Ministry of Interior
- Having seen Royal Krom **ns<sup>1</sup>/4rkm<sup>1</sup>/40196/18**, dated January 24, 1996, promulgating the law on the establishment of Ministry of Economic and Finance
- Having seen Royal Krom **ns<sup>1</sup>/4rkt<sup>1</sup>/40501/175**, dated May 18, 2001, on the establishment of the National Committee for the support of Commune / Sangkat
- Reference to the fourteenth meeting of the National Committee for the support of Commune / Sangkat, dated May 31, 2002

- Reference to the necessity of the Royal Government  
It is herewith decided,

### **Article 1**

The fee of all kind of Civil Registration papers is as follows:

A). For Ratanakiri, Modulhiri, Steung Treng, Preah Vihea and Udor Meanchey:

- Announcement of Marriage 200 Riel / page
- Marriage Certificate 100 Riel / page
- Letter Certifying Marriage 100 Riel / page
- Letter Certifying Birth 100 Riel / page
- Letter Certifying Death 100 Riel / page
- Copy of all kind registration certificate 100 Riel / page

B). For Provinces/ Municipalities other than the above five provinces:

- Announcement of Marriage 400 Riel / page
- Marriage Certificate 400 Riel / page
- Letter Certifying Marriage 400 Riel / page
- Letter Certifying Birth 400 Riel / page
- Letter Certifying Death 400 Riel / page
- Copy of all kind registration certificate 400 Riel / page

### **Article 2**

The stamp fee of all kind of Civil Registration papers is as follows:

- Application for Marriage 1,000 Riel / page
- Copy of Birth Certificate 300 Riel / page
- Copy of Letter Certifying Birth 300 Riel / page
- Copy of Marriage Certificate 1,500 Riel / page
- Copy of Letter Certifying Marriage 1,500 Riel / page
- Copy of Death Certificate 300 Riel / page
- Copy of Letter Certifying Death 400 Riel / page

### **Article 3**

The income the commune-sangkat make from selling the civil registration papers as stipulated in this Sub-Decree is considered as the commune-sangkat income.

### **Article 4**

The Ministry of Interior has the duty to print all kinds of civil registration papers for the supply to the civil registration authority only.

### **Article 5**

Based on the Sub-Decree, where necessary, the Co-Ministers of Interior and the Minister of Economic and Finance have the duty to issue additional instruction.

### **Article 6**

Any provisions contradictory to the Sub-Decree are nullified.

### **Article 7**

This Sub-Decree takes effect from the date of signature.

Phnom Penh, 24 June 2002  
Prime Minister  
Signed and Sealed  
Hun Sen

Having informed Samdech Prime Minister  
Signed and Sealed  
Sar Kheng     You Hokry

Co-Ministers of Interior

Signed and Sealed

Keat Chhon

Minister of Economic and Finance

Cc:  
Ministry of Royal Palace  
Secretariat of Constitutional Council  
Secretariat of the Senate  
Secretariat of the National Assembly  
The Cabinet of Samdech Prime Minister  
Royal task  
Documentation / Archive

No. 133  
Originally copied  
Phnom Penh, July 10/ 2002

Minister  
Vice Secretary  
Signed and Sealed

**Kingdom of Cambodia  
Nation Religion King**

Royal Government of Cambodia

No. 60 **Gn Rkbk**

**Sub-Decree  
On  
Amendment to article 8 and 59 of the Sub-Decree on Civil Registration**

The Royal Government

- Having seen the Constitution of Cambodia
- Having seen Royal Decree # **ns /rkt**/11/97/72, dated 30 Nov 1998, on the Appointment of the Composition of the Royal Government of Kingdom of Cambodia
- Having seen Royal Krom # 02 **ns** 94, dated July 20, 1994, promulgating the Law on the Organizing and Functioning of the Council of Ministers
- Having seen the Law on Marriage and Family, promulgated by the Sub- Decree # 56 **Rk**, dated 20 July, 1989
- Having seen the Royal Krom **ns/rkm**/1096/30, dated 19 October 1996, promulgating the Law on Nationality
- Having seen the Royal Krom **ns/rkm**/0301/05, dated 19 March 2001, Promulgating the Law on the Commune-Sangkat Administration
- Having seen Sub-Decree # 103 **GnRk>bk**, dated 29 December 2000, on Civil Registration
- Reference to the request of the National Committee for the Support of Commune-Sangkat

It is herewith decided,

Same articles-

Amend article 8 and 59 of the Sub-Decree 103 **GnRk>bk** , dated 29 December 2000, on Civil Registration.

**Article 8(new):**

Commune-Sangkat Council is responsible for civil registration within its jurisdiction.  
Commune-Sangkat Chief is a civil registration official.

**Article 59 (New)**

Application for civil registration- birth certifying registration, marriage certifying registration and death certifying registration- shall be applied only to Khmer Citizen and only within 3 years, starting from 01 August, 2002 to 31 August, 2005.

Beyond the above period of time, Khmer Citizen who has no birth certificate and death certificate must request the Provincial/Municipal court judgment and bring the judgment for application for registration at the Commune-Sangkat. Marriage certifying registration is allowed to get registered at the will of the spouses.

For 2002, all kinds of the civil registration books are allowed to be used from 01 August to 31 December 2002.

From 2003 on ward, provisions stipulated in paragraph 1 of Article 14 of the Sub-Decree 103, dated 29 December 2000, shall be applied.

Phnom Penh, 24 June 2002  
Prime Minister  
Signed and Sealed  
Hun Sen

Having informed the Samdech Prime Minister  
Co-Ministers of Interior  
Sar Kheng                      You HoKry

CC:

- The Cabinet of His Majesty the King
- Secretariat of the Senate
- Secretariat of the National Assembly
- The Cabinet of the Prime Minister
- Archives

**Kingdom of Cambodia  
Nation Religion King**

Royal Government of Cambodia

No. 17 **Gn Rkbk**

**Sub-Decree  
On  
Amendment to Sub-Decree on Civil Registration**

The Royal Government

- Having seen the Constitution of Cambodia
- Having seen Royal Decree # **ns /rkt**/11/98/72, dated 30 Nov1998, on the appointment of composition of Royal Government for Kingdom of Cambodia
- Having seen Royal Krom # 02 **ns** 94, dated July 20, 1994, promulgating the law on organizing and functioning of Council of Ministers
- Having seen Sub-Decree # 103 **GnRk>bk**, dated 29 December 2000, on Civil Registration
- Having seen Sub-Decree # 60 **GnRk>bk**, dated 24 June 2002, on the amendment to article 8 and 59 of Sub-Decree #103, dated 29 December 2000, on Civil Registration
- Reference to request of Co-Ministers of Interior

It is herewith decided,

Same articles-

Amend article 25, 40, 43, 45, 47, 51 of Sub-Decree # 103 **GnRk>bk** dated 29 December 2000, on Civil Registration, and amend article 59 (new) of Sub-Decree #60, dated 24 June 2002, on amendment to article 8 and 59 of Sub-Decree # 103, dated 29 Dec 2000, on Civil Registration as follow:

**Article 25(new):**

If there is new born baby and if there is failure to report within 30 days after delivery for birth registration, a father or mother or guardian shall apply for a child's birth certificate from commune/sangkat chief by paying 1,000 (one thousand) riel for birth certificate for people living in Rattanakiri, Mondulkiri, Stung Treng, Preah Vihear, and Uddor Meanchey, and 4,000 (four thousand) riel for the other provinces/Municipalities.

Minister of Interior shall issue additional instruction on formality and procedure of application for above birth registration.

**Article 40 (new)**

If there is failure to report within 15 days for a death, family of a dead shall apply for a death certificate from commune/sangkat chief by paying 1,000 (one thousand) riel for people living in Rattanakiri, Mondulkiri, Stung Treng, Preah Vihear, and Uddor Meanchey, and 4,000 (four thousand) riel for the other provinces/Municipalities.

Minister of Interior shall issue additional instruction on formality and procedure of application for above birth registration.

**Article 40 (new)**

Khmer citizen, who had been born before this new sub-decree took into effect and who had no birth certificate, can apply for letter certifying birth under new instruction at commune office where she/he permanently lives. She/he must bring along two adult witnesses who have exact address/residence before a civil registration official.

Government present civil servants or retired civil servants shall bring their salary or pension papers or statement from ministries concerned for applying for letter certifying birth. Their date of birth in birth certification book must be same as their date of birth in salary or pension papers.

**Article 45(new)**

Khmer citizen, who had lived together as husband and wife before the sub-decree on new CR came to force and who have not registered in marriage record book, are able to apply for registration under the new instruction of marriage record book at commune/sangkat office of their own specific present address. They must bring along two adult witnesses and in conformity with the law on marriage and family.

**Article 47(new)**

Khmer citizen who died before the sub-decree on new CR coming to force and do not have death certificate, relative who is alive is able to apply to register in new model of death record book at commune/sangkat where the relative presently and permanently lives with two adult witnesses who have permanent address to present before CR official.

**Article 51(new)**

Application for a copy of CR letter of the calendar year shall be applied at the commune/sangkat office and shall be signed and sealed by commune/sangkat CR official.

**Article 59(new)**

A- Application for CR certifying birth, marriage and death will be applied only to Khmer citizen from 01 August 2002 to 31 August 2005.

After the above mentioned duration, Khmer people who have no CR letter certifying birth and death shall apply for CR letter under the condition as stated in Article 25(new) and 40(new) of this sub-decree. Marriage registration can be allowed to apply for with the consent of spouse.

For year 2002, all kinds of CR books are allowed to be used from 01 August and shall be finished on 31 December 2002.

From year 2003 onwards, a provision as set forth in paragraph 1 of Article 14 of the Sub-decree #103, dated 29 December 2000, shall be applied.

B- From the effective date of the Sub-decree to 31 August 2005, Khmer citizen who register within this period of time, certifying birth and death, shall be provided original certificate free of charge.

New-born children who are born between 01 August 2002 and 31 August 2005, who failed to register birth and whose father or mother or guardian can register before 31 August 2005, shall be provided with original birth certificate free of charge.

C- To facilitate civil registration, commune/sangkat council can carry out civil registration in own commune/sangkat regarding to instruction by Minister of Interior.

Phnom Penh, 14 July 2004  
Prime Minister

CC:

- Cabinet of Royal Palace
- Secretary General of Senate
- Secretary General of Assemble
- All Government Departments
- File and Archives

Sign and seal

Hun Sen

Having informed Samdach PM  
Co-Ministers of Interior

Sign and seal

Sar Kheng Yu Hokry

## **THE STATE PRESIDENT**

### **Order No. 22/2008/L-CTN of November 28, 2008, on the promulgation of law**

THE PRESIDENT OF THE SOCIALIST REPUBLIC OF VIETNAM

*Pursuant to Article 103 and Article 106 of the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10 of the X<sup>th</sup> National Assembly, the 10<sup>th</sup> session;*

*Pursuant to Article 91 of the Law on Organization of the National Assembly;*

*Pursuant to Article 50 of the Law on Promulgation of Legal Documents,*

PROMULGATES:

**the Law on Vietnamese Nationality,**

which was passed on November 13, 2008, by the XII<sup>th</sup> National Assembly of the Socialist Republic of Vietnam at its 4<sup>th</sup> session.

President of the Socialist Republic of Vietnam

*NGUYEN MINH TRIET*

## **Law on Vietnamese Nationality**

**(No. 24/2008/QH12)**

*Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam, which was amended and supplemented under Resolution No. 51/2001/QH10;*

*The National Assembly promulgates the Law on Vietnamese Nationality.*

Chapter I

GENERAL PROVISIONS

**Article 1.** Vietnamese nationality

Vietnamese nationality reflects the cohesive relationship between individuals and the State of the Socialist Republic of Vietnam, giving rise to rights and obligations of Vietnamese citizens toward the State and rights and responsibilities of the State of the Socialist Republic of Vietnam toward Vietnamese citizens.

**Article 2.** Rights to nationality

1. In the Socialist Republic of Vietnam, every individual is entitled to a nationality. Vietnamese citizens will not be deprived of their Vietnamese nationality, except for cases prescribed in Article 31 of this Law.

2. The State of the Socialist Republic of Vietnam is a unified state of all ethnic groups living in the Vietnamese territory; all members of ethnic groups are equal in their right to have Vietnamese nationality.

**Article 3.** Interpretation of terms

In this Law, the terms below are construed as follows:

1. “Foreign nationality” is the nationality of a country other than the Vietnamese nationality.

2. “Stateless person” is a person who has neither Vietnamese nationality nor foreign nationality.

3. “Overseas Vietnamese” are Vietnamese citizens and persons of Vietnamese origin who permanently reside in foreign countries.

4. “Persons of Vietnamese origin residing abroad” are Vietnamese people who used to have Vietnamese nationality which had been determined at the time of their birth on the consanguinity principle and their offsprings and grandchildren are permanently residing in foreign countries.

5. “Foreigners residing in Vietnam” are foreign nationals and stateless persons who permanently or temporarily reside in Vietnam.

**Article 4.** The nationality principle

The State of the Socialist Republic of Vietnam recognizes that Vietnamese citizens have a single nationality, Vietnamese nationality, unless it is otherwise provided for by this Law.

**Article 5.** Relationships between the State and citizens

1. Persons who hold Vietnamese nationality are Vietnamese citizens.

2. Vietnamese citizens have their citizen rights guaranteed by the State of the Socialist Republic of Vietnam and have to fulfill their citizen obligations toward the State and the society as prescribed by law.

3. The State of the Socialist Republic of Vietnam adopts policies to create conditions for Vietnamese citizens in foreign countries to enjoy their civic rights and fulfill their civic obligations in conformity with the circumstance of living away from the country.

4. Rights and obligations of overseas Vietnamese citizens who also hold foreign nationality comply with relevant laws.

**Article 6.** Protection of Vietnamese citizens living abroad

The State of the Socialist Republic of Vietnam protects lawful rights of Vietnamese citizens living abroad.

Domestic state agencies and overseas Vietnamese representative missions shall take all necessary measures in accordance with laws of host countries and international law and practice to effect such protection.

**Article 7.** Policies toward persons of Vietnamese origin residing abroad

1. The State of the Socialist Republic of Vietnam adopts policies to encourage and create favorable conditions for persons of Vietnamese origin residing abroad to maintain close relations with their families and homeland and contribute to the building of their homeland and country.

2. The State adopts policies to create favorable conditions for persons who have lost their Vietnamese nationality to restore Vietnamese nationality.

**Article 8.** Restriction of the situation of non-nationality

The State of the Socialist Republic of Vietnam creates conditions for children born in the Vietnamese territory to have a nationality and stateless persons permanently residing in Vietnam to acquire Vietnamese nationality under this Law.

**Article 9.** Retention of nationality upon marriage, divorce or annulment of unlawful marriage

The marriage, divorce or annulment of unlawful marriage between a Vietnamese citizen and a foreigner does not alter Vietnamese nationality of the involved parties as well as their minor children (if any).

**Article 10.** Retention of nationality upon change of the spouse's nationality

That a husband or wife acquires, restores or loses his/her Vietnamese nationality does not alter the nationality of his/her spouse.

**Article 11.** Papers proving Vietnamese nationality

One of the following papers can prove one's Vietnamese nationality:

1. Birth certificate; in case the birth certificate does not clearly state the Vietnamese nationality of the holder, papers proving his/her parents' Vietnamese nationality are required.
2. People's identity card;
3. Vietnamese passport;
4. Decision permitting the naturalization in Vietnam, decision permitting the restoration of Vietnamese nationality, decision recognizing the adoption of a foreign child, and decision permitting a foreigner to adopt a Vietnamese child.

**Article 12.** Settlement of matters arising from the fact that a Vietnamese citizen concurrently holds a foreign nationality

1. Matters arising from the fact that a Vietnamese citizen concurrently holds a foreign nationality shall be settled under treaties to which the Socialist Republic of Vietnam is a contracting party; for case where no treaties are available, these matters shall be settled according to international practice.

2. Pursuant to this Law, the Government shall conclude, propose the conclusion of, or decide on the accession to, treaties to settle matters arising from the fact that a Vietnamese citizen concurrently holds a foreign nationality.

## Chapter II

### ACQUISITION OF VIETNAMESE NATIONALITY

#### Section 1. GENERAL PROVISIONS

**Article 13.** Persons having Vietnamese nationality

1. Persons having Vietnamese nationality include those who have Vietnamese nationality by the effective date of this Law and those who acquire Vietnamese nationality under this Law.

2. Overseas Vietnamese who have not yet lost Vietnamese nationality as prescribed by Vietnamese law before the effective date of this Law may retain their Vietnamese nationality and within 5 years after the effective date of this Law, shall make registration with overseas Vietnamese representative missions to retain Vietnamese nationality.

The Government shall specify the order of and procedures for registration for retention of Vietnamese nationality.

**Article 14.** Grounds for identification of persons having Vietnamese nationality

A person is determined to have Vietnamese nationality on one of the following grounds:

1. By birth, as prescribed in Articles 15, 16 and 17 of this Law;
2. Having been naturalized in Vietnam;
3. Having Vietnamese nationality restored;
4. On the grounds defined in Articles 18, 35 and 37 of this Law;
5. On the grounds defined in treaties to which the Socialist Republic of Vietnam is a contracting party.

**Article 15.** The nationality of children whose parents are Vietnamese citizens

A child born inside or outside the Vietnamese territory whose parents, at the time of his/her birth, are both Vietnamese citizens has Vietnamese nationality.

**Article 16.** The nationality of children either of whose parents is a Vietnamese citizen

1. A child born inside or outside the Vietnamese territory either of whose parents is a Vietnamese citizen and the other is a stateless person at the time of his/her birth or whose mother, at the time of his/her birth, is a Vietnamese citizen and whose father is unknown, has Vietnamese nationality.

2. A child either of whose parents is a Vietnamese citizen at the time of his/her birth and the other is a foreign national has the Vietnamese nationality if so agreed in writing by his/her parents at the time of birth registration. In case a child is born in the Vietnamese territory but his/her parents fail to reach an agreement on the selection of his/her nationality, the child has Vietnamese nationality.

**Article 17.** The nationality of children whose parents are stateless persons

1. A child born in the Vietnamese territory whose parents, at the time of his/her birth, are both stateless persons with a permanent residence in Vietnam has Vietnamese nationality.

2. A child born in the Vietnamese territory whose mother, at the time of his/her birth, is a stateless person with a permanent residence in Vietnam and whose father is unknown, has Vietnamese nationality.

**Article 18.** The nationality of abandoned newborns and children found in the Vietnamese territory

1. Abandoned newborns and children found in the Vietnamese territory whose parents are unknown, have Vietnamese nationality.

2. A child specified in Clause 1 of this Article who is aged under full 15 years will no longer have Vietnamese nationality in the following cases:

a/ He/she has found his/her parents who hold single foreign nationality;

b/ He/she has found his/her mother or father who holds single foreign nationality.

## Section 2. NATURALIZATION IN VIETNAM

**Article 19.** Conditions for naturalization in Vietnam

1. Foreign nationals and stateless persons permanently residing in Vietnam who file applications for Vietnamese nationality may be permitted for naturalization in Vietnam if they satisfy the following conditions:

- a/ Having the full civil act capacity as prescribed by Vietnam's laws;
- b/ Obeying the Constitution and laws of Vietnam; respecting the traditions, customs and practices of the Vietnamese nation;
- c/ Understanding Vietnamese sufficiently enough to integrate themselves into the Vietnamese community;
- d/ Having resided in Vietnam for 5 years or more by the time of application for naturalization;
- e/ Being capable of making their livelihood in Vietnam.

2. Those who apply for Vietnamese nationality may be permitted for naturalization in Vietnam without having to fully meet the conditions prescribed at Points c, d and e, Clause 1 of this Article if they fall into one of the following cases:

- a/ Being spouses, natural parents or natural offsprings of Vietnamese citizens;
- b/ Having made meritorious contributions to Vietnam's national construction and defense;
- c/ Being helpful to the State of the Socialist Republic of Vietnam.

3. Persons naturalized in Vietnam shall renounce their foreign nationality, except for those defined in Clause 2 of this Article in special cases, if so permitted by the President.

4. Persons applying for Vietnamese nationality must have Vietnamese names. These names may be selected by the applicants and written in the decisions on naturalization in Vietnam.

5. Persons applying for Vietnamese nationality may not be permitted for naturalization if such naturalization is detrimental to Vietnam's national interests.

6. The Government shall specify conditions for naturalization in Vietnam.

**Article 20.** Dossiers of application for Vietnamese nationality

1. A dossier of application for Vietnamese nationality comprises:

- a/ An application for Vietnamese nationality;
- b/ A copy of the birth certificate, passport or other substitute papers;
- c/ A curriculum vitae;
- d/ A judicial record issued by a competent Vietnamese authority for the period the applicant resides in Vietnam and a judicial record issued by a competent foreign authority for the period the applicant resides in the

foreign country. Judicial records must be issued within 90 days before the date of filing the dossier;

e/ Papers proving his/her Vietnamese language skills;

f/ Papers proving his/her place and period of residence in Vietnam;

g/ Papers proving his/her ability to make livelihood in Vietnam.

