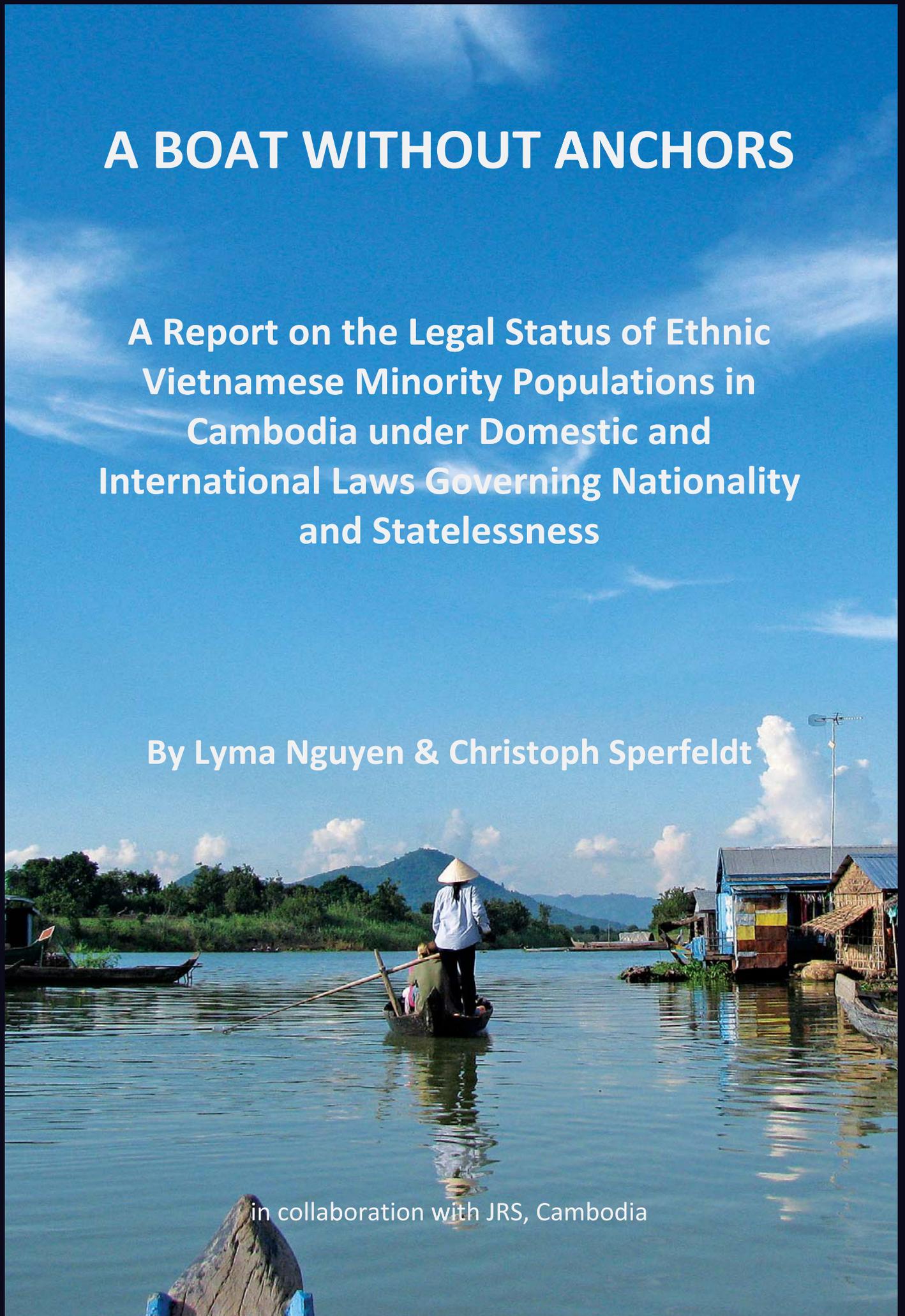


A BOAT WITHOUT ANCHORS

**A Report on the Legal Status of Ethnic
Vietnamese Minority Populations in
Cambodia under Domestic and
International Laws Governing Nationality
and Statelessness**