2. For persons exempt from several conditions on naturalization in Vietnam specified in Clause 2, Article 19 of this Law, papers corresponding to exempted conditions are not required.

3. The Government shall specify papers in dossiers of application for Vietnamese nationality.

**Article 21.** Order of and procedures for processing of dossiers of application for Vietnamese nationality

1. A person applying for Vietnamese nationality shall file a dossier to the provincial-level Justice Service of the locality where he/she resides. In case the dossier is incomplete under Clause 1, Article 20 of this Law or invalid, the provincial-level Justice Service shall immediately notify the applicant thereof for supplementation and completion of the dossier.

2. Within 5 working days after the receipt of a complete and valid dossier, the provincial-level Justice Service shall send to the provincial-level Public Security Department a request for verification of the applicant's identity.

Within 30 days after the receipt of a request from the provincial-level Justice Service, the provincial-level Public Security Department shall conduct verification and send verification results to the provincial-level Justice Service. During this period, the provincial-level Justice Service shall examine papers in the dossier of application for Vietnamese nationality.

Within 10 working days after the receipt of verification results, the provincial-level Justice Service shall complete the dossier for submission to the provincial-level People's Committee president.

Within 10 working days after the receipt of a request from the provincial-level Justice Service, the provincial-level People's Committee president shall consider, make conclusion and send his/her proposal to the Ministry of Justice.

3. Within 20 working days after the receipt of the proposal from the provincial-level People's Committee president, the Ministry of Justice shall re-examine the dossier, if finding that all conditions for naturalization in Vietnam are met, the Ministry shall send a written notification to the applicant for carrying out procedures to renounce his/her foreign nationality, except the case in which the applicant wishes to retain his/her

foreign nationality or is a stateless person. Within 10 working days after the receipt of a written permission for the applicant to renounce his/her foreign nationality, the Minister of Justice shall report the case to the Prime Minister for submission to the President for consideration and decision.

In case the applicant wishes to retain his/her foreign nationality or is a stateless person, within 20 days after the receipt of the proposal from the provincial-level People's Committee president, the Ministry of Justice shall re-examine the dossier, if finding that the applicant is eligible for naturalization in Vietnam, the Ministry shall report the case to the Prime Minister for submission to the President for consideration and decision.

4. The President shall consider and make decision within 30 working days after the receipt of the Prime Minister's proposal.

**Article 22.** Order of, procedures for, and dossiers of application for naturalization in Vietnam applicable to stateless persons permanently residing in Vietnam

Stateless persons who do not have adequate personal identification papers but have been stably residing in the Vietnamese territory for 20 years or more by the effective date of this Law and obey Vietnam's Constitution and laws will be permitted for naturalization in Vietnam under the order, procedures and dossiers specified by the Government.

### Section 3. RESTORATION OF VIETNAMESE NATIONALITY

**Article 23.** Cases in which restoration of Vietnamese nationality is permitted

1. A person who has lost his/her Vietnamese nationality as prescribed in Article 26 of this Law and applies for restoration of Vietnamese nationality may restore his/her Vietnamese nationality, if he/she falls into any of the following cases:

a/ Having applied for permission to return to Vietnam;

b/ His/her spouse, a natural parent or a natural offspring is a Vietnamese citizen;

c/ Having made meritorious contributions to Vietnam's national construction and defense;

d/ Being helpful to the State of the Socialist Republic of Vietnam;

e/ Conducting investment activities in Vietnam;

f/ Having renounced Vietnamese nationality for acquisition of a foreign nationality but failing to obtain permission to acquire the foreign nationality.

2. Persons applying for restoration of Vietnamese nationality may not restore Vietnamese nationality, if such restoration is detrimental to Vietnam's national interests.
3. A person who has been deprived of his/her Vietnamese nationality may only be considered for restoration of Vietnamese nationality for at least 5 years after the date he/she is deprived of Vietnamese nationality.
4. Persons applying for restoration of Vietnamese nationality shall use their previous Vietnamese names, which must be written in the decisions permitting the restoration of Vietnamese nationality.
5. Persons permitted to restore Vietnamese nationality shall renounce their foreign nationality, except for the following persons in special cases, if so permitted by the President, who:
  - a/ Are spouses, natural parents or natural offsprings of Vietnamese citizens;
  - b/ Have made meritorious contributions to Vietnam's national construction and defense;
  - c/ Are helpful to the State of the Socialist Republic of Vietnam.
6. The Government shall specify conditions on restoration of Vietnamese nationality.

**Article 24.** Dossiers of application for restoration of Vietnamese nationality

1. A dossier of application for restoration of Vietnamese nationality comprises:
  - a/ An application for restoration of Vietnamese nationality;
  - b/ A copy of the birth certificate, passport or other valid substitute papers;
  - c/ A curriculum vitae;
  - d/ A judicial record, issued by a competent Vietnamese authority for the period the applicant resides in Vietnam, or a judicial record, issued by a competent foreign authority for the period the applicant resides in the foreign country. Judicial records must be issued within 90 days before the day of submission of the dossier;
  - e/ Papers proving that the applicant is a former Vietnamese national;
  - f/ Papers proving the eligibility for restoration of Vietnamese nationality prescribed in Clause 1, Article 23 of this Law.
2. The Government shall specify papers in dossiers of application for restoration of Vietnamese nationality.

**Article 25.** Order of and procedures for processing dossiers of application for restoration of Vietnamese nationality

1. If the person applying for restoration of Vietnamese nationality resides in Vietnam, he/she shall file the dossier to the provincial-level Justice Service in the locality where he/she resides, if residing abroad, he/she shall file the dossier to the overseas Vietnamese representative mission in the host country. In case the dossier is incomplete under Article 24 of this Law or invalid, the dossier-receiving agency shall immediately notify the applicant thereof for supplementation or completion of the dossier.

2. Within 5 working days after the receipt of a complete and valid dossier, the provincial-level Justice Service shall send to the provincial-level Public Security Department a written request for verification of the applicant's identity.

Within 20 days after the receipt of the provincial-level Justice Service's request, the provincial-level Public Security Department shall conduct verification and send verification results to the provincial-level Justice Service. During this period, the provincial-level Justice Service shall examine papers in the dossier of application for restoration of Vietnamese nationality.

Within 5 working days after the receipt of verification results, the provincial-level Justice Service shall complete the dossier for submission to the provincial-level People's Committee president.

Within 5 working days after the receipt of the provincial-level Justice Service's proposal, the provincial-level People's Committee president shall consider the dossier, make conclusion and send his/her opinion to the Ministry of Justice.

3. Within 20 days after the receipt of a valid and complete dossier, the overseas Vietnamese representative mission shall verify and transfer the dossier, together with its opinions on the restoration of Vietnamese nationality, to the Ministry of Foreign Affairs for forwarding to the Ministry of Justice.

In case of necessity, the Ministry of Justice may request the Ministry of Public Security to verify the applicant's identity.

4. Within 20 days after the receipt of the written proposal of the provincial-level People's Committee president or the overseas Vietnamese representative mission, the Ministry of Justice shall re-examine the dossier, if finding that the applicant is eligible for restoration of Vietnamese nationality, it shall send a written notification to the applicant for carrying out procedures to renounce his/her foreign nationality, unless the applicant wishes to retain his/her foreign nationality or is a stateless person.

Within 10 working days after the receipt of the certificate of the applicant's renunciation of his/her foreign nationality, the Minister of Justice shall

report the case to the Prime Minister for submission to the President for consideration and decision.

In case the person applying for restoration of Vietnamese nationality wishes to retain his/her foreign nationality or is a stateless person, within 15 days after the receipt of the proposal of the provincial-level People's Committee president or the overseas Vietnamese representative mission, the Ministry of Justice shall re-examine the dossier, if finding that the applicant is eligible for restoration of Vietnamese nationality, it shall report the case to the Prime Minister for submission to the President for consideration and decision.

5. The President shall consider and make decision within 20 days after the receipt of the Prime Minister's proposal.

### Chapter III

#### LOSS OF VIETNAMESE NATIONALITY

##### Section 1. GENERAL PROVISIONS

**Article 26.** Grounds for loss of Vietnamese nationality

1. Being permitted to renounce Vietnamese nationality.
2. Being deprived of Vietnamese nationality.
3. Failing to register for retention of Vietnamese nationality as prescribed in Clause 2, Article 13 of this Law.
4. Falling into cases specified in Clause 2, Article 18, and Article 35 of this Law.
5. Falling into cases specified in treaties to which the Socialist Republic of Vietnam is a contracting party.

##### Section 2. RENUNCIATION OF VIETNAMESE NATIONALITY

**Article 27.** Grounds for renunciation of Vietnamese nationality

1. A Vietnamese citizen who files an application for renunciation of Vietnamese nationality to acquire a foreign nationality may be permitted to renounce Vietnamese nationality.
2. A person applying for renunciation of Vietnamese nationality may not renounce Vietnamese nationality if he/she falls into any of the following cases:
  - a/ Owing tax debts to the State or having a property obligation toward an agency, organization or individual in Vietnam;
  - b/ Being examined for penal liability;
  - c/ Serving a Vietnamese court's judgment or ruling;

- d/ Being kept in detention pending judgment enforcement;
  - e/ Serving a decision on application of the administrative handling measure of confinement to an education establishment, a medical treatment establishment or a reformatory.
3. A person applying for renunciation of Vietnamese nationality may not renounce Vietnamese nationality if such renunciation is detrimental to Vietnam's national interests.
  4. Cadres, civil servants and those who are serving in Vietnamese people's armed forces may not renounce Vietnamese nationality.
  5. The Government shall specify conditions for renunciation of Vietnamese nationality.

**Article 28.** Dossiers of application for renunciation of Vietnamese nationality

1. A dossier of application for renunciation of Vietnamese nationality comprises:
  - a/ An application for renunciation of Vietnamese nationality;
  - b/ A curriculum vitae;
  - c/ A copy of the Vietnamese passport, identity card or other papers specified in Article 11 of this Law;
  - d/ A judicial record issued by a competent Vietnamese authority. Judicial records must be issued within 90 days before the date of filing the dossier;
  - e/ Papers proving that the applicant is carrying out procedures for acquisition of foreign nationality, except cases in which the laws of that country do not provide for the issuance of these papers.
  - f/ The written certification of clearance of tax debts, issued by the Tax Department of the locality where the applicant resides;
  - g/ Those who used to be cadres, civil servants or employees or used to serve in Vietnamese people's armed forces and have retired, stopped working, been dismissed, removed from office or relieved from post or demobilized for not more than 5 years, are also required to submit documents of the agencies, organizations or units which have issued the decisions on their retirement, dismissal, removal from office or relief from post or demobilization, certifying that their renunciation of Vietnamese nationality is not detrimental to Vietnam's national interests.
2. Vietnamese citizens who do not permanently reside in Vietnam are not required to submit papers specified at Points d, f and g, Clause 1 of this Article.

3. The Government shall specify papers in the dossiers of application for renunciation of Vietnamese nationality.

**Article 29.** Order of and procedures for processing of dossiers of application for renunciation of Vietnamese nationality

1. If the person applying for renunciation of Vietnamese nationality resides in Vietnam, he/she shall file the dossier to the provincial-level Justice Service of the locality where he/she resides; if residing abroad, he/she shall file the dossier to the Vietnamese representative mission in the host country. In case the dossier is incomplete under Article 28 of this Law or invalid, the dossier-receiving agency shall immediately notify the applicant thereof for supplementation or completion of the dossier.

2. In case the person applying for renunciation of Vietnamese nationality resides in Vietnam, within 5 working days after the receipt of a complete and valid dossier, the provincial-level Justice Service shall publish an announcement on the application for renunciation of Vietnamese nationality on three consecutive issues of a local printed or online newspaper and forward this announcement to the Justice Ministry for posting on the latter's website; in case the applicant resides abroad, within 5 working days after the receipt of a complete and valid dossier, the overseas Vietnamese representative mission shall publish the announcement on its website.

Announcements must be posted on websites for at least 30 days.

3. Within 5 working days after the receipt of a complete and valid dossier, the provincial-level Justice Service shall send to the provincial-level Public Security Department a written request for verification of the applicant's identity.

Within 20 days after the receipt of the provincial-level Justice Service's request, the provincial-level Public Security Department shall conduct verification and send verification results to the provincial-level Justice Service. During this period, the provincial-level Justice Service shall examine papers in the dossier of application for renunciation of Vietnamese nationality.

Within 5 working days after the receipt of verification results, the provincial-level Justice Service shall complete the dossier for submission to the provincial-level People's Committee president.

Within 5 working days after the receipt of the proposal of the provincial-level Justice Service, the provincial-level People's Committee president shall consider, make conclusion and send his/her opinion to the Ministry of Justice.

4. Within 20 days after the receipt of a complete and valid dossier, the overseas Vietnamese representative mission shall examine and transfer the dossier, together with its opinion on the renunciation of Vietnamese nationality to the Ministry of Foreign Affairs for forwarding to the Ministry of Justice.

In case of necessity, the Ministry of Justice may request the Ministry of Public Security to verify the applicant's identity.

5. Within 20 days after the receipt of the proposal of the provincial-level People's Committee president or the overseas Vietnamese representative mission, the Ministry of Justice shall re-examine the dossier, if finding that the applicant is eligible for renunciation of Vietnamese nationality, the Ministry shall report the case to the Prime Minister for submission to the President for consideration and decision.

6. The President shall consider and make decision within 20 days after the receipt of the Prime Minister's proposal.

**Article 30.** Exemption from carrying out procedures for personal identity verification

The dossiers of application for renunciation of Vietnamese nationality of persons falling into any of the following cases are not required to go through the step of personal identity verification:

1. Those who are aged under 14 years;
2. Those who were born and settle abroad;
3. Those who have settled in a foreign country for 10 years or more;
4. Those who were permitted to leave Vietnam for family reunion.

### Section 3. DEPRIVATION OF VIETNAMESE NATIONALITY

**Article 31.** Grounds for deprivation of Vietnamese nationality

1. Vietnamese citizens residing abroad may be deprived of Vietnamese nationality if they commit acts that cause serious harms to the national independence, national construction and defense or the prestige of the Socialist Republic of Vietnam.

2. Persons who have been naturalized in Vietnam under Article 19 of this Law, regardless of whether they reside inside or outside the Vietnamese territory, may be deprived of Vietnamese nationality, if they commit acts specified in Clause 1 of this Article.

**Article 32.** Order of and procedures for deprivation of Vietnamese nationality

1. Within 15 days after the date of detecting or receiving a complaint or denunciation about an act prescribed in Clause 1, Article 31 of this Law, the provincial-level People's Committee or overseas Vietnamese representative mission shall conduct verification, if obtaining sufficient grounds, it shall compile a dossier to propose the President to deprive the person committing such act of his/her Vietnamese nationality.

Courts which have adjudicated persons committing acts defined in Clause 1 of this Article shall compile a dossier to propose the President to deprive these persons of their Vietnamese nationality.

The Government shall specify papers in the dossiers of proposal for deprivation of Vietnamese nationality.

2. Dossiers of proposal for deprivation of Vietnamese nationality shall be sent to the Ministry of Justice. Within 30 days after the receipt of a dossier from the provincial-level People's Committee, overseas Vietnamese representative mission or court, the Ministry of Justice shall assume the prime responsibility for, and coordinate with the Ministry of Public Security, the Ministry of Foreign Affairs and other relevant ministries and branches in, examining the dossier of proposal for deprivation of Vietnamese nationality and report the case to the Prime Minister for submission to the President for consideration and decision.

3. The President shall consider and make decision within 20 days after the receipt of the Prime Minister's proposal.

#### Section 4. ANNULMENT OF DECISIONS ON THE GRANT OF VIETNAMESE NATIONALITY

**Article 33.** Grounds for annulment of decisions on the grant of Vietnamese nationality

1. In case a person who has been naturalized in Vietnam under Article 19 of this Law, regardless of whether he/she resides inside or outside the Vietnamese territory, has intentionally made false declarations or forged papers in applying for Vietnamese nationality, the decision on the grant of Vietnamese nationality may be annulled, if such decision has been issued for 5 years or less.

2. The annulment of decisions on the grant of Vietnamese nationality of a person will not alter the nationality of his/her spouse.

**Article 34.** Order of and procedures for annulment of decisions on the grant of Vietnamese nationality

1. Within 15 days after the day of detecting or receiving a complaint or denunciation about acts specified in Clause 1, Article 33 of this Law, the provincial-level People's Committee shall conduct verification, if obtaining

sufficient grounds, it shall compile a dossier to propose the President to annul the decision on the grant of Vietnamese nationality to the person committing such an act.

Courts which have adjudicated persons committing acts defined in Clause 1, Article 33 of this Law shall compile dossiers to propose the State President to annul the decision on the grant of Vietnamese nationality to the convicted persons.

The Government shall specify papers in the dossiers of proposal for annulment of decisions on the grant of Vietnamese nationality.

2. Dossiers of proposal for annulment of decisions on the grant of Vietnamese nationality shall be sent to the Ministry of Justice.

Within 15 days after the receipt of a proposal dossier from the provincial-level People's Committee or court, the Ministry of Justice shall examine the dossier and report the case to the Prime Minister for submission to the President for consideration and decision.

3. The President shall consider and make decision within 20 days after the receipt of the Prime Minister's proposal.

#### Chapter IV

#### CHANGE OF NATIONALITY OF MINORS AND ADOPTED CHILDREN

**Article 35.** Nationality of minor children upon their parents' naturalization in Vietnam, restoration or renunciation of Vietnamese nationality

1. When the nationality of the parents changes as a result of naturalization in Vietnam, restoration or renunciation of Vietnamese nationality, the nationality of the minor child who is living with his/her parents will be changed accordingly.

2. When only one parent is permitted for naturalization in Vietnam, restoration or renunciation of Vietnamese nationality, the minor child who is living with that person will acquire Vietnamese nationality or lose his/her Vietnamese nationality, if so agreed in writing by his/her parents.

In case a parent is permitted for naturalization in Vietnam or restoration of Vietnamese nationality, the minor child who is living with that person will also acquire Vietnamese nationality, if his/her parents fail to reach a written agreement on the retention of their child's foreign nationality.

3. Change of the nationality of persons aged between full 15 and under 18 years under Clauses 1 and 2, this Article, is subject to these persons' consent.

**Article 36.** Nationality of minor children whose parents are deprived of Vietnamese nationality or have their decisions on the grant of Vietnamese nationality annulled

The nationality of a minor child will not change when both of his/her parents are or either of them is deprived of Vietnamese nationality or the decision on the grant of Vietnamese nationality is annulled.

**Article 37.** Nationality of adopted minor children

1. A child who is a Vietnamese citizen and adopted by a foreigner will retain his/her Vietnamese nationality.
2. A child who is a foreign national and adopted by a Vietnamese citizen will acquire Vietnamese nationality from the date a competent Vietnamese agency approves the adoption.
3. A child who is a foreign national and adopted by parents one of whom is a Vietnamese citizen and the other is a foreign national may be permitted for naturalization in Vietnam according to the application for Vietnamese nationality filed by his/her adoptive parents and is exempt from conditions prescribed in Clause 1, Article 19 of this Law.
4. Change of the nationality of adopted children aged between full 15 and under 18 years is subject to these persons' consent.

## Chapter V

### RESPONSIBILITIES OF STATE AGENCIES FOR NATIONALITY

**Article 38.** Tasks and powers of the President for nationality

1. To decide on the grant, restoration, renunciation and deprivation of Vietnamese nationality and annulment of decisions on the grant of Vietnamese nationality.
2. To decide on the negotiation and conclusion of nationality treaties under this Law and the Law on Conclusion of, Accession to and Implementation of Treaties.

**Article 39.** Responsibilities of the Government for nationality

1. To perform the unified state management of nationality.
2. To negotiate and conclude nationality treaties or propose the State President to decide on the negotiation and conclusion of nationality treaties according to this Law and the Law on Conclusion of, Accession to and Implementation of Treaties.
3. To direct the nationality law dissemination and education.
4. To provide for the rates of charges and fees for settlement of nationality-related matters.

5. To inspect and examine the observance of the nationality law.
6. To enter into international cooperation on nationality.

**Article 40.** Responsibilities of ministries, ministerial-level agencies, provincial-level People’s Committees and overseas Vietnamese representative missions

1. The Ministry of Justice shall take responsibility before the Government for the performance of the state management of nationality, promulgate forms of papers required for settlement of nationality-related matters, make state statistics of nationality-related matters already settled for reporting to the Prime Minister for submission to the President.
2. The Ministry of Foreign Affairs shall coordinate with the Ministry of Justice in guiding overseas Vietnamese representative missions to settle nationality-related matters, make state statistics on nationality-related matters settled by overseas Vietnamese representative missions for reporting to the Ministry of Justice.
3. Ministries and ministerial-level agencies shall, within the scope of their tasks and powers, coordinate with the Ministry of Justice in performing the state management of nationality.
4. Provincial-level People’s Committees shall consider and propose their opinions on cases of application for naturalization in Vietnam, restoration of Vietnamese nationality, renunciation of Vietnamese nationality, deprivation of Vietnamese nationality and annulment of decisions on the grant of Vietnamese nationality under this Law; and annually, make statistics on Vietnamese nationality-related matters already settled for reporting to the Ministry of Justice.
5. Overseas Vietnamese representative missions shall consider and propose their opinions on cases of application for restoration, renunciation and deprivation of Vietnamese nationality; and annually, make statistics on Vietnamese nationality-related matters already settled for reporting to the Ministry of Foreign Affairs and the Ministry of Justice.

**Article 41.** Announcement and publicization of results of settlement of nationality-related matters

The Ministry of Justice shall notify applicants for naturalization in Vietnam, restoration or renunciation of Vietnamese nationality and persons deprived of their Vietnamese nationality or have their decisions on the grant of Vietnamese nationality annulled of the results of settlement of nationality-related matters and publicize the results on the Justice Ministry’s website.

The President Office shall send to the CONG BAO of the Socialist Republic of Vietnam decisions on the grant of, restoration, renunciation, deprivation of Vietnamese nationality and decisions annulling decisions on the grant of Vietnamese nationality.

## Chapter VI

### IMPLEMENTATION PROVISIONS

#### **Article 42.** Transitional provisions

From the effective date of this Law, dossiers of nationality-related matters already received shall still be processed under the 1998 Law on Vietnamese Nationality and its detailing and guiding documents.

#### **Article 43.** Effect

This Law takes effect on July 1, 2009.

This Law replaces the May 20, 1998 Law on Vietnamese Nationality.

#### **Article 44.** Implementation detailing and guidance

The Government shall detail and guide the implementation of articles and clauses of the Law as assigned; and guides other necessary provisions of the Law in order to meet state management requirements.

*This Law was passed on November 13, 2008, by the XII<sup>th</sup> National Assembly of the Socialist Republic of Vietnam at its 4<sup>th</sup> session.-*

Chairman of the National Assembly  
*NGUYEN PHU TRONG*

**Law No. 07/1998/QH10**  
**on Vietnamese Nationality**

**20 May 1998**

This is the official translation. Published in the Official Gazette No. 21 dated 31 July 1998.  
It repealed REF\LEG\1093. The Law came into effect on 1 January 1999.

Available at <http://www.unhcr.org/refworld/docid/3ae6b56010.html> (accessed 15 October 2012)

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The Vietnamese nationality reflects the cohesive relationship between individuals and the State of Socialist Republic of Vietnam, giving rise to the rights and obligations of Vietnamese citizens toward the State and the rights and responsibilities of the State of Socialist Republic of Vietnam toward the Vietnamese citizens;

In order to uphold the honor and the sense of responsibility of the Vietnamese citizens in enjoying citizen rights and performing citizen obligations, to inherit and promote the tradition of solidarity and patriotism of the Vietnamese nation, to enhance the cohesion between the State of the Socialist Republic of Vietnam and every Vietnamese, regardless of whether they reside in the country or abroad, for the cause of a prosperous people, a strong country and an equitable and civilized society;

Pursuant to the 1992 Constitution of the Socialist Republic of Vietnam;

This Law stipulates the Vietnamese nationality,

**Chapter I**  
**GENERAL PROVISIONS**

**Article 1. The right to nationality**

1. In the Socialist Republic of Vietnam, each individual is entitled to have a nationality. Not any Vietnamese citizen is deprived of his/her Vietnamese nationality, except for the cases prescribed in Article 25 of this Law.

2. The State of the Socialist Republic of Vietnam is a unified State of all ethnic groups living on the Vietnamese territory; all members of all ethnic groups are equal in their right to have the Vietnamese nationality.

**Article 2. Interpretation of terms**

In this Law, the following terms shall be construed as follows;

1. "Foreign nationality" is the nationality of a country other than the Socialist Republic of Vietnam.
2. "Stateless persons" are those who have neither Vietnamese nationality nor foreign nationality.

3. "Vietnamese living abroad" are Vietnamese citizens and people of Vietnamese origin who permanently or temporarily reside in foreign countries.

4. "Vietnamese residing abroad" are Vietnamese citizens and people of Vietnamese origin, who permanently reside and earn their living in foreign countries.

5. "Foreigners residing in Vietnam" are foreign nationals and stateless persons who permanently or temporarily reside in Vietnam.

6. "Foreigners permanently residing in Vietnam" are foreign nationals and stateless persons who permanently reside and earn their living in Vietnam.

7. "Extradition" is the hand-over by one country to another country of a person committing a criminal act or convicted of criminal offense for which the sentence has already taken legal effect, who is present on the former's territory, so that the latter shall examine such individual for penal liability or impose penalty against him/her.

8. "Deprivation of nationality" is a citizen's loss of nationality under a coercive decision by the competent State agency.

### **Article 3. The principle of single nationality**

The State of the Socialist Republic of Vietnam recognizes that the Vietnamese citizens have only one nationality; the Vietnamese nationality.

### **Article 4. The relationship between the State and its citizens**

1. Persons who hold Vietnamese nationality are citizens of the Socialist Republic of Vietnam (hereafter referred to as Vietnamese citizens).

2. Vietnamese citizens shall have their citizen rights guaranteed by the State of the Socialist Republic of Vietnam and shall have to fulfill their citizen obligations toward the State and society as provided for by law.

The State of the Socialist Republic of Vietnam shall not extradite Vietnamese citizens to other countries.

### **Article 5. The protection of Vietnamese living abroad**

The State of the Socialist Republic of Vietnam shall protect the legitimate rights of Vietnamese living abroad.

The State agencies in the country, the diplomatic missions and consular offices of Vietnam in foreign countries shall have to take all necessary measures in accordance with the laws of such countries, the international law and practice to effect such protection.

### **Article 6. The policies toward people of Vietnamese origin in foreign countries**

1. The State of the Socialist Republic of Vietnam shall adopt policies to encourage and create favorable conditions for people of Vietnamese origin in foreign countries to maintain close relation with their families and native land, and contribute to the building of their native land and the country.

2. The State shall adopt policies to create favorable conditions for persons who have lost their Vietnamese nationality to have it restored.

#### **Article 7. The policies toward Vietnamese citizens living in foreign countries**

The State of the Socialist Republic of Vietnam shall adopt policies to enable Vietnamese citizens living in foreign countries to enjoy their citizen rights and perform their citizen obligations in a way suitable to their circumstance of living away from the homeland.

#### **Article 8. Limiting the non-nationality status**

The State of the Socialist Republic of Vietnam creates conditions for all children born on the Vietnamese territory to have nationality and for stateless persons permanently residing in Vietnam to be granted the Vietnamese nationality under the provisions of this Law.

#### **Article 9. Retention of nationality in cases of marriage, divorce or annulment of unlawful marriage.**

The marriage, divorce or annulment of unlawful marriage between a Vietnamese citizen and a foreigner shall not alter the Vietnamese nationality of the involved party as well as their minor children.

#### **Article 10. Retention of nationality in cases of change to the nationality of a husband or a wife.**

That a husband or a wife is granted or loses his or her Vietnamese nationality shall not alter the nationality of his/her spouse.

#### **Article 11. Papers proving Vietnamese nationality**

The following papers shall serve as grounds to prove one's Vietnamese nationality:

1. A certificate of Vietnamese nationality; a decision on naturalization in Vietnam, a decision on Vietnamese nationality restoration, a Vietnamese identity card or passport;
2. His/her birth certificate enclosed with papers proving the Vietnamese nationality of his/her parents, in case of the absence of the papers defined in Point 1 of this Article;
3. Other papers prescribed by the Government.

#### **Article 12. The State management over nationality**

The contents of State management over Vietnamese nationality shall include:

1. Promulgating, guiding and organizing the implementation of legal documents on Vietnamese nationality; formulating policies on Vietnamese nationality;
2. Deciding the naturalization in Vietnam, restoration, relinquishment and deprivation of Vietnamese nationality;
3. Granting Vietnamese nationality certificates, and certificates of loss of Vietnamese nationality;
4. Making State statistics on Vietnamese nationality;
5. Supervising and inspecting the observance of the legislation on Vietnamese nationality;

6. Settling complaints and denunciations about Vietnamese nationality;

7. Establishing international cooperation in the field of nationality.

#### **Article 13. The application of international treaties**

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

## **Chapter II HOLDING OF VIETNAMESE NATIONALITY**

#### **Article 14. Persons holding Vietnamese nationality**

Vietnamese nationality holders include those who have been holding Vietnamese nationality up to the effective date of this Law and those who hold Vietnamese nationality under this Law.

#### **Article 15. The grounds for determining the Vietnamese nationality of a person**

A person is determined to have Vietnamese nationality when there exists one of the following grounds:

1. By birth, as defined in Articles 16, 17 and 18 of this Law;
2. Being naturalized in Vietnam;
3. Having Vietnamese nationality restored;
4. Under the international treaties which the Socialist Republic of Vietnam has signed or acceded to;
5. Other grounds defined in Articles 19, 28 and 30 of this Law.

#### **Article 16. The nationality of children born to parents who are Vietnamese citizens**

A child born to parents, both of whom are Vietnamese citizens, shall hold Vietnamese nationality, regardless of whether the child was born inside or outside the Vietnamese territory.

#### **Article 17. The nationality of a child born to parents, one of whom is a Vietnamese citizen**

1. A child born to parents, one of whom is a Vietnamese citizen and the other is a stateless person; or his/her mother is a Vietnamese citizen while his/her father is unknown, shall hold Vietnamese nationality, regardless of whether the child was born inside or outside the Vietnamese territory.
2. A child born to parents, one of whom is a Vietnamese citizen and the other is a foreign national, shall hold Vietnamese nationality, if so agreed in writing by his/her parents at the time of registration of their child's birth.

#### **Article 18. The nationality of a child born to parents who are both stateless persons**

1. A child born on the Vietnamese territory and whose parents, at the time of his/her birth, are both stateless persons who have a permanent residence in Vietnam, shall hold Vietnamese nationality.

2. A child on the Vietnamese territory whose mother, at the time of his/her birth, is a stateless person having a permanent residence in Vietnam, and whose father is unknown, shall hold Vietnamese nationality.

#### **Article 19. The nationality of newborn who is abandoned or found on the Vietnamese territory**

1. A newborn abandoned or found on the Vietnamese territory whose parents are unknown, shall hold Vietnamese nationality.

2. In cases where a person mentioned in Clause 1 of this Article who is under 15 years old has found his/her parents who both hold foreign nationality or one of whom holds foreign nationality, or his/her guardian holds foreign nationality, he/she shall no longer hold Vietnamese nationality; for a person who is full 15 years of age but under full eighteen years of age, his/her written consent is required.

#### **Article 20. Granting of Vietnamese nationality**

1. Foreign nationality and stateless persons who are residing in Vietnam and apply for the Vietnamese nationality, may be granted Vietnamese nationality if they fully meet the following conditions:

a/ Having full capacity for civil acts as prescribed by Vietnamese laws;

b/ Abiding by the Constitution and laws of Vietnam; respecting the traditions, customs and practices of the Vietnamese people;

c/ Knowing the Vietnamese language sufficiently enough to integrate themselves into the social community of Vietnam;

d/ Having resided in Vietnam for five years or more;

e/ Being capable of ensuring their living in Vietnam.

2. Foreign nationals and stateless persons may be granted Vietnamese nationality without having to fully meet the conditions prescribed in Points c, d and e, Clause 1 of this Article, if they fall into one of the following cases;

a/ Being spouses, offspring or parents of Vietnamese citizens;

b/ Having made meritorious contributions to the cause of building and defending the Vietnamese fatherland;

c/Being helpful to the State of the Socialist Republic of Vietnam.

3. Foreign nationals naturalized in Vietnam shall not retain their foreign nationality, except for special cases which shall be decided by the State President.

4. Persons applying for Vietnamese nationality shall not be granted Vietnamese nationality, if such naturalizations is detrimental to Vietnam's national interests.

The Government shall stipulate the procedures and order for handling applications of Vietnamese nationality.

#### **Article 21. The restoration of Vietnamese nationality**

1. A person who has lost his/her Vietnamese nationality under Article 23 of this Law and now applies for the restoration of Vietnamese nationality, may have his/her Vietnamese nationality restored, if he/she falls into one of the following cases;

a/ Applying for repatriation to Vietnam;

b/ His/her spouse, offspring(s), mother or father being Vietnamese citizen(s);

c/ Having made meritorious contributions to the cause of building and defending the Vietnamese fatherland;

d/ Being beneficial to the State of the Socialist Republic of Vietnam.

2. Persons applying for the restoration of Vietnamese nationality shall not have Vietnamese nationality restored, if such restoration is detrimental to Vietnam's nationality interests.

The Government shall stipulate the procedures and order for handling applications for restoration of Vietnamese nationality.

#### **Article 22. Certificates of Vietnamese nationality**

1. Vietnamese citizens shall have the right to request the Vietnamese competent agency(ies) defined in Articles 35 and 36 of this Law to grant them certificates of Vietnamese nationality.

2. Certificates of Vietnamese nationality shall be granted to those who have filed applications therefor and can prove that they hold Vietnamese nationality.

The Government shall stipulates the procedures and order for granting certificates of Vietnamese nationality.

### **Chapter III LOSS OF VIETNAMESE NATIONALITY**

#### **Article 23. Loss of Vietnamese nationality**

A Vietnamese citizen shall lose his/her Vietnamese nationality in the following cases:

1. Being permitted to relinquish his/her Vietnamese nationality;

2. Being deprived of his/her Vietnamese nationality.

3. Losing his/her Vietnamese nationality under international treaties which Vietnam has signed or acceded to;

4. Other cases defined in Clause 2 of Article 19, Article 26 and Article 28 of this Law.

#### **Article 24. Relinquishment of Vietnamese nationality**

1. A Vietnamese citizen who files application for the relinquishment of Vietnamese nationality so as to be granted nationality of a foreign country may be permitted to relinquish his/her Vietnamese nationality.

2. A person applying for the relinquishment of Vietnamese nationality shall not be permitted to relinquish his/her Vietnamese nationality if he/she falls under one of the following cases;

a/ He/she is owing tax debts to the State or a property obligation to a Vietnamese agency organization or citizen;

b/ He/she is being examined for penal liability;

c/ He/she has not yet completely served Vietnamese court's sentence(s) and/or decisions(s) against him/her.

3. Persons applying for the relinquishment of Vietnamese nationality shall not be permitted to relinquish their Vietnamese nationality if such relinquishment is detrimental to Vietnam's national interests.

4. State officials and employees and those who are serving in the people's armed forces shall not be permitted to relinquish their Vietnamese nationality.

The Government shall stipulate the procedures and order for handling applications for the relinquishment of Vietnamese nationality.

#### **Article 25. The deprivation of Vietnamese nationality**

1. 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.

2. Persons who have been granted with Vietnamese nationality in accordance with Article 20 of this Law, regardless of whether they reside inside or outside the Vietnamese territory, may be deprived of Vietnamese nationality if they commit acts prescribed in Clause 1 of this Article.

#### **Article 26. Annulment of decisions on granting Vietnamese nationality**

1. In cases where a person who has been granted the Vietnamese nationality in accordance with Article 20 of this Law, regardless of whether he/she resides inside or outside the Vietnamese territory, intentionally made false declaration or falsified papers when applying for Vietnamese nationality, the decision on naturalization shall be annulled, provided that such decision has been issued for less than five years.

2. The annulment of the decision on naturalization of a husband or a wife shall not alter the nationality of his/her spouse.

#### **Article 27. The certificates of Vietnamese nationality loss**

The certificates of Vietnamese nationality loss shall be granted to persons who file applications therefor and can prove that they once held Vietnamese nationality.

The Government shall stipulate the procedures and order for granting certificates of Vietnamese nationality loss.

### **Chapter IV CHANGES TO NATIONALITY OF MINORS AND ADOPTED CHILDREN**

**Article 28. Nationality of children who are minors in cases of their parents' naturalization, relinquishment or restoration of Vietnamese nationality**

1. When there is a change to the nationality of his/her parents due to the granting, relinquishment or restoration of Vietnamese nationality, the nationality of the child who is a minor living with his/her parents shall be changed accordingly.
2. When there is a change to the nationality of his/her father or mother due to the granting, relinquishment or restoration of Vietnamese nationality, the nationality of the child who is a minor shall be decided according to the written consent from his/her parents.
3. Any change to the nationality of persons, who are from full 15 years to under 18 years of age as stipulated in Clauses 1 and 2 of this Article, must be agreed upon in writing by such persons.

**Article 29. Nationality of children who are minors in cases where their parents are deprived of Vietnamese nationality or where decisions on granting Vietnamese nationality are annulled**

When both his/her parents or either of them is deprived of Vietnamese nationality under Article 25 of this Law or the decision on granting the Vietnamese nationality is annulled under Article 26 of this Article 26 of this Law, the nationality of a child who is a minor shall not change.

**Article 30. Nationality of adopted children who are minors**

1. A child who is a Vietnamese citizen and adopted by foreigner(s) shall retain his/her Vietnamese nationality.
2. A child who is a foreign national and adopted by Vietnamese citizen(s) shall hold Vietnamese nationality as from the date the Vietnamese competent agency recognizes the adoption.
3. A child who is a foreign national and adopted by parents one of whom is a Vietnamese citizen and the other is a foreign national shall be granted Vietnamese nationality according to the application for the Vietnamese nationality filed by his/her adoptive parents and exempt from conditions prescribed in Clause 1, Article 20 of this Law.

Any change to the nationality of an adopted child, who is from full 15 years to under 18 years of age, must be agreed upon in writing by him/her.

**Chapter V**  
**THE POWERS AND PROCEDURES FOR HANDLING NATIONALITY-RELATED MATTERS**

**Article 31. The powers of the National Assembly regarding nationality**

The National Assembly has the following tasks and powers regarding the nationality:

1. To promulgate legal documents on Vietnamese nationality;
2. To exert the supreme supervision on the observance of the legislation on Vietnamese nationality;
3. To ratify or rescind international treaties on nationality which the Socialist Republic of Vietnam has signed or acceded to at the proposal of the State President.

**Article 32. The powers of the State President over nationality**

The State President has the following tasks and powers over nationality:

1. To permit the naturalization in Vietnam;
2. To permit the Vietnamese nationality restoration;
3. To permit the Vietnamese nationality relinquishment;
4. To decide the Vietnamese nationality deprivation;
5. To annul decisions on naturalization in Vietnam;
6. To conclude international treaties on behalf of the State of the Socialist Republic of Vietnam, decide the ratification of or acceding to international treaties on nationality or concerning nationality, except for cases where such international treaties must be submitted to the National Assembly for decision.

#### **Article 33. The powers of the Government over nationality**

The Government has the following tasks and powers over nationality:

1. To submit to the National Assembly and the National Assembly Standing Committee draft laws, ordinances and resolutions on Vietnamese nationality; to promulgate documents guiding the implementation of legislation on Vietnamese nationality;
2. To submit to the State President for decision the granting, restoration, relinquishment or deprivation of Vietnamese nationality and the annulment of decisions on naturalization in Vietnam;
3. To submit to the State President for decision the signing of international treaties on the State's behalf, the ratification of or acceding to international treaties on nationality or concerning nationality; to decide the signing of or acceding to international treaties on nationality or concerning nationality on the Government's behalf;
4. To direct and guide the granting of certificates of Vietnamese nationality and certificates of loss of Vietnamese nationality;
5. To organize and direct the dissemination and education of legislation on Vietnamese nationality;
6. To make State statistics on Vietnamese nationality;
7. To inspect and supervise, according to its competence, the observance of the legislation on Vietnamese nationality;
8. To establish international cooperation on nationality.

#### **Article 34. The powers of the ministries, the ministerial-level agencies and the agencies attached to the Government regarding nationality**

1. The Ministry of Justice shall assist the Government in performing the tasks and exercising the powers defined in Article 33 of this Law.
2. The ministries, the 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 the tasks and exercising the powers regarding nationality as prescribed by the Government.

**Article 35. The powers of the People's Committees of the provinces and cities directly under the Central Government**

The People's Committees of the provinces and cities directly under the Central Government have the following tasks and powers regarding the nationality:

1. To receive examine dossiers of application for the granting, restoration or relinquishment of Vietnamese nationality; to request the handling of such dossiers;
2. To propose the deprivation of Vietnamese nationality or the annulment of decisions on naturalization in Vietnam;
3. To consider and grant certificates of Vietnamese nationality and certificates of loss of Vietnamese nationality.

**Article 36. The powers of the Vietnamese diplomatic missions and consular offices overseas regarding nationality**

The Vietnamese diplomatic missions and consular offices overseas have the following tasks and powers regarding nationality:

1. To receive and examine dossiers of application for the restoration or relinquishment of Vietnamese nationality; to receive dossiers of application for Vietnamese nationality in some exceptional cases; to request the handling of such dossiers;
2. To propose the deprivation of Vietnamese nationality and the annulment of decisions on naturalization in Vietnam;
3. To consider and grant certificates of Vietnamese nationality and certificates of loss of Vietnamese nationality.