By Lyma Nguyen & Christoph Sperfeldt

in collaboration with JRS, Cambodia



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LIST OF ABBREVIATIONS

ACT	Alliance for Conflict Transformation
ASEAN	Association of South East Asian Nations
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CIEP	Council for Inter-Ethnic Peace
CHRAC	Cambodian Human Rights Action Committee
CGDK	Coalition Government of Democratic Kampuchea
CIA	Central Intelligence Agency
CNMW	Convention on the Nationality of Married Women
CRC	Convention on the Rights of the Child
ECCC	Extraordinary Chambers in the Courts of Cambodia
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
JRS	Jesuit Refugee Service
KCD	Khmer Community Development
KKKHRA	Khmer Kampuchea Krom Human Rights Association
KR	Khmer Rouge
LAC	Legal Aid of Cambodia
OCIJ	Office of the Co-Investigating Judges
OHCHR	Office of the High Commissioner for Human Rights
PRK	People's Republic of Kampuchea
ROV	Republic of Vietnam
SRSR	Special Representative of the Secretary-General for Human Rights in Cambodia
UNHCR	United Nations High Commissioner for Refugees
UDHR	United Nations Declaration of Human Rights
UNTAC	United Nations Transitional Authority in Cambodia

EXECUTIVE SUMMARY

This Report considers the nationality status of a group from among the ethnic Vietnamese minority in Kampong Chhnang Province, Cambodia (**the focal group**), under the operation of the applicable domestic nationality laws of Cambodia and Vietnam. Although ethnic Vietnamese have migrated to Cambodia during different times up to today, members of the specific ethnic Vietnamese minority group the subject of this report, are long-term residents of Cambodia, having been born and raised in the country for generations—with the exception of the period between 1975 and the early 1980s, when they were forcibly deported to Vietnam by the Khmer Rouge regime. During those events, they lost important documentation establishing their legal status. Since their return to Cambodia in the early 1980s, members of the focal group have been regarded by Cambodian authorities as “immigrants”.

In assessing the nationality status of the focal group, this report (1) looks at the status of the focal group under the applicable Cambodian and Vietnamese nationality laws, including any relevant changes to the laws throughout time; (2) examines documentation available among the focal group to establish or prove their civil status; (3) considers how the national authorities of Cambodia and Vietnam view and treat the group under the operation of their respective laws; and (4) discusses whether members of the focal group could be classified as stateless.

Firstly, even though Cambodia’s current 1996 Nationality Law governs access to Cambodian nationality, nationality laws applicable under earlier administrations remain relevant to the determination of citizenship today. Applying the applicable laws to the focal group, the following findings are made: members of the focal group born when the 1954 Nationality Law was in force, have a strong claim for recognition of a previous acquisition of Cambodian nationality, which they automatically acquired on the basis of the *jus soli* provisions of this law. No definitive assessment can be made about the status of the focal group members under the applicable Vietnamese nationality laws at the time, as no Vietnamese nationality legislation pre-1988 could be identified or located.

Secondly, Cambodian authorities do not regard members of the focal group as Cambodian nationals under the operation of Cambodia’s laws, but rather have, by and large, treated them as “immigrants” or “foreign residents”. In addition, the focal group has no effective access to civil registration in Cambodia, including birth registration. From the Vietnamese authorities’ treatment of the focal group during their exile in Vietnam, and of others who emigrated permanently to Vietnam in more recent times, it appears that Vietnamese authorities do not currently view the focal group as Vietnamese citizens, but rather, the state leaves open an avenue for naturalisation.

Based on these findings, the report concludes that the focal group appears to be stateless, finding that could be confirmed through further research. Looking into the future, the report discusses ways for reducing and preventing statelessness among this group, including recognition of nationality acquired under previous laws, and makes recommendations to relevant stakeholders.