**Article 37. Filing applications for settlement of nationality matters**

Persons applying for the granting, restoration or relinquishment of Vietnamese nationality, or for certificates of Vietnamese nationality or certificates of loss of Vietnamese nationality shall send their applications to the People's Committees of the provinces and cities directly under the Central Government where they reside, if they live in Vietnam; or to the Vietnamese diplomatic missions or consular offices overseas if they reside abroad.

**Article 38. The time limit for handling nationality-related applications**

1. The time limit for settling an application for naturalization in Vietnam shall not exceed 12 months, and an application for Vietnamese nationality relinquishment or restoration shall not exceed 6 months, from the date the People's Committee of the province or city directly under the Central Government or the Vietnamese diplomatic mission or consular office overseas receives complete and valid dossiers.
2. The time limit for settling an application for a certificate for Vietnamese nationality or a certificate of loss of Vietnamese nationality shall not exceed 90 days from the date the People's Committee of the province or city directly under the Central Government or the Vietnamese diplomatic mission or consular office overseas receives complete and valid dossiers.

**Article 39. Publishing on the Official Gazette decisions on granting, restoration, relinquishment or deprivation of Vietnamese nationality and the annulment of decisions on naturalization in Vietnam**

The decisions on granting restoration, relinquishment or deprivation of Vietnamese nationality and the annulment of decisions on naturalization in Vietnam shall be published on the Official Gazette of the Socialist Republic of Vietnam.

**Article 40. The settlement of complaints, denunciations and disputes about Vietnamese nationality**

1. Complaints about the administrative decisions or administrative acts of State agencies defined in Articles 34, 35 and 36 of this Law and denunciations against law-breaking acts in the handling of Vietnamese nationality-related matters shall be made in accordance with the provisions of the legislation on complaints and denunciations.

2. Disputes among individuals on Vietnamese nationality shall be settled by courts according to the procedures for settling civil cases.

**Chapter VI  
IMPLEMENTATION PROVISIONS**

**Article 41. The international cooperation to limit the dual - or multi-nationality status and handle problems arising from dual - or multi-nationality status**

Basing themselves on the principles prescribed in this Law, the competent State agencies shall undertake the signing of international treaties with foreign countries to limit the dual - or multi-nationality status and handle problems arising therefrom.

**Article 42. Enforcement effect**

This Law takes effect from January 1st, 1999 and replaces the Law on Vietnamese Nationality of June 28, 1988.

The Government shall stipulate in details and guide the implementation of this Law.

# Nationality Law [Viet Nam]

15 July 1988

[Unofficial translation]

This law was adopted by the SRV National Assembly at its Third Session on 28 June 1988.

Available at <http://www.unhcr.org/refworld/docid/3ae6b5200.html> (accessed 17 October 2012)

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## Chapter I - GENERAL PROVISIONS

### Article 1 - People having Vietnamese nationality.

The State of the SRV is the united State of all nationalities living together on the Vietnamese soil, all members of various nationalities have Vietnamese nationality.

People who have Vietnamese nationality comprise those who have Vietnamese nationality up to the day when this Law enters into force and those who have Vietnamese nationality as provided for by this Law.

### Article 2 - Relation between the State and citizens.

Vietnamese citizens are ensured of their rights by the State and they must fulfill their obligations vis-à-vis the State and the society as provided for by the law.

The State protects legitimate rights of oversea Vietnamese citizens.

### Article 3 - Recognition of Vietnamese nationality for Vietnamese citizens.

The State of the SRV only recognizes one nationality for Vietnamese citizens, which is Vietnamese nationality.

### Article 4 - Keeping of nationality in case of marriage, divorce, cancellation of illegal marriage and change of nationality of the husband or wife.

(1) The marriage, divorce and the cancellation of illegal marriage between Vietnamese citizens with foreign citizens or stateless persons do not change their nationality.

(2) The adoption or loss of Vietnamese nationality of one of the spouses does not change the nationality of the opposite sex.

## Chapter II - DETERMINATION OF VIETNAMESE NATIONALITY

### Article 5 - Vietnamese nationality.

A person has Vietnamese nationality if he/she belongs to one of the following categories:

- (1) by birth;
- (2) admitted in Vietnamese nationality;
- (3) readmitted in Vietnamese nationality;
- (4) having Vietnamese nationality in accordance with an international treaty of which Vietnam is a signatory;
- (5) having Vietnamese nationality in other cases as provided for by this Law.

#### **Article 6 - Nationality of children.**

- (1) Children whose parents are Vietnamese citizens have Vietnamese nationality irrespective of their place of birth in or outside the Vietnamese territory.
- (2) Children whose father or mother is a Vietnamese citizen while the other is a stateless person or is unknown have Vietnamese nationality irrespective of their place of birth in or outside the Vietnamese territory.
- (3) Children whose father or mother is a Vietnamese citizen while the other is a foreign citizen, if they are born in Vietnam or when they are born their parents have a permanent residence in Vietnam, have Vietnamese nationality except the case where their parents unanimously choose another nationality for them. In case those children are born outside Vietnam and when they are born, their parents have no permanent residence in Vietnam, their nationality is chosen by their parents.
- (4) Children born in Vietnam and whose parents are stateless parents having a permanent residence in Vietnam, have Vietnamese nationality.
- (5) Children found on the Vietnamese soil and whose parents are unknown have Vietnamese nationality.

#### **Article 7 - Admission in Vietnamese nationality.**

- (1) Foreign citizens and stateless persons residing in Vietnam and voluntarily observing the Constitution and law of Vietnam can be admitted in Vietnamese nationality if they are in possession of the following conditions:
  - (a) being 18 years old upwards;
  - (b) knowing Vietnamese language;
  - (c) having lived in Vietnam at least 5 years.
- (2) Foreign citizens and stateless persons, if they have legitimate reasons, can be admitted in Vietnamese nationality without being obliged to be fully in possession of the conditions stipulated in points (a), (b), (c), clause 1 of this Article.
- (3) People who were admitted in Vietnamese nationality in accordance with the provisions of this Article and who had made false declarations when applying for admission in Vietnamese nationality, can have the decision for their admission in Vietnamese nationality cancelled.

### **Chapter III - LOSS, READMISSION IN VIETNAMESE NATIONALITY**

#### **Article 8 - Loss of Vietnamese nationality.**

Vietnamese citizens lose their Vietnamese nationality in the following circumstances:

- (1) being allowed to give it up;
- (2) being deprived of their Vietnamese nationality;
- (3) losing Vietnamese nationality as provided for by an international treaty of which Vietnam is a signatory;
- (4) losing Vietnamese nationality in other circumstances stipulated by this Law.

**Article 9 - Giving up Vietnamese nationality.**

- (1) Vietnamese citizens can give up Vietnamese nationality if they have legitimate reasons.
- (2) Applicants for giving up Vietnamese nationality cannot yet give it up if they belong to one of the following categories:
  - (a) being in military service;
  - (b) having tax unpaid or being involved in other financial obligations vis-à-vis the State;
  - (c) being under penal prosecution;
  - (d) serving a sentence.
- (3) The giving up of Vietnamese nationality is not allowed if it affects the national security.

**Article 10 - Deprivation of Vietnamese nationality.**

- (1) Vietnamese citizens living abroad can be deprived of their Vietnamese nationality if they are involved in acts seriously damaging the national independence, the cause of building and defending the Vietnamese Socialist Fatherland or the interests and prestige of the SRV.
- (2) Those who have been admitted in Vietnamese nationality in accordance with the provisions of Article 7 of this Law, if they are involved in acts provided for by clause 1 of this Article, can be deprived of their Vietnamese nationality, though they are living anywhere.

**Article 11 - Readmission in Vietnamese nationality.**

Those who have lost their Vietnamese nationality can be readmitted in if if they have legitimate reasons.

**Chapter IV - NATIONALITY OF CHILDREN IN CASE OF CHANGE OF PARENTS'  
NATIONALITY. NATIONALITY OF ADOPTIVE CHILDREN**

**Article 12 - Nationality of children in case of change of parents' nationality.**

- (1) When the nationality of parents changes, being admitted in, giving up, being readmitted in Vietnamese nationality, the children's nationality automatically changes following their parents'.
- (2) When only the father or mother changes his/her nationality, the children's nationality is defined following the choice of their parents.
- (3) The change of nationality of persons from 15 years old up to under 18 as provided for by clauses 1 and 2 of this Article is to be subject to the agreement by such persons.

**Article 13 - Nationality of children when their parents are deprived of their nationality or they have the decision for being admitted in Vietnamese nationality cancelled.**

When the parents or one of them are deprived of their nationality as provided for by Article 10 or the decision for their admission in Vietnamese nationality in accordance with clause 3, article 7 of this Law is cancelled, the children's nationality does not change.

**Article 14 - Nationality of adoptive children.**

(1) Children being foreign citizens or stateless persons, if their adoptive parents or one of them are Vietnamese citizens, are admitted in Vietnamese nationality upon their adoptive parents' application and are exempted from the conditions stipulated in clause 1, Article 7 of this Law.

(2) Children being Vietnamese citizens, if their adoptive parents or one of them are foreign citizens and agreed by their own parents or their tutor, are allowed to give up Vietnamese nationality upon their adoptive parents' application in order to be admitted in another country's nationality.

(3) The change of nationality of persons from 15 years old up to under 18 as provided for by clauses 1 and 2 of this Article is to be subject to the agreement by such persons.

**Chapter V - COMPETENCE FOR DEALING WITH THE PROBLEMS OF NATIONALITY**

**Article 15**

(1) The Council of Ministers gives its decisions on the cases of admission in, giving up of, readmission in, deprivation of Vietnamese nationality and cancellation of decisions for admission in Vietnamese nationality.

(2) The procedures for solving the problems of nationality are stipulated by the Council of Ministers.

**Chapter VI - FINAL PROVISIONS**

**Article 16**

In case the international treaty of which the SRV is a signatory has different provisions, those provisions are applied.

**Article 17**

This Law enters into force as of 15 July 1988. At the same time the following documents are abrogated:

(1) Decree No. 53/SL dated 20/10/1945;

(2) Decree 73/SL dated 7/12/1945;

(3) Article 6 of Decree 251/SL dated 20/8/1948;

(4) Decree 51/SL dated 14/12/1959;

(5) Decision 1043/NO/TVQH dated 8/2/1971 of the Standing Committee of the National Assembly.

**Article 18**

The Council of Ministers stipulates details for the implementation of this Law.

## **Convention relating to the Status of Stateless Persons**

**Adopted on 28 September 1954 by a Conference of Plenipotentiaries convened by Economic and Social Council resolution 526 A (XVII) of 26 April 1954**

**Entry into force: 6 June 1960, in accordance with article 39**

### **Preamble**

The High Contracting Parties,

Considering that the Charter of the United Nations and the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations have affirmed the principle that human beings shall enjoy fundamental rights and freedoms without discrimination,

Considering that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms,

Considering that only those stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951, and that there are many stateless persons who are not covered by that Convention,

Considering that it is desirable to regulate and improve the status of stateless persons by an international agreement,

Have agreed as follows:

### **Chapter I**

#### **GENERAL PROVISIONS**

##### **Article 1. - Definition of the term "stateless person"**

1. For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law.

2. This Convention shall not apply:

(i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;

(ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country;

(iii) To persons with respect to whom there are serious reasons for considering that:

( a ) They have committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provisions in respect of such crimes;

( b ) They have committed a serious non-political crime outside the country of their residence prior to their admission to that country;

( c ) They have been guilty of acts contrary to the purposes and principles of the United Nations.

#### **Article 2. - General obligations**

Every stateless person has duties to the country in which he finds himself, which require in particular that he conform to its laws and regulations as well as to measures taken for the maintenance of public order.

#### **Article 3. - Non-discrimination**

The Contracting States shall apply the provisions of this Convention to stateless persons without discrimination as to race, religion or country of origin.

#### **Article 4. - Religion**

The Contracting States shall accord to stateless persons within their territories treatment at least as favourable as that accorded to their nationals with respect to freedom to practise their religion and freedom as regards the religious education of their children.

#### **Article 5. - Rights granted apart from this Convention**

Nothing in this Convention shall be deemed to impair any rights and benefits granted by a Contracting State to stateless persons apart from this Convention.

#### **Article 6. - The term "in the same circumstances"**

For the purpose of this Convention, the term "in the same circumstances" implies that any requirements (including requirements as to length and conditions of sojourn or residence) which the particular individual would have to fulfil for the enjoyment of the right in question, if he were not a stateless person, must be fulfilled by him, with the exception of requirements which by their nature a stateless person is incapable of fulfilling.

#### **Article 7. - Exemption from reciprocity**

1. Except where this Convention contains more favourable provisions, a Contracting State shall accord to stateless persons the same treatment as is accorded to aliens generally.
2. After a period of three years' residence, all stateless persons shall enjoy exemption from legislative reciprocity in the territory of the Contracting States.
3. Each Contracting State shall continue to accord to stateless persons the rights and benefits to which they were already entitled, in the absence of reciprocity, at the date of entry into force of this Convention for that State.
4. The Contracting States shall consider favourably the possibility of according to stateless persons, in the absence of reciprocity, rights and benefits beyond those to which they are entitled according to paragraphs 2 and 3, and to extending exemption from reciprocity to stateless persons who do not fulfil the conditions provided for in paragraphs 2 and 3.
5. The provisions of paragraphs 2 and 3 apply both to the rights and benefits referred to in articles 13, 18, 19, 21 and 22 of this Convention and to rights and benefits for which this Convention does not provide.

#### **Article 8. - Exemption from exceptional measures**

With regard to exceptional measures which may be taken against the person, property or interests of nationals or former nationals of a foreign State, the Contracting States shall not apply such measures to a stateless person solely on account of his having previously possessed the nationality of the foreign

State in question. Contracting States which, under their legislation, are prevented from applying the general principle expressed in this article shall, in appropriate cases, grant exemptions in favour of such stateless persons.

#### **Article 9. - Provisional measures**

Nothing in this Convention shall prevent a Contracting State, in time of war or other grave and exceptional circumstances, from taking provisionally measures which it considers to be essential to the national security in the case of a particular person, pending a determination by the Contracting State that that person is in fact a stateless person and that the continuance of such measures is necessary in his case in the interests of national security.

#### **Article 10. - Continuity of residence**

1. Where a stateless person has been forcibly displaced during the Second World War and removed to the territory of a Contracting State, and is resident there, the period of such enforced sojourn shall be considered to have been lawful residence within that territory.

2. Where a stateless person has been forcibly displaced during the Second World War from the territory of a Contracting State and has, prior to the date of entry into force of this Convention, returned there for the purpose of taking up residence, the period of residence before and after such enforced displacement shall be regarded as one uninterrupted period for any purposes for which uninterrupted residence is required.

#### **Article 11. - Stateless seamen**

In the case of stateless persons regularly serving as crew members on board a ship flying the flag of a Contracting State, that State shall give sympathetic consideration to their establishment on its territory and the issue of travel documents to them or their temporary admission to its territory particularly with a view to facilitating their establishment in another country.

### **Chapter II**

#### **JURIDICAL STATUS**

#### **Article 12. - Personal status**

1. The personal status of a stateless person shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.

2. Rights previously acquired by a stateless person and dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting State, subject to compliance, if this be necessary, with the formalities required by the law of that State, provided that the right in question is one which would have been recognized by the law of that State had he not become stateless.

#### **Article 13. - Movable and immovable property**

The Contracting States shall accord to a stateless person treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.

#### **Article 14. - Artistic rights and industrial property**

In respect of the protection of industrial property, such as inventions, designs or models, trade marks, trade names, and of rights in literary, artistic and scientific works, a stateless person shall be accorded in the country in which he has his habitual residence the same protection as is accorded to nationals of

that country. In the territory of any other Contracting State, he shall be accorded the same protection as is accorded in that territory to nationals of the country in which he has his habitual residence.

#### **Article 15. - Right of association**

As regards non-political and non-profit-making associations and trade unions the Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible, and in any event, not less favourable than that accorded to aliens generally in the same circumstances.

#### **Article 16. - Access to courts**

1. A stateless person shall have free access to the courts of law on the territory of all Contracting States.
2. A stateless person shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the courts, including legal assistance and exemption from *cautio judicatum solvi* .
3. A stateless person shall be accorded in the matters referred to in paragraph 2 in countries other than that in which he has his habitual residence the treatment granted to a national of the country of his habitual residence.

### **Chapter III**

#### **GAINFUL EMPLOYMENT**

#### **Article 17. - Wage-earning employment**

1. The Contracting States shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage in wage-earning employment.
2. The Contracting States shall give sympathetic consideration to assimilating the rights of all stateless persons with regard to wage-earning employment to those of nationals, and in particular of those stateless persons who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.

#### **Article 18. - Self-employment**

The Contracting States shall accord to a stateless person lawfully in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the right to engage on his own account in agriculture, industry, handicrafts and commerce and to establish commercial and industrial companies.

#### **Article 19. - Liberal professions**

Each Contracting State shall accord to stateless persons lawfully staying in their territory who hold diplomas recognized by the competent authorities of that State, and who are desirous of practising a liberal profession, treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

### **Chapter IV**

## WELFARE

### Article 20. - Rationing

Where a rationing system exists, which applies to the population at large and regulates the general distribution of products in short supply, stateless persons shall be accorded the same treatment as nationals.

### Article 21. - Housing

As regards housing, the Contracting States, in so far as the matter is regulated by laws or regulations or is subject to the control of public authorities, shall accord to stateless persons lawfully staying in their territory treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances.

### Article 22. - Public education

1. The Contracting States shall accord to stateless persons the same treatment as is accorded to nationals with respect to elementary education.

2. The Contracting States shall accord to stateless persons treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, with respect to education other than elementary education and, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships.

### Article 23. - Public relief

The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment with respect to public relief and assistance as is accorded to their nationals.

### Article 24. - Labour legislation and social security

1. The Contracting States shall accord to stateless persons lawfully staying in their territory the same treatment as is accorded to nationals in respect of the following matters:

( a ) In so far as such matters are governed by laws or regulations or are subject to the control of administrative authorities; remuneration, including family allowances where these form part of remuneration, hours of work, overtime arrangements, holidays with pay, restrictions on home work, minimum age of employment, apprenticeship and training, women's work and the work of young persons, and the enjoyment of the benefits of collective bargaining;

( b ) Social security (legal provisions in respect of employment injury, occupational diseases, maternity, sickness, disability, old age, death, unemployment, family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme), subject to the following limitations:

(i) There may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

(ii) National laws or regulations of the country of residence may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.

2. The right to compensation for the death of a stateless person resulting from employment injury or from occupational disease shall not be affected by the fact that the residence of the beneficiary is outside the territory of the Contracting State.

3. The Contracting States shall extend to stateless persons the benefits of agreements concluded between them, or which may be concluded between them in the future, concerning the maintenance of acquired rights and rights in the process of acquisition in regard to social security, subject only to the conditions which apply to nationals of the States signatory to the agreements in question.

4. The Contracting States will give sympathetic consideration to extending to stateless persons so far as possible the benefits of similar agreements which may at any time be in force between such Contracting States and non-contracting States.

## **Chapter V**

### **ADMINISTRATIVE MEASURES**

#### **Article 25. - Administrative assistance**

1. When the exercise of a right by a stateless person would normally require the assistance of authorities of a foreign country to whom he cannot have recourse, the Contracting State in whose territory he is residing shall arrange that such assistance be afforded to him by their own authorities.

2. The authority or authorities mentioned in paragraph 1 shall deliver or cause to be delivered under their supervision to stateless persons such documents or certifications as would normally be delivered to aliens by or through their national authorities.

3. Documents or certifications so delivered shall stand in the stead of the official instruments delivered to aliens by or through their national authorities and shall be given credence in the absence of proof to the contrary.

4. Subject to such exceptional treatment as may be granted to indigent persons, fees may be charged for the services mentioned herein, but such fees shall be moderate and commensurate with those charged to nationals for similar services.

5. The provisions of this article shall be without prejudice to articles 27 and 28.

#### **Article 26. - Freedom of movement**

Each Contracting State shall accord to stateless persons lawfully in its territory the right to choose their place of residence and to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances.

#### **Article 27. - Identity papers**

The Contracting States shall issue identity papers to any stateless person in their territory who does not possess a valid travel document.

#### **Article 28. - Travel documents**

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

#### **Article 29. - Fiscal charges**

1. The Contracting States shall not impose upon stateless persons duties, charges or taxes, of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situations.

2. Nothing in the above paragraph shall prevent the application to stateless persons of the laws and regulations concerning charges in respect of the issue to aliens of administrative documents including identity papers.

#### **Article 30. - Transfer of assets**

1. A Contracting State shall, in conformity with its laws and regulations, permit stateless persons to transfer assets which they have brought into its territory, to another country where they have been admitted for the purposes of resettlement.

2. A Contracting State shall give sympathetic consideration to the application of stateless persons for permission to transfer assets wherever they may be and which are necessary for their resettlement in another country to which they have been admitted.

#### **Article 31. - Expulsion**

1. The Contracting States shall not expel a stateless person lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a stateless person shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the stateless person shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a stateless person a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

#### **Article 32. - Naturalization**

The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.

### **Chapter VI**

#### **FINAL CLAUSES**

#### **Article 33. - Information on national legislation**

The Contracting States shall communicate to the Secretary-General of the United Nations the laws and regulations which they may adopt to ensure the application of this Convention.

#### **Article 34. - Settlement of disputes**

Any dispute between Parties to this Convention relating to its interpretation or application, which cannot be settled by other means, shall be referred to the International Court of Justice at the request of any one of the parties to the dispute.

#### **Article 35. - Signature, ratification and accession**

1. This Convention shall be open for signature at the Headquarters of the United Nations until 31 December 1955.

2. It shall be open for signature on behalf of:

( a ) Any State Member of the United Nations;

( b ) Any other State invited to attend the United Nations Conference on the Status of Stateless Persons; and

( c ) Any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. It shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. It shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

### **Article 36. - Territorial application clause**

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

### **Article 37. - Federal clause**

In the case of a Federal or non-unitary State, the following provisions shall apply

( a ) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal legislative authority, the obligations of the Federal Government shall to this extent be the same as those of Parties which are not Federal States;

( b ) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent States, provinces or cantons which are not, under the constitutional system of the Federation, bound to take legislative action, the Federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of States, provinces or cantons at the earliest possible moment;

( c ) A Federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the Federation and its constituent units in regard to any particular provision of the Convention showing the extent to which effect has been given to that provision by legislative or other action.

### **Article 38. - Reservations**

1. At the time of signature, ratification or accession, any State may make reservations to articles of the Convention other than to articles 1, 3, 4, 16 (1) and 33 to 42 inclusive.

2. Any State making a reservation in accordance with paragraph 1 of this article may at any time withdraw the reservation by a communication to that effect addressed to the Secretary-General of the United Nations.

#### **Article 39. - Entry into force**

1. This Convention shall come into force on the ninetieth day following the day of deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the sixth instrument of ratification or accession, the Convention shall enter into force on the ninetieth day following the date of deposit by such State of its instrument of ratification or accession.

#### **Article 40. - Denunciation**

1. Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. Such denunciation shall take effect for the Contracting State concerned one year from the date upon which it is received by the Secretary-General of the United Nations.

3. Any State which has made a declaration or notification under article 36 may, at any time thereafter, by a notification to the Secretary-General of the United Nations, declare that the Convention shall cease to extend to such territory one year after the date of receipt of the notification by the Secretary-General.

#### **Article 41. - Revision**

1. Any Contracting State may request revision of this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

2. The General Assembly of the United Nations shall recommend the steps, if any, to be taken in respect of such request.

#### **Article 42. - Notifications by the Secretary-General of the United Nations**

The Secretary-General of the United Nations shall inform all Members of the United Nations and non-member States referred to in article 35:

( a ) Of signatures, ratifications and accessions in accordance with article 35;

( b ) Of declarations and notifications in accordance with article 36;

( c ) Of reservations and withdrawals in accordance with article 38;

( d ) Of the date on which this Convention will come into force in accordance with article 39;

( e ) Of denunciations and notifications in accordance with article 40;

( f ) Of request for revision in accordance with article 41.

In faith whereof the undersigned, duly authorized, have signed this Convention on behalf of their respective Governments.

Done at New York, this twenty-eighth day of September, one thousand nine hundred and fifty-four, in a single copy, of which the English, French and Spanish texts are equally authentic and which shall remain deposited in the archives of the United Nations, and certified true copies of which shall be delivered to all Members of the United Nations and to the non-member States referred to in article 35.

**Convention on the Reduction of Statelessness**  
1961

Done at New York on 30 August 1961. Entered into force on 13 December 1975.  
United Nations, *Treaty Series*, vol. 989, p. 175.



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**Convention on the Reduction of Statelessness**  
**Done at New York on 30 August 1961**

*The Contracting States,*

*Acting* in pursuance of resolution 896 (IX), adopted by the General Assembly of the United Nations on 4 December 1954,

*Considering* it desirable to reduce statelessness by international agreement,

*Have agreed* as follows:

*Article 1*

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

- (a) at birth, by operation of law, or
- (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

A Contracting State which provides for the grant of its nationality in accordance with subparagraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

2. A Contracting State may make the grant of its nationality in accordance with subparagraph (b) of paragraph 1 of this article subject to one or more of the following conditions:

- (a) that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;
- (b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;
- (c) that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;
- (d) that the person concerned has always been stateless.

3. Notwithstanding the provisions of paragraphs 1 (b) and 2 of this article, a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.

4. A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he had passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this article, such application shall not be refused.

5. The Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 4 of this article subject to one or more of the following conditions:

- (a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;
- (b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;
- (c) that the person concerned has always been stateless.

#### *Article 2*

A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.

#### *Article 3*

For the purpose of determining the obligations of Contracting States under this Convention, birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be.

#### *Article 4*

1. A Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or

that of the mother shall be determined by the national law of such Contracting State. Nationality granted in accordance with the provisions of this paragraph shall be granted:

- (a) at birth, by operation of law, or
- (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.

2. A Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 1 of this article subject to one or more of the following conditions:

- (a) that the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;
- (b) that the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;
- (c) that the person concerned has not been convicted of an offence against national security;
- (d) that the person concerned has always been stateless.

#### *Article 5*

1. If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality.

2. If, under the law of a Contracting State, a child born out of wedlock loses the nationality of that State in consequence of a recognition of affiliation, he shall be given an opportunity to recover that nationality by written application to the appropriate authority, and the conditions governing such application shall not be more rigorous than those laid down in paragraph 2 of article 1 of this Convention.

#### *Article 6*

If the law of a Contracting State provides for loss of its nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.

#### *Article 7*

1. (a) If the law of a Contracting State permits renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality.

(b) The provisions of subparagraph (a) of this paragraph shall not apply where their application would be inconsistent with the principles stated in articles 13 and 14 of the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations.

2. A national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.

3. Subject to the provisions of paragraphs 4 and 5 of this article, a national of a Contracting State shall not lose his nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground.

4. A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.

5. In the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.

6. Except in the circumstances mentioned in this article, a person shall not lose the nationality of a Contracting State, if such loss would render him stateless, notwithstanding that such loss is not expressly prohibited by any other provision of this Convention.

#### *Article 8*

1. A Contracting State shall not deprive a person of its nationality if such deprivation would render him stateless.

2. Notwithstanding the provisions of paragraph 1 of this article, a person may be deprived of the nationality of a Contracting State:

(a) in the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;

(b) where the nationality has been obtained by misrepresentation or fraud.

3. Notwithstanding the provisions of paragraph 1 of this article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:

(a) that, inconsistently with his duty of loyalty to the Contracting State, the person

- (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or
- (ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 2 or 3 of this article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.

#### *Article 9*

A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.

#### *Article 10*

1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavours to secure that any such treaty made by it with a State which is not a party to this Convention includes such provisions.

2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.

#### *Article 11*

The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.

#### *Article 12*

1. In relation to a Contracting State which does not, in accordance with the provisions of paragraph 1 of article 1 or of article 4 of this Convention, grant its nationality at birth by operation of law, the provisions of paragraph 1 of article 1 or of article 4, as the case may be, shall apply to persons born before as well as to persons born after the entry into force of this Convention.

2. The provisions of paragraph 4 of article 1 of this Convention shall apply to persons born before as well as to persons born after its entry into force.

3. The provisions of article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State after the entry into force of the Convention for that State.

*Article 13*

This Convention shall not be construed as affecting any provisions more conducive to the reduction of statelessness which may be contained in the law of any Contracting State now or hereafter in force, or may be contained in any other convention, treaty or agreement now or hereafter in force between two or more Contracting States.

*Article 14*

Any dispute between Contracting States concerning the interpretation or application of this Convention which cannot be settled by other means shall be submitted to the International Court of Justice at the request of any one of the parties to the dispute.

*Article 15*

1. This Convention shall apply in all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any Contracting State is responsible; the Contracting State concerned shall, subject to the provisions of paragraph 2 of this article, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which the Convention shall apply ipso facto as a result of such signature, ratification or accession.

2. In any case in which, for the purpose of nationality, a non-metropolitan territory is not treated as one with the metropolitan territory, or in any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Contracting State or of the non-metropolitan territory for the application of the Convention to that territory, that Contracting State shall endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months from the date of signature of the Convention by that Contracting State, and when such consent has been obtained the Contracting State shall notify the Secretary-General of the United Nations. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.

3. After the expiry of the twelve-month period mentioned in paragraph 2 of this article, the Contracting States concerned shall inform the Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of this Convention may have been withheld.

*Article 16*

1. This Convention shall be open for signature at the Headquarters of the United Nations from 30 August 1961 to 31 May 1962.

2. This Convention shall be open for signature on behalf of:

- (a) any State Member of the United Nations;
- (b) any other State invited to attend the United Nations Conference on the Elimination or Reduction of Future Statelessness;
- (c) any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.

3. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.

4. This Convention shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

*Article 17*

1. At the time of signature, ratification or accession any State may make a reservation in respect of articles 11, 14 or 15.

2. No other reservations to this Convention shall be admissible.

*Article 18*

1. This Convention shall enter into force two years after the date of the deposit of the sixth instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the sixth instrument of ratification or accession, it shall enter into force on the ninetieth day after the deposit by such State of its instrument of ratification or accession or on the date on which this Convention enters into force in accordance with the provisions of paragraph 1 of this article, whichever is the later.

*Article 19*

1. Any Contracting State may denounce this Convention at any time by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the Contracting State concerned one year after the date of its receipt by the Secretary-General.

2. In cases where, in accordance with the provisions of article 15, this Convention has become applicable to a non-metropolitan territory of a Contracting State, that State may at any time thereafter, with the consent of the territory concerned, give notice to the Secretary-General of the United Nations denouncing this Convention separately in respect of that territory. The denunciation shall take effect one year after the date of the receipt of such notice by the Secretary-General, who shall notify all other Contracting States of such notice and the date of receipt thereof.

*Article 20*

1. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in article 16 of the following particulars:

- (a) signatures, ratifications and accessions under article 16;
- (b) reservations under article 17;
- (c) the date upon which this Convention enters into force in pursuance of article 18;
- (d) denunciations under article 19.

2. The Secretary-General of the United Nations shall, after the deposit of the sixth instrument of ratification or accession at the latest, bring to the attention of the General Assembly the question of the establishment, in accordance with article 11, of such a body as therein mentioned.

*Article 21*

This Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Convention.

DONE at New York, this thirtieth day of August, one thousand nine hundred and sixty-one, in a single copy, of which the Chinese, English, French, Russian and Spanish texts are equally authentic and which shall be deposited in the archives of the United Nations, and certified copies of which shall be delivered by the Secretary-General of the United Nations to all Members of the United Nations and to the non-member States referred to in article 16 of this Convention.

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**GUIDELINES ON STATELESSNESS NO. 1:  
The definition of “Stateless Person” in Article 1(1) of the 1954  
Convention relating to the Status of Stateless Persons**

UNHCR issues these Guidelines pursuant to its mandate responsibilities to address statelessness. These responsibilities were initially limited to stateless persons who were refugees as set out in paragraph 6 (A) (II) of the UNHCR Statute and Article 1 (A) (2) of the 1951 Convention relating to the Status of Refugees. To undertake the functions foreseen by Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness, UNHCR’s mandate was expanded to cover persons falling under the terms of that Convention by General Assembly Resolutions 3274 (XXIX) of 1974 and 31/36 of 1976. The Office was entrusted with responsibilities for stateless persons generally under UNHCR Executive Committee Conclusion 78, which was endorsed by the General Assembly in Resolution 50/152 of 1995. Subsequently, in Resolution 61/137 of 2006, the General Assembly endorsed Executive Committee Conclusion 106 which sets out four broad areas of responsibility for UNHCR: the identification, prevention and reduction of statelessness and the protection of stateless persons.

These Guidelines result from a series of expert consultations conducted in the context of the 50th Anniversary of the 1961 Convention on the Reduction of Statelessness and build in particular on the *Summary Conclusions of the Expert Meeting on the Concept of Stateless Persons under International Law*, held in Prato, Italy in May 2010. These Guidelines are to be read in conjunction with the forthcoming *Guidelines on Procedures for Determining whether an Individual is a Stateless Person* and *Guidelines on the Status of Stateless Persons at the National Level*. This set of Guidelines will be published in due course as a UNHCR Handbook on Statelessness.

These Guidelines are intended to provide interpretive legal guidance for governments, NGOs, legal practitioners, decision-makers and the judiciary, as well as for UNHCR staff and other UN agencies involved in addressing statelessness.

## I. INTRODUCTION

### a) Overview

1. The 1954 Convention relating to the Status of Stateless Persons (1954 Convention) is the only international treaty aimed specifically at regulating the standard of treatment for stateless persons.<sup>1</sup> As such, it is of critical importance in ensuring the protection of this vulnerable group.

2. Article 1(1) of the 1954 Convention sets out the definition of a stateless person as follows:

*“For the purpose of this Convention, the term “stateless person” means a person who is not considered as a national by any State under the operation of its law.”*

The Convention does not permit reservations to Article 1(1) and thus this definition is binding on all States Parties to the treaty. In addition, the International Law Commission has concluded that the definition in Article 1(1) is part of customary international law.<sup>2</sup> These Guidelines do not address Article 1(2) of the 1954 Convention which sets out the circumstances in which persons who fall within the “stateless person” definition are nevertheless excluded from the protection of this treaty.

3. Procedures implemented by States to determine whether an individual qualifies as a stateless person for the purposes of Article 1(1) are considered in separate guidance, as these Guidelines focus on the substantive criteria of the definition, except where cross-reference to the guidelines on procedures is necessary.<sup>3</sup> Questions relating to the rights and obligations of stateless persons are also addressed in separate guidelines.<sup>4</sup>

4. These Guidelines are intended to assist States, UNHCR and other actors with interpreting Article 1(1) to facilitate the identification and proper treatment of beneficiaries of the 1954 Convention. In addition, these Guidelines will be relevant in a range of other circumstances, such as the interpretation of other international instruments that refer to stateless persons or to related terms also undefined in treaties. In this respect, it is noted that as the 1954 Convention has not been able to attract the same level of ratifications/accessions as the 1951 Convention relating to the Status of Refugees (1951 Convention) and other human rights treaties, there is limited State practice, including jurisprudence of national courts, on the interpretation of Article 1(1).

### b) Background to the 1954 Convention

5. The 1954 Convention shares the same origins as the 1951 Convention. It was originally conceived as a draft protocol to the refugee treaty. However, when the 1951 Convention was adopted, the protocol was left in draft form and referred to a separate negotiating conference where it was transformed into a self-standing treaty concerning stateless persons. Most importantly for the purposes of these Guidelines, the 1954 Convention establishes the universal definition of a “stateless person” in its Article 1(1).

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<sup>1</sup> The 1961 Convention on the Reduction of Statelessness is concerned with avoiding statelessness primarily through safeguards in nationality laws, thereby reducing the phenomenon over time. The 1930 Special Protocol on Statelessness, which came into force in 2004, does not address standards of treatment but is concerned with specific obligations of the previous State of nationality. This Protocol has very few States Parties.

<sup>2</sup> See page 49 of the International Law Commission, *Articles on Diplomatic Protection with commentaries*, 2006, which states that the Article 1 definition can “no doubt be considered as having acquired a customary nature”. The Commentary is accessible at [http://untreaty.un.org/ilc/guide/9\\_8.htm](http://untreaty.un.org/ilc/guide/9_8.htm). The text of Article 1(1) of the 1954 Convention is used in the Articles on Diplomatic Protection to provide a definition of stateless person.

<sup>3</sup> Please see the *Guidelines on Procedures for Determining whether an Individual is a Stateless Person* (“*Procedures Guidelines*”).

<sup>4</sup> Please see the *Guidelines on the Status of Stateless Persons at the National Level* (“*Status Guidelines*”).

## II. INTERPRETING ARTICLE 1(1)

### a) General Considerations

6. Article 1(1) of the 1954 Convention is to be interpreted in line with the ordinary meaning of the text, read in context and bearing in mind the treaty's object and purpose.<sup>5</sup> As indicated in its preamble and in the *Travaux Préparatoires*, the object and purpose of the 1954 Convention is to ensure that stateless persons enjoy the widest possible exercise of their human rights.<sup>6</sup> The drafters intended to improve the position of stateless persons by regulating their status. As a general rule, possession of a nationality is preferable to recognition and protection as a stateless person. Therefore, in seeking to ensure that all those who fall within the 1954 Convention's reach benefit from its provisions, it is important to recognise and respect an individual's nationality status.

7. Article 1(1) applies in both migration and non-migration contexts. A stateless person may never have crossed an international border, having lived in the same country for his or her entire life. Some stateless persons, however, may also be refugees or persons eligible for complementary protection.<sup>7</sup> Those stateless persons who fall within the scope of the 1951 Convention will be entitled to protection under that instrument, a matter discussed further in the *Status Guidelines*.

8. Persons who fall within the scope of Article 1(1) of the 1954 Convention are sometimes referred to as "*de jure*" stateless persons even though the term is not used in the Convention itself. By contrast, reference is made in the Final Act of the 1961 Convention to "*de facto*" stateless persons. Unlike Article 1(1) stateless persons, the term *de facto* statelessness is not defined in any international instrument and there is no treaty regime specific to this category of persons (the reference in the Final Act of the 1961 Convention being limited and non-binding in nature).<sup>8</sup> Care must be taken that those who qualify as "stateless persons" under Article 1(1) of the 1954 Convention are recognised as such and not mistakenly referred to as *de facto* stateless persons as otherwise they may fail to receive the protection guaranteed under the 1954 Convention. These Guidelines address interpretive issues regarding the Article 1(1) definition of stateless persons, yet avoid qualifying them as *de jure* stateless persons as that term appears nowhere in the treaty itself.

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<sup>5</sup> Please see Article 31(1) of the 1969 Vienna Convention on the Law of Treaties which sets out this primary rule of interpretation. Article 31 goes on to set out other factors which are relevant in interpreting treaty provisions whilst supplementary methods of interpretation are listed in Article 32.

<sup>6</sup> Please see the second and fourth paragraphs of the Preamble:

"Considering that the United Nations has, on various occasions, manifested its profound concern for stateless persons and endeavoured to assure stateless persons the widest possible exercise of these fundamental rights and freedoms,...

Considering that it is desirable to regulate and improve the status of stateless persons by an international agreement,..."

(The reference to "fundamental rights and freedoms" is a reference to the Universal Declaration of Human Rights which is mentioned in the first paragraph of the Preamble).

<sup>7</sup> For example, they may fall within the European Union's subsidiary protection regime set out in Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. See, more generally, UNHCR Executive Committee Conclusion No.103 (LVI) of 2005 on complementary forms of protection.

<sup>8</sup> On *de facto* statelessness see for example, Section II.A. of United Nations High Commissioner for Refugees, *Expert Meeting on the Concept of Stateless Persons under International Law (Summary Conclusions)*, 2010 (hereinafter referred to as the "*Prato Conclusions*"):

1. *De facto* statelessness has traditionally been linked to the notion of effective nationality and some participants were of the view that a person's nationality could be ineffective inside as well as outside of his or her country of nationality. Accordingly, a person could be *de facto* stateless even if inside his or her country of nationality. However, there was broad support from other participants for the approach set out in the discussion paper prepared for the meeting which defines a *de facto* stateless person on the basis of one of the principal functions of nationality in international law, the provision of protection by a State to its nationals abroad.
2. The definition is as follows: *de facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality".

The full text of the Conclusions is available at: <http://www.unhcr.org/refworld/pdfid/4ca1ae02.pdf>.

9. An individual is a stateless person from the moment that the conditions in Article 1(1) of the 1954 Convention are met. Thus, any finding by a State or UNHCR that an individual satisfies the test in Article 1(1) is declaratory, rather than constitutive, in nature.<sup>9</sup>

10. Article 1(1) can be analysed by breaking the definition down into two constituent elements: “not considered as a national...under the operation of its law” and “by any State”. When determining whether an individual is stateless under Article 1(1), it is often most practical to look first at the matter of “by any State,” as this will not only narrow the scope of inquiry to States with which an individual has ties, but might also exclude from consideration at the outset entities that do not fulfil the concept of “State” under international law. Indeed, in some instances consideration of this element alone will be decisive, such as where the only entity to which an individual has a relevant link is not a State.