PART I: INTRODUCTION

Ethnic Vietnamese groups have lived in Cambodia throughout contemporary history. Nowadays, they are one of the largest, if not the largest, minority group in Cambodia. Despite this, the ethnic Vietnamese population in Cambodia remains understudied, with little public information available about the minority group. This paper attempts to rectify this gap in the available research by assessing a significant issue faced by large parts of the group today: their claims to Cambodian citizenship. The purpose of this paper is to examine the legal status of a small sub-group of ethnic Vietnamese residents of Kampong Chhnang Province (**the focal group**) by examining primary data obtained through research conducted in three communities.¹

1.1 BACKGROUND TO THE LEGAL REPORT

This report results from a pilot project to “prevent statelessness among the ethnic Vietnamese minority group in Cambodia”, which has been implemented throughout 2012 by the Jesuit Refugee Service (**JRS**) Cambodia office, in collaboration with the Statelessness Programme at Tilburg University, the Netherlands, and the Civil Party legal team representing the civil claims of members of the minority group before the Extraordinary Chambers in the Courts of Cambodia (**ECCC**, or Khmer Rouge Tribunal).²

This pilot project was able to build upon previous work, conducted since 2008, with ethnic Vietnamese individuals applying to participate as civil parties at the ECCC. Following outreach conducted by the Khmer Kampuchea Krom Human Rights Association (**KKKHRA**), ethnic Vietnamese survivors of the Khmer Rouge regime, most of whom reside on floating villages along the Tonle Sap river and the Tonle Sap lake, applied to become Civil Parties before the ECCC.

As part of the application process for victims of the Khmer Rouge regime to participate as Civil Parties, applicants completed the ECCC Victim Information Form, and in doing so, provided a detailed account of the crimes they suffered during the period of the Democratic Kampuchea (**Khmer Rouge regime**). Members of the group recounted that during this period, they were persecuted, deported out of Cambodia and targeted for genocide – attacks carried out with an intention to destroy the group, in whole or in part.³

¹ This research was conducted together with Christoph Sperfeldt (DED/GIZ Advisor to CHRAC) and Jessica Pham (researcher from Stanford University and intern to the author’s legal team).

² Lyma Nguyen is an Australian lawyer who has worked in a pro bono capacity since 2008, as victims lawyer and International Civil Party Lawyer representing ethnic Vietnamese Civil Parties at the ECCC, together with national co-lawyers from Legal Aid of Cambodia, NY Chandy (2009 – 2010) and SAM Sokong (2011 to presently, 2012). The information presented in this paper has been compiled from several activities throughout 2008 to 2012, conducted by the authors, with the collaboration of local civil society organisations, the Kampuchea Khmer Krom Human Rights Association, Legal Aid of Cambodia, the Cambodian Human Rights Action Committee and the Jesuit Refugee Services.

³ In September 2010, the ECCC’s Office of the Co-Investigating Judges charged Ieng Sary, Ieng Thirith, Khieu Samphan and Nuon Chea, the four Senior Leaders accused in the Case File 002, with genocide against the

Since 2011, and following years of appeals over their status as victims of crime and their admissibility as Civil Parties, all applicants from the focal group were finally admitted into Case 002 as Civil Parties before the ECCC.⁴ In granting them Civil Party status, the tribunal recognised them as victims who have a standing to seek “moral and collective” reparations before the ECCC, having suffered personal and direct harm as a result of crimes committed by Senior Leaders of the Khmer Rouge regime.⁵ As a significant number of these Civil Parties have sought access to “Cambodian nationality” as a moral and collective reparation connected with the harm they suffered following forced deportations out of Cambodia in 1975⁶, efforts have been made to assess these civil claims and address this issue within the framework of the ECCC’s “moral and collective reparations” mandate and beyond.⁷

Altogether there have been 43 ethnic Vietnamese Civil Parties admitted by the court from Kampong Chhnang province⁸, represented by national lawyer, Mr SAM Sokong, from Legal Aid of Cambodia (LAC) and international co-lawyer, Ms Lyma NGUYEN. These Civil Parties have formally raised a claim for recognition of, or access to, Cambodian nationality at the ECCC as a reparative measure for damages suffered as a direct result of their forced deportation out of Cambodia, by the Khmer Rouge regime.⁹

Vietnamese, deportation of the Vietnamese as a crime against humanity and crimes specific to the treatment of the Vietnamese. OCIJ, Press Release, ‘Co-Investigating Judges Issue Closing Order in Case 002’ (Cambodia), 16 September 2010 at [http://www.eccc.gov.kh/sites/default/files/media/ECCC_OCIJ_PR_16_Sep_2010\(En\).pdf](http://www.eccc.gov.kh/sites/default/files/media/ECCC_OCIJ_PR_16_Sep_2010(En).pdf) See OCIJ, “Closing Order”, 15 September 2010, Document number D427, Case File No. 002/19-09-2007-ECCC-OCIJ at <http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D427Eng.pdf>.