## **b) Interpreting “by any State”**

### **Which States need to be examined?**

11. Although the definition in Article 1(1) is formulated in the negative (“not considered to be a national by any State”), an enquiry into whether someone is stateless is limited to the States with which a person enjoys a relevant link, in particular by birth on the territory, descent, marriage, or habitual residence. In some cases this may limit the scope of investigation to only one State (or indeed to an entity which is not a State).<sup>10</sup>

### **What is a “State”?**

12. The definition of “State” in Article 1(1) is informed by how the term has generally evolved in international law. The criteria in the 1933 Montevideo Convention on the Rights and Duties of States remain pertinent in this regard. According to that Convention, a State is constituted when an entity has a permanent population, defined territory, effective government and capacity to enter into relations with other States. Other factors of statehood that have subsequently emerged in international legal discourse include the effectiveness of the entity in question, the right of self-determination, the prohibition on the use of force and the consent of the State which previously exercised control over the territory in question.<sup>11</sup>

13. For an entity to be a “State” for the purposes of Article 1(1) it is not necessary for it to have received universal or large-scale recognition of its statehood by other States or to have become a Member State of the United Nations. Nevertheless, recognition or admission will be strong evidence of statehood.<sup>12</sup> Differences of opinion may arise within the international community on whether a particular entity has achieved statehood. In part, this reflects the complexity of some of the criteria involved and their application. Even where an entity objectively appears to satisfy the criteria mentioned in the paragraph above, there may be States that for political reasons choose to withhold recognition of, or actively not recognise, it as a State. In making an Article 1(1) determination, a decision-maker may be inclined to look toward his or her State’s official stance on a particular entity’s legal personality. Such an approach could, however, lead to decisions influenced more by the political position of the government of the State making the determination rather than the position of the entity in international law.

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<sup>9</sup> The implications of this, in terms of the suspensive effect of determination procedures and the treatment of individuals awaiting an outcome of a determination of their statelessness, are addressed in the *Procedures Guidelines* and the *Status Guidelines*.

<sup>10</sup> The issue of what constitutes a relevant link is dealt with further in the *Procedures Guidelines* in the context of the standard of proof required to establish statelessness.

<sup>11</sup> Where an entity claims to be a new State but the manner in which it emerged involved a breach of a *jus cogens* norm, this would raise questions about its eligibility for statehood. A *jus cogens* norm is a principle of customary international law considered to be peremptory in nature, that is it takes precedence over any other obligations (whether customary or treaty in nature), is binding on all States and can only be overridden by another peremptory norm. Examples of *jus cogens* norms include the prohibition on the use of force and the right to self-determination.

<sup>12</sup> Please note though, the longstanding debate on the constitutive versus declaratory nature of recognition of States. The former doctrine considers the act of recognition to be a prerequisite to statehood whilst the latter treats recognition as merely evidence of that status under international law. These different approaches also contribute to the complexity in some cases of determining the statehood of an entity.

14. Once a State is established, there is a strong presumption in international law as to its continuity irrespective of the effectiveness of its government. Therefore, a State which loses an effective central government because of internal conflict can nevertheless remain a “State” for the purposes of Article 1(1).

### **c) Interpreting “not considered as a national ... under the operation of its law”**

#### **Meaning of “law”**

15. The reference to “law” in Article 1(1) should be read broadly to encompass not just legislation, but also ministerial decrees, regulations, orders, judicial case law (in countries with a tradition of precedent) and, where appropriate, customary practice.<sup>13</sup>

#### **When is a person “not considered as a national” under a State’s law and practice?**

16. Establishing whether an individual is not considered as a national under the operation of its law requires a careful analysis of how a State applies its nationality laws in an individual’s case in practice and any review/appeal decisions that may have had an impact on the individual’s status.<sup>14</sup> This is a mixed question of fact and law.

17. Applying this approach of examining an individual’s position in practice may lead to a different conclusion than one derived from a purely objective analysis of the application of nationality laws of a country to an individual’s case. A State may not in practice follow the letter of the law, even going so far as to ignore its substance. The reference to “law” in the definition of statelessness in Article 1(1) therefore covers situations where the written law is substantially modified when it comes to its implementation in practice.

#### *Automatic and non-automatic modes of acquisition or withdrawal of nationality*

18. The majority of States have a mixture of automatic and non-automatic modes for effecting changes to nationality, including through acquisition, renunciation, loss or deprivation of nationality.<sup>15</sup> When determining whether someone is considered as a national of a State or is stateless, it is helpful to establish whether an individual’s nationality status has been influenced by automatic or non-automatic mechanisms or modes.

19. Automatic modes are those where a change in nationality status takes place by operation of law (*ex lege*).<sup>16</sup> According to automatic modes, nationality is acquired as soon as criteria set forth by law are met, such as birth on a territory or birth to nationals of a State. By contrast in non-automatic modes, an act of the individual or a State authority is required before the change in nationality status takes place.

#### *Identifying competent authorities*

20. To establish whether a State considers an individual to be its national, it is necessary to identify which institution(s) is/are the competent authority(ies) for nationality matters in a given country with which he or she has relevant links. Competence in this context relates to the authority responsible for conferring or withdrawing nationality from individuals, or for clarifying nationality status where nationality is acquired or withdrawn automatically. The competent

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<sup>13</sup> A similar approach is taken in Article 2(d) of the 1997 European Convention on Nationality.

<sup>14</sup> This approach reflects the general principle of law set out in Articles 1 and 2 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws.

<sup>15</sup> Please note that the terms loss and deprivation are used here in the same manner as in the 1961 Convention: “loss” refers to withdrawal of nationality by operation of law (*ex lege*) and “deprivation” refers to withdrawal of nationality initiated by the authorities of the State.

<sup>16</sup> Please note in this regard that the phrase “under the operation of its law” in Article 1(1) is not synonymous with “by operation of law”. The latter is a term of art (used, for example, in the 1961 Convention) which signifies a mechanism that is automatic in nature. The stateless person definition encompasses nationality that may have been acquired or withdrawn through non-automatic as well as automatic mechanisms.

authority or authorities will differ from State to State and in many cases there will be more than one competent authority involved.<sup>17</sup>

21. Some States have a single, centralized body that governs nationality issues that would constitute the competent authority for the purposes of an analysis of nationality status. Other States, however, have several authorities that can determine nationality, any one of which might be considered a competent authority depending on the circumstances. Thus, it is not necessary that a competent authority be a central State body. A local or regional administrative body can be a competent authority as can a consular official<sup>18</sup> and in many cases low-level local government officials will constitute the competent authority. The mere possibility that the decision of such an official can later be overridden by a senior official does not in itself exclude the former from being treated as a competent authority for the purposes of an Article 1(1) analysis.

22. Identifying the competent authority or authorities involves establishing which legal provision(s) relating to nationality may be relevant in an individual's case and which authority/authorities are mandated to apply them. Isolating the relevant legal provisions requires both an assessment of an individual's personal history as well as an understanding of the nationality laws of a State, including the interpretation and application, or non-application in some cases, of nationality laws in practice.

23. The identity and number of competent authorities in a particular case will depend in particular on the following factors:

- whether automatic or non-automatic modes for the acquisition, renunciation, or withdrawal of nationality need to be considered; and
- whether more than one nationality-related event needs to be examined.

*Evaluating evidence of competent authorities in non-automatic modes of nationality acquisition and withdrawal*

24. Identifying the competent authority where a non-automatic mode of changing nationality status is involved can be relatively straightforward. For mechanisms which are dependent on an act or decision of a State body, that body will be the competent authority.

25. For example, the government department that decides naturalisation applications will be the competent authority in respect of this mechanism. The position of this authority is generally decisive. Some non-automatic modes involving an act of the State do not involve any discretion on the part of the officials concerned; if an individual satisfies the requirements set out in law, the official will be required to carry out a specific act bestowing or withdrawing nationality.<sup>19</sup>

26. In non-automatic modes where an act of the State is required for acquisition of nationality, there will generally be a document recording that act, such as a citizenship certificate. Such documentation will be decisive in proving nationality. In the absence of such evidence it can be assumed that the necessary action was not taken and nationality not acquired.<sup>20</sup> This assumption of non-citizenship can be set aside by subsequent statements, actions, or evidence by the competent authority indicating that nationality was actually conferred.

*Evaluating evidence of competent authorities in automatic modes of citizenship acquisition or loss of nationality*

27. In cases where acquisition or loss of nationality occurs automatically, no State body is actively involved in the change of status and no active step is required of an individual. Such

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<sup>17</sup> It follows from the above that the views of a State body that is not competent to pronounce on nationality status are irrelevant.

<sup>18</sup> Please see below at paragraphs 32-33.

<sup>19</sup> Please note that it cannot be concluded that an individual is a national (or has been deprived of nationality) until such a procedure has been completed, see paragraph 43 below.

<sup>20</sup> Applications for naturalization or other documents submitted through a non-automatic nationality procedure do not qualify as sufficient evidence regarding a State's determination on that individual's nationality status.

change occurs by operation of law (*ex lege*) when prescribed criteria are met. In most countries, nationality is acquired automatically either through birth on the territory or descent. Nationality is also acquired automatically by most individuals affected by State succession.<sup>21</sup> Some laws provide for automatic loss of nationality, when certain conditions are met, such as prescribed periods of residency abroad, failure to register or make a declaration within a specific period.

28. Where nationality is acquired automatically, documents are typically not issued by the State as part of the mechanism. In such cases, it is generally birth registration that provides proof of place of birth and parentage and thereby provides evidence of acquisition of nationality, either by *jus soli* or *jus sanguinis*, rather than being the formal basis for the acquisition of nationality.

29. When automatic modes of nationality acquisition or loss are under consideration, the competent authority is any State institution that is empowered to make a determination of an individual's nationality status in the sense of clarifying that status, rather than deciding whether to confer or withdraw it. Examples of such bodies are passport authorities or, in a limited number of States, civil registration officials (where nationality is indicated in acts of civil registration, in particular birth registration). It is possible that in a particular case, more than one competent authority will emerge as a number of bodies may legitimately take positions regarding an individual's nationality in the course of their designated activities.

#### *Considerations where State practice contravenes automatic modes of acquisition of nationality*

30. Where the competent authorities treat an individual as a non-national even though he or she would appear to meet the criteria for automatic acquisition of nationality under the operation of a country's laws, it is their position rather than the letter of the law that is determinative in concluding that a State does not consider such an individual as a national. This scenario frequently arises where discrimination against a particular group is widespread in government departments or where, in practice, the law governing automatic acquisition at birth is systematically ignored and individuals are required instead to prove additional ties to a State.<sup>22</sup>

#### *Assessing nationality in the absence of evidence of the position of competent authorities*

31. There may be cases where an individual has never come into contact with a State's competent authorities, perhaps because acquisition was automatic at birth and a person has lived in a region without public services and has never applied for identity documents or a passport. In such cases, it is important to assess the State's general attitude in terms of nationality status of persons who are similarly situated. If the State has a good record in terms of recognising, in a non-discriminatory fashion, the nationality status of all those who appear to come within the scope of the relevant law, for example in the manner in which identity card applications are handled, this may indicate that the person concerned is considered as a national by the State. However, if the individual belongs to a group whose members are routinely denied identification documents issued only to nationals, this may indicate that he or she is not considered as a national by the State.

#### *Role of consular authorities*

32. The role of consular authorities merits particular consideration. A consulate may be the competent authority responsible for conducting the necessary step in a non-automatic mechanism. This occurs, for example, where a country's laws require children born to their

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<sup>21</sup> In some cases of State succession, however, citizenship of a successor State is not automatic and non-automatic modes of citizenship acquisition are employed instead. Please see the International Law Commission, *Articles on the Nationality of Natural Persons in Relation to Succession of States with Commentaries*, 1999, for an overview of State practice.

<sup>22</sup> Where a State's laws provides for automatic acquisition of nationality, but in practice a State places additional requirements on individuals to acquire nationality, this does not negate the automatic nature of the nationality law. Rather, it indicates that the State in practice does not consider those who do not satisfy their extra-legal requirements as nationals, potentially rendering them stateless under the Article 1(1) definition.

nationals overseas to register with a consulate as a prerequisite for acquiring the nationality of the parents. As such, the consulate in the country of such a child's birth will be the competent authority and its position on his or her nationality will be decisive, assuming no subsequent mechanism has also to be considered. If an individual is refused such registration or is prevented from applying for it, he or she is not considered as a national for the purposes of Article 1(1).

33. Consulates might be identified as competent authorities in other respects. Where individuals seek assistance from a consulate, for example to renew a passport or to obtain clarification of their nationality status, a consulate is legitimately required to take a position on that individual's nationality status within its powers of consular protection. In doing so, it acts as a competent authority. This is also the case when it responds to enquiries from other States regarding an individual's nationality status. Where a consulate is the only competent authority to take a position on an individual's nationality status, its position is typically decisive. Where other competent authorities have also taken positions on an individual's nationality status, their positions must be weighed up against any taken by consular authorities.<sup>23</sup>

#### *Enquiries with competent authorities*

34. In some cases an individual or a State may seek clarification of that individual's nationality status with competent authorities. This need typically arises where an automatic mode of acquisition or loss is involved or where an individual may have acquired or been deprived of nationality through a non-automatic mechanism, but lacks any documentary proof of this. Such enquiries may be met either with silence or a refusal to respond from the competent authority. Conclusions regarding a lack of response should only be drawn after a reasonable period of time. If a competent authority has a general policy of never replying to such requests, no inference can be drawn from this failure to respond based on the non-response alone. Conversely, when a State routinely responds to such queries, a lack of response will generally provide strong confirmation that the individual is not a national. Where a competent authority issues a pro forma response to an enquiry and it is clear that the authority has not examined the particular circumstances of an individual's position, such a response carries little weight. In any case, the position of the competent authority on a nationality status enquiry will need to be weighed up against the position taken by any other competent authority, or authorities, involved in an individual's case.<sup>24</sup>

#### *Inconsistent treatment by competent authorities*

35. The assessment of the positions of competent authorities becomes complex when an individual has been treated by various State actors inconsistently. For example, an individual may have been allowed to receive public benefits, which by law and in practice are reserved for nationals, but on reaching adulthood is denied a passport. Depending on the specific facts of the case, inconsistent treatment may be an instance of a national's rights being violated, the consequence of that person never having acquired nationality of that State, or the result of an individual having been deprived of or losing his or her nationality.

36. In cases where there is evidence that an individual has acquired nationality through a non-automatic mechanism dependent on an act of a State body, subsequent denial by other State bodies of rights generally accorded to nationals indicates that his or her rights are being breached. That being said, in certain circumstances the nature of the subsequent treatment may point to the State having changed its position on the nationality status of that individual, or that nationality has been lost or withdrawn.

37. Even where acquisition or withdrawal of nationality may have occurred automatically or through the formal act of an individual, State authorities nonetheless will often subsequently

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<sup>23</sup> Please see paragraph 37 on the relative weight to be given to bodies tasked with issuing identity documents which mention nationality status.

<sup>24</sup> Please note that in cases of a non-automatic change in nationality status that requires an act of a State, the existence (or lack of) documents normally issued as part of the State's action will be decisive in establishing nationality. Please see paragraph 26.

confirm that nationality has been acquired or withdrawn. This is generally undertaken through procedures for the issuance of identity documents. In relation to mechanisms for acquisition or loss of nationality either automatically or through the formal act of an individual, greater weight is warranted regarding the view of the competent authorities responsible for issuing identity documents that constitute proof of nationality, such as passports, certificates of nationality and, where they are only issued to nationals, identity cards.<sup>25</sup>

#### *Nationality acquired in error or bad faith*

38. Where the action of the competent authority in a non-automatic mechanism is undertaken in error (for example, because of a misunderstanding of the law to be applied) or in bad faith, this does not in itself invalidate the individual's nationality status so acquired. This flows from the ordinary meaning of the terms employed in Article 1(1) of the 1954 Convention. The same is true if the individual's nationality status changes as a result of a fraudulent application by the individual or one which inadvertently contained mistakes regarding material facts. For the purposes of the definition, conferrals of nationality under a non-automatic mechanism are to be considered valid even if there is no legal basis for such conferral.<sup>26</sup> However, in some cases the State, on discovering the error or bad faith involved in the nationality procedure in question, will subsequently have taken action to deprive the individual of nationality and this will need to be taken into account in determining the State's position of the individual's current status.

39. The impact of fraud or mistake in the acquisition of nationality is to be distinguished from the fraudulent acquisition of documents which may be presented as evidence of nationality. These documents will not necessarily support a finding of nationality as in many cases they will be unconnected to any nationality mechanism, automatic or non-automatic, which actually was applied in respect of the individual.

#### *Impact of appeal/review proceedings*

40. In instances where an individual's nationality status has been the subject of review or appeal proceedings, whether by a judicial or other body, its decision must be taken into account. In States that generally respect the rule of law,<sup>27</sup> the appellate/review body's decision typically would constitute the position of the State regarding the individual's nationality for the purposes of Article 1(1) if under the local law its decisions are binding on the Executive.<sup>28</sup> Thus, where authorities have subsequently treated an individual in a manner inconsistent with a finding of nationality by a review body, this represents an instance of a national's rights not being respected rather than the individual not being a national.

41. A different approach may be justified in countries where the executive is able to ignore the positions of judicial or other review bodies (even though these are binding as a matter of law) with impunity. This may be the case, for example, in States where a practice of discriminating against a particular group is widespread through State institutions. In such cases, the position of State authorities that such groups are not nationals would be decisive rather than the position of judicial authorities that might uphold the nationality rights of such groups.

42. There may be situations where the judgment of a court in a case not directly concerning the individual nevertheless has legal implications for that person's nationality status. If the judgment alters, as a matter of domestic law, such a person's nationality status, this will generally be conclusive as to his or her nationality (subject to the qualification regarding rule of law set out in the preceding paragraph). This may arise, for example, where in a particular

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<sup>25</sup> Indeed, other authorities may consult with this competent authority when taking a position on the individual's nationality.

<sup>26</sup> This situation must be distinguished from one where a non-national is merely treated to the privileges of nationality.

<sup>27</sup> "Rule of law" is described in the UN Secretary-General's 2004 Report on *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies* as:

"... a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards..."

<sup>28</sup> The exception would be where under the domestic law the judicial finding is only a recommendation and is not binding in nature on the authorities.

case the interpretation of a provision governing a mechanism for automatic acquisition has the effect of bringing a whole body of people within the ambit of that provision without any action required on their or the government's part.<sup>29</sup>

#### *Temporal Issues*

43. An individual's nationality is to be assessed as at the time of determination of eligibility under the 1954 Convention. It is neither a historic nor a predictive exercise. The question to be answered is whether, at the point of making an Article 1(1) determination, an individual is a national of the country or countries in question. Therefore, if an individual is partway through a process for acquiring nationality but those procedures are yet to be completed, he or she cannot be considered as a national for the purposes of Article 1(1) of the 1954 Convention.<sup>30</sup> Similarly, where requirements or procedures for loss, deprivation or renunciation of nationality have only been partially fulfilled or completed, the individual is still a national for the purposes of the stateless person definition.

#### *Voluntary Renunciation of Nationality*

44. Voluntary renunciation relates to an act of free will whereby an individual gives up his or her nationality status. This generally takes the form of an oral or written declaration. The subsequent withdrawal of nationality may be automatic or at the discretion of the authorities.<sup>31</sup> In some States voluntary renunciation of nationality is treated as grounds for excluding an individual from the coverage of Article 1(1). However, this is not permitted by the 1954 Convention. The treaty's object and purpose, of facilitating the enjoyment by stateless persons of their human rights, is equally relevant in cases of voluntary as well as involuntary withdrawal of nationality. Indeed, in many cases the renunciation may have pursued a legitimate objective, for example the fulfilment of conditions for acquiring another nationality, and the individual may only have expected a very short spell as stateless. The question of an individual's free choice is not relevant when determining eligibility for recognition as stateless under Article 1(1); it may, however, be pertinent to the matter of the treatment received thereafter. Those who have renounced their nationality voluntarily might be able to reacquire such nationality, unlike other stateless persons. The availability of protection in another State may have an impact on the status to be awarded on recognition and, as such, this issue is explored in the Status Guidelines.

#### *Concept of Nationality*

45. In assessing the nationality laws of a State it is important to bear in mind that the terminology used to describe a "national" varies from country to country. For example, other labels that might be applied to that status include "citizen", "subject", "*national*" in French, and "*nacional*" in Spanish. Moreover, within a State there may be various categories of nationality with differing names and associated rights. The 1954 Convention is concerned with ameliorating the negative effect, in terms of dignity and security, of an individual not satisfying a fundamental aspect of the system for human rights protection; the existence of a national-State relationship. As such, the definition of stateless person in Article 1(1) incorporates a concept of national which reflects a formal link, of a political and legal character, between the individual and a particular State. This is distinct from the concept of nationality which is concerned with membership of a religious, linguistic or ethnic group.<sup>32</sup> As such, the treaty's concept of national is consistent with the traditional understanding of this term under international law; that is persons over whom a State considers it has jurisdiction on the basis of nationality, including the right to bring claims against other States for their ill-treatment.

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<sup>29</sup> For example, this would be the case where a court rules that a provision of the nationality legislation governing automatic acquisition of nationality by individuals born in the territory prior to a specific date applies to an entire ethnic group, despite statements to the contrary by the government.

<sup>30</sup> The same approach applies where the individual has not pursued or exhausted a remedy in relation to denial or withdrawal of nationality.

<sup>31</sup> Voluntary renunciation is to be distinguished from loss of nationality through failure to comply with formalities, including where the individual is aware of the relevant requirements and still chooses to ignore them.

<sup>32</sup> This meaning of nationality can be found, for example, in the refugee definition in Article 1A(2) of the 1951 Refugees Convention in relation to the phrase "well-founded fear of being persecuted for reasons of race, religion, nationality..." (emphasis added).

46. Where States grant a legal status to certain groups of people over whom they consider to have jurisdiction on the basis of a nationality link rather than a form of residence, then a person belonging to this category will be a “national” for the purposes of the 1954 Convention. Generally, at a minimum, such status will be associated with the right of entry, re-entry and residence in the State’s territory but there may be situations where, for historical reasons, entry is only permitted to a non-metropolitan territory belonging to a State. The fact that different categories of nationality within a State have different rights associated with them does not prevent their holders from being treated as a “national” for the purposes of Article 1(1). Nor does the fact that in some countries the rights associated with nationality are fewer than those enjoyed by nationals of other States or indeed fall short of those required in terms of international human rights obligations.<sup>33</sup> Although the issue of diminished rights may raise issues regarding the effectiveness of the nationality and violations of international human rights obligations, this is not pertinent to the application of the stateless person definition in the 1954 Convention.<sup>34</sup>

47. There is no requirement of a “genuine” or an “effective” link implicit in the concept of “national” in Article 1(1).<sup>35</sup> Nationality, by its nature, reflects a linkage between the State and the individual, often on the basis of birth on the territory or descent from a national and this is often evident in the criteria for acquisition of nationality in most countries. However, a person can still be a “national” for the purposes of Article 1(1) despite not being born or habitually resident in the State of purported nationality.

48. Under international law, States have broad discretion in the granting and withdrawal of nationality. This discretion may be circumscribed by treaty. In particular, there are numerous prohibitions in global and regional human rights treaties regarding discrimination on grounds such as race, which apply with regard to grant, loss and deprivation of nationality.<sup>36</sup> Prohibitions in terms of customary international law are not so clear, though one example would be deprivation on the grounds of race.

49. Bestowal, refusal, or withdrawal of nationality in contravention of international obligations must not be condoned. The illegality on the international level, however, is generally irrelevant for the purposes of Article 1(1). The alternative would mean that an individual who has been stripped of his or her nationality in a manner inconsistent with international law would nevertheless be considered a “national” for the purposes of Article 1(1); a situation seemingly inconsistent with the object and purpose of the 1954 Convention.<sup>37</sup>

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<sup>33</sup>Please note that it is the rights *generally* associated with nationality that are relevant, not whether such rights are actually observed in a specific individual’s experience.

<sup>34</sup>Historically, there does not appear to have been any requirement under international law for nationality to have a specific content in terms of rights of individuals, as opposed to it creating certain inter-State obligations.

<sup>35</sup>These concepts have arisen in the field of diplomatic protection that is the area of customary international law that governs the right of a State to take diplomatic and other action against another State on behalf of its national whose rights and interests have been injured by the other State. The International Law Commission recently underlined why these concepts should not be applied beyond a narrow set of circumstances, please see page 33 of its *Articles on Diplomatic Protection with commentaries*, 2006 available at [http://untreaty.un.org/ilc/guide/9\\_8.htm](http://untreaty.un.org/ilc/guide/9_8.htm).

<sup>36</sup>An example is Article 9 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women which guarantees that all women should have equal rights as men in their ability to confer nationality on their children and with respect to acquisition, change, or retention of their nationality (typically upon marriage to a foreigner).

<sup>37</sup>The exception to the general approach may be situations where the breach of international law amounts to a violation of a peremptory norm of international law. In such circumstances, States may be under an obligation not to recognise situations flowing from that violation as legal. This may involve non-recognition of the nationality status, including perhaps, how this status is treated in an Article 1(1) determination. The exact scope of this obligation under customary international law remains a matter of debate.

**GUIDELINES ON STATELESSNESS NO. 3:  
The Status of Stateless Persons at the National Level**

UNHCR issues these Guidelines pursuant to its mandate responsibilities to address statelessness. These responsibilities were initially limited to stateless persons who were refugees as set out in paragraph 6 (A) (II) of the UNHCR Statute and Article 1 (A) (2) of the 1951 Convention relating to the Status of Refugees. To undertake the functions foreseen by Articles 11 and 20 of the 1961 Convention on the Reduction of Statelessness, UNHCR's mandate was expanded to cover persons falling under the terms of that Convention by General Assembly Resolutions 3274 (XXIX) of 1974 and 31/36 of 1976. The Office was entrusted with responsibilities for stateless persons generally under UNHCR Executive Committee Conclusion 78, which was endorsed by the General Assembly in Resolution 50/152 of 1995. Subsequently, in Resolution 61/137 of 2006, the General Assembly endorsed Executive Committee Conclusion 106 which sets out four broad areas of responsibility for UNHCR: the identification, prevention and reduction of statelessness and the protection of stateless persons.

These Guidelines result from a series of expert consultations conducted in the context of the 50th Anniversary of the 1961 Convention on the Reduction of Statelessness and build in particular on the *Summary Conclusions of the Expert Meeting on Statelessness Determination Procedures and the Status of Stateless Persons*, held in Geneva, Switzerland in December 2010. These Guidelines are to be read in conjunction with the *Guidelines on Procedures for Determining whether an individual is a Stateless Person* and the *Guidelines on the Definition of "Stateless Person" in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons*. This set of Guidelines will be published in due course as a UNHCR Handbook on Statelessness.

These Guidelines are intended to provide interpretative legal guidance for governments, NGOs, legal practitioners, decision-makers and the judiciary, as well as for UNHCR staff and other UN agencies involved in addressing statelessness.

## I. INTRODUCTION

1. Stateless persons are generally denied enjoyment of a range of human rights and prevented from participating fully in society. The 1954 Convention relating to the Status of Stateless Persons (“1954 Convention”) addresses this marginalisation by granting stateless persons a core set of rights. Its provisions, along with applicable standards of international human rights law, establish the minimum rights and the obligations of stateless persons in Contracting States of the 1954 Convention. The status of a stateless person in a Contracting State, that is the rights and obligations of stateless persons under national law, must reflect these international standards.

2. These Guidelines are aimed at assisting States to ensure that stateless persons receive such status in their jurisdictions. They address the treatment of persons determined to be stateless by a State under the 1954 Convention, the position of individuals awaiting the outcome of a statelessness determination procedure, as well as the appropriate treatment of stateless persons in States that do not have statelessness determination procedures.<sup>1</sup> The Guidelines also examine the position of stateless persons in countries not party to the 1954 Convention as well as those considered to be *de facto* stateless.<sup>2</sup>

3. The 1954 Convention has received relatively little attention and literature on State practice regarding implementation of the Convention is rare. These Guidelines nevertheless consider existing practice of States party to the 1954 Convention.

4. Statelessness arises in a variety of contexts. It occurs in migratory situations, for example among expatriates and/or their children who might lose their nationality without having acquired the nationality of a country of habitual residence. Most stateless persons, however, have never crossed borders and find themselves in their “own country”. Their predicament exists *in situ*, that is in the country of their long-term residence, in many cases the country of their birth.<sup>3</sup> For these individuals, statelessness is often a result of discrimination on the part of authorities in framing and implementing nationality laws.

5. While all stateless persons must be treated in line with international standards, their status can vary to reflect the context in which statelessness arises. These Guidelines therefore first address the relevant international law standards and then examine separately the scope of stateless person status for individuals in a migratory context and for those in their “own country”.<sup>4</sup>

## II. INTERNATIONAL LAW AND THE STATUS OF STATELESS PERSONS

### a) Parallels Between the Status of Refugees and Stateless Persons

6. The status set out for stateless persons in the 1954 Convention is modelled on that established for refugees in the 1951 Convention relating to the Status of Refugees (“1951 Convention”). Comparison of the texts of the two treaties shows that numerous provisions of the 1954 Convention were taken literally, or with minimal changes, from the corresponding provisions of the 1951 Convention. This is largely because of the shared drafting history of the 1951 and 1954 Conventions which both emerged from the work of the Ad Hoc Committee on Statelessness and Related Problems that was appointed by the Economic and Social

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<sup>1</sup> The considerations involved in setting up and operating a determination procedure are addressed in UNHCR, *Guidelines on Procedures for Determining whether an Individual is a Stateless Person* (“Procedures Guidelines”) available at: <http://www.unhcr.org/refworld/docid/4f7dafb52.html>.

<sup>2</sup> The term *de facto* stateless is considered further in paragraph 48 below. The definition of stateless person in the 1954 Convention is examined in UNHCR, *Guidelines on the Definition of “Stateless Person” in Article 1(1) of the 1954 Convention on the Status of Stateless Persons* (“Definition Guidelines”) available at: <http://www.unhcr.org/refworld/docid/4f4371b82.html>.

<sup>3</sup> The phrase “own country” is taken from Article 12(4) of the International Covenant on Civil and Political Rights (“ICCPR”) and its interpretation by the UN Human Rights Committee.

<sup>4</sup> Please see paragraph 23 below which examines the nature of an individual’s right to remain in his or her “own country”.

Council in 1949.<sup>5</sup> As a result, the *travaux préparatoires* of the 1951 Convention are particularly pertinent in interpreting the 1954 Convention.<sup>6</sup>

7. As with the 1951 Convention, the rights set out in the 1954 Convention are not limited to individuals who have been recognised as stateless following a determination made by a State or UNHCR. A person is stateless from the moment he or she satisfies the criteria in the 1954 Convention definition, any determination of this fact being merely declaratory. Instead, the rights afforded to an individual under the Convention are linked to the nature of that person's presence in the State, assessed in terms of degree of attachment to the host country.

8. Despite sharing the same overall approach, the 1954 Convention nevertheless contains several significant differences from the 1951 Convention. There is no prohibition against *refoulement* (Article 33, 1951 Convention) and no protection against penalties for illegal entry (Article 31, 1951 Convention). Moreover, both the right to employment and the right of association provide for a lower standard of treatment than the equivalent provisions in the 1951 Convention.<sup>7</sup> The scope of protection against expulsion also differs between the treaties.

9. A stateless person may simultaneously be a refugee.<sup>8</sup> Where this is the case, it is important that each claim is assessed and that both statelessness and refugee status are explicitly recognised. Similarly, where standards of treatment are provided for a complementary form of protection, including protection against *refoulement*, States must apply these standards to stateless individuals who qualify for that protection.<sup>9</sup>

## **b) Overview of the Standard of Treatment Required by the 1954 Convention**

10. Articles 12-32 of the 1954 Convention establish a broad range of civil, economic, social and cultural rights for States to accord to stateless persons. The 1954 Convention divides these rights into the following categories:

- juridical status (including personal status, property rights, right of association, and access to courts);
- gainful employment (including wage-earning employment, self-employment, and access to the liberal professions);
- welfare (including rationing, housing, public education, public relief, labour legislation, and social security); and
- administrative measures (including administrative assistance, freedom of movement, identity papers, travel documents, fiscal charges, transfer of assets, expulsion, and naturalization).

11. The 1954 Convention establishes minimum standards. Like the 1951 Convention, the 1954 Convention requires that States provide its beneficiaries with treatment along the following scale:

- treatment which is to be afforded to stateless persons irrespective of the treatment afforded to citizens or other aliens;

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<sup>5</sup> Resolution 248 (IX) (B) of 8 August 1949. Although the protection of stateless persons was initially intended to be addressed in a Protocol which would apply *mutatis mutandis* most of the substantive rights set out in the Refugee Convention, it was subsequently decided to adopt a standalone instrument, the Convention relating to the Status of Stateless Persons. For additional information on the drafting history, please see Nehemiah Robinson's detailed account of the *travaux préparatoires* of the 1954 Convention, *Convention Relating to the Status of Stateless Persons: Its History and Interpretation – A Commentary*, 1955, available at: <http://www.unhcr.org/refworld/pdfid/4785f03d2.pdf> ("Robinson Commentary to the 1954 Convention").

<sup>6</sup> Please see in particular, paragraphs 13-20 below on the scale of rights accorded to stateless persons depending on their level of attachment to a Contracting State under the 1954 Convention.

<sup>7</sup> However, like the 1951 Refugee Convention, the 1954 Convention calls on States to "give sympathetic consideration to assimilating the rights of all stateless persons with regards to wage-earning employment to those of nationals...". Please see Article 17(2) of the 1954 Convention.

<sup>8</sup> The definitions of stateless person under the 1954 Convention and that of refugees under the 1951 Convention are not mutually exclusive. Please see the *Definition Guidelines* at paragraph 7.

<sup>9</sup> For further information about how refugee, complementary protection, and statelessness claims are to be assessed in statelessness determination procedures, as well as necessary confidentiality guarantees, please see paragraphs 26-30 of the *Procedures Guidelines*.

- the same treatment as nationals;
- treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances; and
- the same treatment accorded to aliens generally.

12. States have discretion to facilitate greater parity between the status of stateless persons and that of nationals and indeed may also have an obligation to do so under international human rights treaties. The responsibility placed on States to respect, protect and fulfil 1954 Convention rights is balanced by the obligation in Article 2 of the same treaty that stateless persons abide by the laws of the country in which they find themselves.

### **Rights on a gradual, conditional scale**

13. The rights provided for in the 1954 Convention are extended to stateless persons based on their degree of attachment to the State. Some provisions are applicable to any individual who satisfies the definition of “stateless person” in the 1954 Convention and are either subject to the jurisdiction of a State party or present in its territory. Other rights, however, are conferred on stateless persons, conditional upon whether an individual is “lawfully in”, “lawfully staying in” or “habitually resident” in the territory of a Contracting State. States may thus grant individuals determined to be stateless more comprehensive rights than those guaranteed to individuals awaiting a determination. Nevertheless, the latter are entitled to many of the 1954 Convention rights. This is similar to the treatment of asylum-seekers under the 1951 Convention.

14. Those rights in the 1954 Convention which are triggered when an individual is subject to the jurisdiction of a State party include personal status (Article 12), property (Article 13), access to courts (Article 16(1)), rationing (Article 20), public education (Article 22), administrative assistance (Article 25) and facilitated naturalization (Article 32). Additional rights that accrue to individuals when they are physically present in a Contracting State’s territory are freedom of religion (Article 4) and the right to identity papers (Article 27).

15. The 1954 Convention foresees that stateless persons who are “lawfully in” a Contracting State (in French “*se trouvant régulièrement*”), are entitled to an additional set of rights. The “lawfully in” rights include the right to engage in self-employment (Article 18), freedom of movement within a Contracting State (Article 26) and protection from expulsion (Article 31).

16. For stateless persons to be “lawfully in” a Contracting State, their presence in the country needs to be authorized by the State. The concept encompasses both presence which is explicitly sanctioned and also that which is known and not prohibited, taking into account all personal circumstances of the individual.<sup>10</sup> The duration of presence can be temporary. This interpretation of the terms of the 1954 Convention is in line with its object and purpose, which is to assure the widest possible exercise by stateless persons of the rights contained therein. As confirmed by the drafting history of the Convention,<sup>11</sup> applicants for statelessness status

<sup>10</sup> The 1951 Convention also makes the enjoyment of specific rights to refugees conditional upon various degrees of attachment to the State, please see UNHCR, Note on International Protection, 7 September 1994, A/AC.96/830, at paragraph 29, available at: <http://www.unhcr.org/refworld/docid/3f0a935f2.html>. According to the *Robinson Commentary to the 1954 Convention*, note 5, above: “It is to be assumed that the expression ‘lawfully in the country’ as used in [the 1954 Convention] has the same meaning as the one in the Refugee Convention”. The concept of “lawful” stay for the purposes of the 1951 Convention has been interpreted as follows and, in light of the shared drafting history of the 1951 and 1954 Conventions, also applies in interpreting the 1954 Convention: “...‘lawful’ normally is to be assessed against prevailing national laws and regulations; a judgment as to lawfulness should nevertheless take into account all the prevailing circumstances, including the fact that the stay in question is known and not prohibited, i.e. tolerated, because of the precarious circumstances of the person”. Please see in this regard UNHCR, “*Lawfully Staying*” – *A Note on Interpretation*, 1988, in particular paragraph 23, available at: <http://www.unhcr.org/refworld/docid/42ad93304.html>. The UN Human Rights Committee has decided that an individual with an expulsion order that was not enforced, who was allowed to stay in Sweden on humanitarian grounds was “lawfully in the territory” for the purposes of enjoying the right to freedom of movement protected by Article 12 of the ICCPR. Please see *Celepili v. Sweden*, CCPR/C/51/D/456/1991 at paragraph 9.2 (26.7.1994).

<sup>11</sup> Please see the *Robinson Commentary to the 1954 Convention*, note 5 above, in particular in relation to Articles 15, 18 and 31, 1997, available at: <http://www.unhcr.org/refworld/docid/4785f03d2.html>. Given the shared drafting history

who enter into a determination procedure are therefore “lawfully in” the territory of a Contracting State.<sup>12</sup> By contrast, an individual who has no immigration status in the country and declines the opportunity to enter a statelessness determination procedure is not “lawfully in” the country.

17. The 1954 Convention grants another set of rights to stateless persons who are “lawfully staying” in a Contracting State (in French “*résidant régulièrement*”). The “lawfully staying” rights in the 1954 Convention include the right of association (Article 15), right to work (Article 17), practice of liberal professions (Article 19), access to public housing (Article 21), right to public relief (Article 23), labour and social security rights (Article 24), and travel documents (Article 28).<sup>13</sup>

18. The “lawfully staying” requirement envisages a greater duration of presence in a territory. This need not, however, take the form of permanent residence. Shorter periods of stay authorised by the State may suffice so long as they are not transient visits. Stateless persons who have been granted a residence permit would fall within this category.<sup>14</sup> It also covers individuals who have temporary permission to stay if this is for more than a few months. By contrast, a visitor admitted for a brief period would not be “lawfully staying”. Individuals recognised as stateless following a determination procedure but to whom no residence permit has been issued will generally be “lawfully staying” in a Contracting State by virtue of the length of time already spent in the country awaiting a determination.

19. A final set of rights foreseen by the 1954 Convention are those to be accorded to stateless persons who are “habitually resident” or “residing” in a Contracting State. The rights accruing to those who are “habitually resident” are protection of artistic rights and intellectual property (Article 14) and rights pertaining to access to Courts, including legal assistance and assistance in posting bond or paying security for legal costs (Article 16(2)).

20. The condition that a stateless person be “habitually resident” or “residing” indicates that the person resides in a Contracting State on an on-going and stable basis. “Habitual residence” is to be understood as stable, factual residence. This covers those stateless persons who have been granted permanent residence, and also applies to individuals without a residence permit who are settled in a country, having been there for a number of years, who have an expectation of on-going residence there.

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of the 1951 and 1954 Conventions and the extent to which specific provisions of the 1954 Convention mirror those of the 1951 Convention, it is important to note the statement of the delegate of France in explaining the meaning of the term “lawfully in” as used in the text proposed by France which was later accepted by the drafting committee: “Any person in possession of a residence permit was in a regular position. In fact, the same was true of a person who was not yet in possession of a residence permit but who had applied for it and had the receipt for that application. Only those persons who had not applied, or whose application had been refused, were in an irregular position”. UN Ad Hoc Committee on Refugees and Stateless Persons, *Ad Hoc Committee on Statelessness and Related Problems, First Session: Summary Record of the Fifteenth Meeting Held at Lake Success, New York, on 27 January 1950*, 6 February 1950, E/AC.32/SR.15, available at: <http://www.unhcr.org/refworld/docid/40aa1d5f2.html>.

<sup>12</sup> Please see the *Procedures Guidelines*, which set out in paragraph 20 that statelessness determination procedures are to have suspensive effect on removal proceedings for the individual concerned for the duration of the procedure until a determination is reached. The length of time an individual would be considered as “lawfully in” a country as a result of being in a statelessness determination procedure will often be short. As established in the *Procedures Guidelines* at paragraphs 22-23, manifestly well-founded applications may only require a few months to reach a final determination, with first instance decisions generally to be issued no more than six months from the application.

<sup>13</sup> Since 1 April 2010, all travel documents issued by States, including travel documents for stateless persons pursuant to the 1954 Convention must be machine readable in accordance with International Civil Aviation Organization (“ICAO”) standards. Please see ICAO, *Annex 9 to the Convention on International Civil Aviation, Facilitation*, July 2005 and *Document 9303, Machine Readable Travel Documents*, 2006.

<sup>14</sup> The concept of “stay” has been interpreted in the context of the 1951 Convention and is applicable to interpreting the 1954 Convention as follows: “‘stay’ means something less than durable residence, although clearly more than a transit stop”. Please see paragraph 23, UNHCR, “*Lawfully Staying*” – *A Note on Interpretation*, 1988, available at: <http://www.unhcr.org/refworld/docid/42ad93304.html>.

### c) International Human Rights Law

21. The status of a stateless person under national law must also reflect applicable provisions of international human rights law. The vast majority of human rights apply to all persons irrespective of nationality or immigration status, including to stateless persons.<sup>15</sup> Moreover, the principle of equality and non-discrimination generally prohibits any discrimination based on the lack of nationality status.<sup>16</sup> Legitimate differentiation may be permitted for groups who are in a materially different position.<sup>17</sup> Thus, States may explore affirmative action measures to help particularly vulnerable groups of stateless persons in their territory.

22. International human rights law supplements the protection regime set out in the 1954 Convention.<sup>18</sup> Whilst a number of provisions of international human rights law replicate rights found in the 1954 Convention, others provide for a higher standard of treatment or for rights not found in the Convention at all.<sup>19</sup>

23. Of particular importance to stateless persons is the right enshrined in Article 12(4) of the International Covenant on Civil and Political Rights (“ICCPR”) to enter one’s “own country”. This goes beyond a right of entry to one’s country of nationality.<sup>20</sup> It also guarantees the right of entry, and thus the right to remain, of individuals with special ties to a State. This includes, for instance, stateless persons long-established in a State as well as stateless persons who have been stripped of their nationality in violation of international law or who have been denied nationality of a State which has acquired through State succession the territory in which they habitually reside.

24. Even considering these developments in international human rights law, the 1954 Convention retains its significance as it addresses matters specific to statelessness that are not addressed elsewhere, notably the provision of identity papers and travel documents and administrative assistance to stateless persons. Moreover, the provisions of the Convention do not allow for derogation in times of public emergency unlike some human rights treaties and it

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<sup>15</sup> Please see Human Rights Committee, *General Comment No.15 (The Position of Aliens under the Covenant)*, 1986, available at: <http://www.unhcr.org/refworld/pdfid/45139acfc.pdf>, and Human Rights Committee, *General Comment No. 31 (The Nature of the General Legal Obligation Imposed on States Parties to the Covenant)*, 2004, available at: <http://www.unhcr.ch/tbs/doc.nsf/0/58f5d4646e861359c1256ff600533f5f?Opendocument>. Please see also the UN Sub-Commission on the Promotion and Protection of Human Rights, Special Rapporteur on the rights of non-citizens, *Final Report (E/CN.Sub.2/2003/23)*, 2003, available at: <http://www.unhcr.org/refworld/pdfid/3f46114c4.pdf>. Please note though that full enjoyment of human rights is facilitated by the possession of a nationality, hence the need for specific protection for stateless persons in the form of the 1954 Convention.

<sup>16</sup> Please see, for example, Articles 2(1) and 26 of the ICCPR.

<sup>17</sup> Please see Human Rights Committee, *General Comment No. 18 (Non-discrimination)*, 1989, at paragraph 13, available at: <http://www.unhcr.org/refworld/pdfid/453883fa8.pdf>. Please see also Executive Summary and paragraph 23 of UN Sub-Commission Special Rapporteur on the rights of non-citizens, *Final Report (E/CN.Sub.2/2003/23)*, 2003, above at note 15.

<sup>18</sup> It also provides an alternate regulatory framework in countries that have not acceded to the 1954 Convention. This is considered further in paragraph 47 below.

<sup>19</sup> For example, protection against arbitrary detention as found in Article 9(1) of the ICCPR. Regional human rights treaties are also pertinent.

<sup>20</sup> Please see Human Rights Committee, *General Comment No.27 (Freedom of Movement)*, at paragraph 20 :

“The wording of article 12, paragraph 4, does not distinguish between nationals and aliens (“no one”). Thus, the persons entitled to exercise this right can be identified only by interpreting the meaning of the phrase “his own country”. The scope of “his own country” is broader than the concept “country of his nationality”. It is not limited to nationality in a formal sense, that is, nationality acquired at birth or by conferral; it embraces, at the very least, an individual who, because of his or her special ties to or claims in relation to a given country, cannot be considered to be a mere alien. This would be the case, for example, of nationals of a country who have there been stripped of their nationality in violation of international law, and of individuals whose country of nationality has been incorporated in or transferred to another national entity, whose nationality is being denied them. The language of article 12, paragraph 4, moreover, permits a broader interpretation that might embrace other categories of long-term residents, including but not limited to stateless persons arbitrarily deprived of the right to acquire the nationality of the country of such residence”.

sets out a number of standards that are more generous than their counterparts under human rights law.<sup>21</sup>

### III. INDIVIDUALS IN A MIGRATORY CONTEXT

#### a) Individuals Awaiting Determination of Statelessness

25. Although the 1954 Convention does not explicitly address statelessness determination procedures, there is an implicit responsibility for States to identify stateless persons in order to accord them appropriate standards of treatment under the Convention.<sup>22</sup> The following paragraphs consider the appropriate status for individuals awaiting the determination of their statelessness both in countries that have established determination procedures and in those without.

26. In countries with a determination procedure, an individual awaiting a decision is entitled, at a minimum, to all rights based on jurisdiction or presence in the territory as well as “lawfully in” rights.<sup>23</sup> Thus, his or her status must guarantee, *inter alia*, identity papers, the right to self-employment, freedom of movement and protection against expulsion.<sup>24</sup> As the aforementioned Convention rights are formulated almost identically to those in the 1951 Convention, it is recommended that individuals awaiting a determination of statelessness receive the same standards of treatment as asylum-seekers whose claims are being considered in the same State.

27. The status of those awaiting statelessness determination must also reflect applicable human rights such as protection against arbitrary detention and assistance to meet basic needs.<sup>25</sup> Allowing individuals awaiting statelessness determination to engage in wage-earning employment, even on a limited basis, may reduce the pressure on State resources and contributes to the dignity and self-sufficiency of the individuals concerned.

#### b) Individuals Determined to Be Stateless – Right of Residence

28. Although the 1954 Convention does not explicitly require States to grant a person determined to be stateless a right of residence, granting such permission would fulfil the object and purpose of the treaty. This is reflected in the practice of States with determination procedures. Without a right to remain, the individual is at risk of continuing insecurity and prevented from enjoying the rights guaranteed by the 1954 Convention and international human rights law.

29. It is therefore recommended that States grant persons recognised as stateless a residence permit valid for at least two years, although permits for a longer duration, such as five years, are preferable in the interests of stability. Such permits are to be renewable, providing the possibility of facilitated naturalization as prescribed by Article 32 of the 1954 Convention.

30. If an individual recognised as stateless subsequently acquires or re-acquires the nationality of another State, for instance because of a change in its nationality laws, he or she will cease to be stateless in terms of the 1954 Convention. This may justify the cancellation of a residence permit obtained on the basis of statelessness status, although proportionality considerations in relation to acquired rights and factors arising under international human

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<sup>21</sup> For example, protection against expulsion for persons “lawfully in” the territory is confined under Article 13 of the ICCPR to procedural safeguards, whereas Article 31 of the 1954 Convention also limits the substantive grounds on which expulsion can be justified.

<sup>22</sup> Please see the *Procedures Guidelines* at paragraph 1.

<sup>23</sup> As set out in paragraphs 15-16 above. This would also apply in States without dedicated determination procedures when an individual raises a statelessness claim in a different context.

<sup>24</sup> The importance of protection against expulsion for fair and efficient determination procedures is discussed in the *Procedures Guidelines* at paragraph 20. Specifically, statelessness determination procedures are to have suspensive effect on removal.

<sup>25</sup> Please see paragraphs 21-22 above.

rights law, such as the degree to which the individual has established a private and family life in the State, need to be taken into account.

31. Recognition of an individual as a stateless person under the 1954 Convention also triggers the “lawfully staying” rights,<sup>26</sup> in addition to a right to residence. Thus the right to work, access to healthcare and social assistance, as well as a travel document must accompany a residence permit.

32. Although the 1954 Convention does not address family unity, Contracting States are nevertheless encouraged to facilitate the reunion of those with recognised statelessness status in their territory with their spouses and dependents.<sup>27</sup> Indeed, some States have obligations arising under relevant international or regional human rights treaties to do so.<sup>28</sup>

33. The two provisions in the Convention that are restricted to individuals with “habitual residence” would not automatically flow from recognition as stateless.<sup>29</sup> These may be activated, though, if the individual can be considered to be living in the country on a stable basis.

### **c) Where Protection is Available in Another State**

34. Where an individual recognised as stateless has a realistic prospect, in the near future, of obtaining protection consistent with the standards of the 1954 Convention in another State, the host State has discretion to provide a status that is more transitional in nature than that described in paragraphs 29-33 above. Separate considerations apply for those who voluntarily renounce their nationality as a matter of convenience or choice.<sup>30</sup>

35. In these cases, care must be taken to ensure that the criteria for determining whether an individual has a realistic prospect of obtaining protection elsewhere are narrowly construed.<sup>31</sup> In UNHCR’s view protection can only be considered available in another country when a stateless person:

- is able to acquire or reacquire nationality through a simple, rapid, and non-discretionary procedure, which is a mere formality; or
- enjoys permanent residence status in a country of previous habitual residence to which immediate return is possible.

36. With respect to acquisition or reacquisition of nationality, individuals must be able to avail themselves of a procedure that is easily accessible, both physically and financially, as well as one that is simple in terms of procedural steps and evidentiary requirements. Moreover, the acquisition/reacquisition procedure must be swift and the outcome guaranteed because it is non-discretionary where prescribed requirements are met.<sup>32</sup>

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<sup>26</sup> Please see paragraphs 17-18 above.

<sup>27</sup> For an explanation of family unity in the context of the 1951 Convention, please see UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* (reissued 2011), paragraphs 181-188, available at: <http://www.unhcr.org/refworld/docid/4f33c8d92.html>. Whether dependents of a stateless person would be entitled to statelessness status is subject to an inquiry into the national status of each dependent to verify qualification as a “stateless person” under the 1954 Convention. Facilitating family unity, however, could also be achieved by granting residence rights to dependents of a stateless person in the territory of a Contracting State, even where the dependents are not stateless.

<sup>28</sup> For more on how international human rights obligations supplement those that arise from the 1954 Convention, please see paragraphs 21-24 above.

<sup>29</sup> Please see paragraphs 19-20 above.

<sup>30</sup> Please see further paragraphs 42-43 below.

<sup>31</sup> Moreover, safeguards are necessary to prevent the individual being left without a legal status anywhere and to ensure that any special circumstances justifying a residence permit are properly examined.

<sup>32</sup> An example would be a procedure through which former nationals can reacquire their nationality by simply signing a declaration at the nearest consular authority following production of their birth certificate or cancelled/expired passport, where the competent authority is then obliged to restore nationality. Similar procedures may also involve registration or the exercise of the right of option to acquire nationality.

37. By contrast, other procedures for acquisition of nationality may not present a sufficiently reliable prospect of obtaining protection elsewhere and would therefore not justify providing merely a transitional status to stateless persons. For example, it would not suffice that the individual has access to naturalization procedures which, as a general rule, leave discretion in the hands of officials and have no guaranteed outcome. Similarly, procedures with vague requirements for the acquisition of nationality or those that would oblige an individual to be physically present in a country of former nationality where legal entry and residence are not guaranteed would also not suffice.

38. As for an individual's ability to return to a country of previous habitual residence, this must be accompanied by the opportunity to live a life of security and dignity in conformity with the object and purpose of the 1954 Convention. Thus, this exception only applies to those individuals who already enjoy the status of permanent residence in another country, or would be granted it upon arrival, where this is accompanied by a full range of civil, economic, social and cultural rights, and where there is a reasonable prospect of obtaining nationality of that State.<sup>33</sup> Permission to return to another country on a short-term basis would not suffice.

#### **Where statelessness results from loss/deprivation or good-faith voluntary renunciation of nationality**

39. In many cases an individual will cooperate in attempting to acquire or restore nationality or to make arrangements for return to a country of previous habitual residence. This might arise where an individual involuntarily renounced or lost his or her nationality. This could also arise where an individual renounced his or her former nationality consciously and in good faith with a view to acquiring another nationality. In some cases, on account of poorly drafted nationality laws such individuals must renounce their nationality in order to apply for another but are then unable to acquire the second nationality and are left stateless.

40. The best solution in such cases is reacquisition of the former nationality. Where a State determines that such individuals are stateless, but have the possibility of reacquiring their former nationality, the State would not need to provide them with a residence permit. Rather, they can be provided with some form of immigration status to allow the individuals concerned to remain briefly in the territory while making arrangements to move to the other State. Such temporary permission could be for as short a period as a few months and the rights to be enjoyed need not match those required when a residence permit is issued. Indeed, a status closer to that provided during the determination process may be justifiable.

41. States can extend temporary permission to stay where admission/readmission or reacquisition of nationality does not materialise through no fault of the individual. However, extensions can be limited in duration in order to strike a fair balance between facilitating the completion of admission/readmission or reacquisition efforts and providing a degree of certainty for the affected stateless person. If the time limit is reached and admission/readmission or reacquisition has not yet materialised despite the good faith attempts of the individual, it is then the responsibility of the Contracting State to grant the individual the status generally accorded upon recognition as a stateless person; that is, a renewable residence permit with a complement of rights, including the right to work and receive a travel document.

#### **Where statelessness results from voluntary renunciation of nationality as a matter of convenience or choice**

42. Some individuals voluntarily renounce a nationality because they do not wish to be nationals of a particular State or in the belief that this will lead to grant of a protection status in

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<sup>33</sup> Paragraphs 20-22 of UNHCR, *Position on the return of persons not found to be in need of international protection to their countries of origin: UNHCR's Role*, 2010, available at: <http://www.unhcr.org/refworld/pdfid/4cea23c62.pdf>, are to be read in light of the criteria set forth in these Guidelines.

another country.<sup>34</sup> Re-admission to the State of former nationality, coupled with re-acquisition of that nationality, is the preferred solution in such situations. Where cooperation from the individual for readmission to another State or for reacquisition of nationality is lacking, the authorities are entitled to pursue their own discussions with the other State to secure admission of the individual concerned. In this context, other international obligations of the State of former nationality will be relevant, including those relating to prevention of statelessness upon renunciation of nationality and the right to enter one's own country.<sup>35</sup>

43. A Contracting State need not necessarily grant or renew permission for stay to such individuals. Nor would they be entitled to all of the rights foreseen by the 1954 Convention. Bar any other protection obstacles, involuntary return cannot be excluded in such cases, for example, where the former State of nationality is also the country of previous habitual residence and its authorities are prepared to grant permanent residence to the individual concerned.

### Consideration of local ties

44. Where an individual has developed close ties with a host State as a result of long-term residence and family links, conferral of the status normally granted upon recognition as a stateless person, that is a renewable residence permit with a complement of rights, would be appropriate, even where protection may be available in another State.<sup>36</sup> In some cases, this approach may be required to satisfy human rights obligations such as refraining from unlawful or arbitrary interference with privacy, family or home.<sup>37</sup>

## IV. INDIVIDUALS IN THEIR "OWN COUNTRY"

45. As noted in paragraph 23 above, certain stateless persons can be considered to be in their "own country" in the sense envisaged by Article 12(4) of the ICCPR. Such persons include individuals who are long-term, habitual residents of a State which is often their country of birth. Being in their "own country" they have a right to enter and remain there with significant implications for their status under national law. Their profound connection with the State in question, often accompanied by an absence of links with other countries, imposes a political and moral imperative on the State to facilitate their full integration into society. The fact that these people are stateless in their "own country" is often a reflection of discriminatory treatment in the framing and application of nationality laws. Some will have been denied nationality despite being born and resident solely in that State; others may have been stripped

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<sup>34</sup> International law recognises that every individual has a right to a nationality, but this does not extend to a right for individuals to choose a specific nationality. There is widespread acceptance of automatic conferral of nationality by States based on factors outside an individual's control, such as descent, birth on the territory, or residence in the territory at the moment of State succession.

<sup>35</sup> Please see, in particular, Article 7(1) of the 1961 Convention on the Reduction of Statelessness and Article 12(4) of the ICCPR. In addition, friendly relations and cooperation between States based on the principle of good faith require re-admission in such circumstances. Numerous agreements between States now facilitate this by providing for re-admission of stateless persons, including former nationals and former habitual residents. UNHCR may be able to play a role in this regard, please see paragraph (j) of UNHCR Executive Committee Conclusion No. 96 (LIV) of 2003 on the return of persons found not to be in need of international protection, available at: <http://www.unhcr.org/refworld/docid/3f93b1ca4.html>, in which the Executive Committee:

*“Recommends, depending on the situation, that UNHCR complement the efforts of States in the return of persons found not to be in need of international protection by:*

- (i) Promoting with States those principles which bear on their responsibility to accept back their nationals, as well as principles on the reduction of statelessness;
- (ii) Taking clear public positions on the acceptability of return of persons found not to be in need of international protection;
- (iii) Continuing its dialogue with States to review their citizenship legislation, particularly if it allows renunciation of nationality without at the same time ensuring that the person in question has acquired another nationality and could be used to stop or delay the return of a person to a country of nationality”.

<sup>36</sup> This is particularly so where the link with the other State is relatively tenuous. This is to be distinguished, however, from ties that are so profound that the individual is considered to be in his or her "own country".

<sup>37</sup> Please see paragraphs 21-24 above.

of their nationality because of membership of a section of the community that has fallen out of political or social favour.<sup>38</sup>

46. The appropriate status for such individuals in their “own country” is nationality of the State in question. As set out in the *Procedures Guidelines*, in these cases the correct mechanism for determining an individual or a population group’s status is one that is concerned with the restoration or conferral of nationality.<sup>39</sup> Recourse to a statelessness determination procedure will not generally be appropriate. If, however, individuals are expected to seek protection through such a mechanism, the status awarded on recognition shall include, at the very least, permanent residence with facilitated access to nationality.<sup>40</sup>

## V. STATUS FOR STATELESS PERSONS NOT COVERED BY THE 1954 CONVENTION

47. Many individuals who meet the stateless person definition in the 1954 Convention live in countries that are not party to this treaty. Nevertheless, the standards in the Convention and the practice of Contracting States may prove helpful to such countries in devising and implementing strategies to address statelessness in their territories, and regulating the status of stateless persons. In particular, States which are not yet party to the Convention may take note of the practice of providing identity papers and travel documents to stateless persons, measures which have already been adopted in several other non-Contracting States. In addition, all States would need to comply with their obligations under international human rights law, such as protection against arbitrary detention (Article 9(1) of the ICCPR) and, in the case of persons stateless *in situ*, the right to enter and remain in one’s “own country” (Article 12(4) of the ICCPR).<sup>41</sup>

48. *De facto* stateless persons also fall outside of the protection of the 1954 Convention.<sup>42</sup> Nevertheless, as *de facto* stateless persons are unable to return immediately to their country of nationality, providing them at the very minimum with temporary permission to stay promotes a degree of stability. Thus, States may consider giving them a status similar to that recommended above in paragraph 40 for stateless persons who have the possibility of securing protection elsewhere. In many cases an interim measure of this nature will prove sufficient as return will become possible through, for example, improved consular assistance or a change in policy with regard to consular assistance for such individuals.

49. Where the prospects of national protection appear more distant, it is recommended to enhance the status of *de facto* stateless persons through the grant of a residence permit similar to those granted to persons who are recognised as stateless pursuant to the 1954

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<sup>38</sup> Of relevance in this regard are the prohibition on arbitrary deprivation of nationality found, *inter alia*, in Article 15(2) of the Universal Declaration of Human Rights and the prohibition against discrimination found in international human rights law, in particular the *jus cogens* prohibition on racial discrimination. A *jus cogens* norm is a principle of customary international law considered to be peremptory in nature, that is, it takes precedence over any other obligations, whether customary or treaty in nature, is binding on all States and can only be overridden by another peremptory norm.

<sup>39</sup> Please see the *Procedures Guidelines* at paragraphs 6-9.

<sup>40</sup> Where States have created stateless populations in their territory, they may well be unwilling to introduce statelessness determination procedures or grant stateless persons the status recommended. In such cases UNHCR’s efforts to secure solutions for the population in question may go beyond advocacy to technical advice and operational support for initiatives aimed at recognising the link between such individuals and the State through the grant of nationality.

<sup>41</sup> Please see further paragraphs 45-46 above.

<sup>42</sup> There is no internationally accepted definition of *de facto* statelessness, although there is an explicit reference to this concept in the Final Act of the 1961 Convention and an implicit reference in the Final Act of the 1954 Convention. According to recent efforts to define the term, *de facto* stateless persons possess a nationality, but are unable, or for valid reasons are unwilling, to avail themselves of the protection of a State of nationality. Please see further Section II.A. of United Nations High Commissioner for Refugees, *Expert Meeting on the Concept of Stateless Persons under International Law (Summary Conclusions)*, 2010, which proposes the following operational definition for the term:

“*De facto* stateless persons are persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country. Protection in this sense refers to the right of diplomatic protection exercised by a State of nationality in order to remedy an internationally wrongful act against one of its nationals, as well as diplomatic and consular protection and assistance generally, including in relation to return to the State of nationality”.

The full text of the Conclusions is available at: <http://www.unhcr.org/refworld/pdfid/4ca1ae002.pdf>.

Convention. In general, the fact that *de facto* stateless persons have a nationality means that return to their country of nationality is the preferred durable solution. However, where the obstacles to return prove intractable, practical and humanitarian considerations point towards local solutions through naturalization as the appropriate response.