⁴ The ECCC’s Pre-Trial Chamber admitted ethnic Vietnamese civil parties into proceedings in Case 002 against Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith (the latter having been found unfit to stand trial in September 2012), following a number of mass appeals to the Pre-Trial Chamber, conducted by international lawyer, Ms Lyma NGUYEN and national lawyers, Mr NY Chandy and Mr SAM Sokong from Legal Aid of Cambodia. See, for example: Civil Party Co-Lawyers, “Appeal Against Order on the Admissibility of Civil Party Applicants from Current Residents of Kampong Chhnang Province (D417)”, 27 September 2010 (Document D417/2/3). Public version available at:

http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D417_2_3_EN.PDF (through <http://www.eccc.gov.kh/en/document/court/appeal-civil-party-lawyers-against-order-admissibility-civil-party-applicants-current>). See also ECCC, Pre-Trial Chamber, ‘Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications’ (Public) Document No. D404/2/4, 24 June 2011; and Pre-trial Chamber, ‘Corrigendum to Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications’ (Public) Document D404/2/4 Corr-1’, 8 July 2011.

⁵ See Internal Rule 23 (“General Rules about Victim Participation as Civil Parties”, (amended on 5 September 2008, 6 March 2009, 11 September 2009, 9 February 2010 and 17 September 2010); Rule 23 *bis* (“Application and admission of Civil Parties”, adopted 9 February 2010) and Rule 23 *quinquies* (“Civil Party Claim”, adopted 9 February 2010, amended 17 September 2010). See also *Practice Direction on Victim Participation* 02/2007/Revision 1.

⁶ ECCC Internal Rule 23*quinquies*(1) provides that “If an Accused is convicted, the Chambers may award only collective and moral reparations to Civil Parties. Collective and moral reparations for the purposes of these Rules are measures that: (a) acknowledge the harm suffered by Civil Parties as a result of the commission of the crimes for which an Accused is convicted and (b) provide benefits to the Civil Parties which address this harm.

⁷ ECCC, Internal Rules, Revision 8 (3 August 2011) available at <http://www.eccc.gov.kh/en/document/legal/internal-rules>. Internal Rule 23 provides that “[T]he purpose of Civil Party action before the ECCC is to (a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution; and (b) Seek collective and moral reparations, as provided in Rule 23*quinquies*”.

⁸ This number is now lower as some civil parties have passed away.

⁹ See Civil Party Lawyers, ‘Premieres Indications sur la Nature des Reparations que les Co-Avocats Principaux pour les Parties Civiles entendent Soliciter – Audience du 19 October 2011’, Document E125/2 filed 12 March 2011, paras 88 – 93. See also Initial Specifications of the Reparation Claim through the ECCC Trial Chamber, Case No. 002/19-09-2007-ECCC/TC, ‘Transcript of Hearing on Specification of Civil Party Reparations Awards and Accused Ieng Thirith’s Fitness to Stand Trial’ (classified Public), 19 October 2011, pages 48 – 53. However, unless

Since 2011, JRS – an organisation that possesses extensive experience with refugees and other displaced populations – has been involved in supporting these activities. JRS has been active in Cambodia for many years serving refugees through advocacy and targeted services. JRS and the Civil Party Legal Team initially identified a need to engage in a thorough assessment of the status of these individuals under Cambodian and international legal frameworks.

1.1.1 Objectives, Methodology and Limitations

All those who work with ethnic Vietnamese populations in Cambodia understand the sensitivities involved in matters of nationality and citizenship, both politically and socially. Against this background, the authors, JRS and other partners decided to initially address the problem through a small pilot project involving a limited number of target communities in Kampong Chhnang province, with whom the partners had previously established a relationship, through past outreach and legal representation activities. Further details about the research methodology will be provided in Chapter 3.1.1.

Relevance

This research paper aims to fill an important gap in existing information, and to assist in increasing the understanding among key stakeholders about the focal group's status under national and international legal frameworks. Further, documenting the process of this project will provide valuable lessons for other communities who experience similar circumstances. It is expected that access to citizenship documentation would noticeably improve the living conditions and daily lives of members of this minority group by providing much needed protection under the law, including access to property ownership as well as to financial and social services. This is an important step for the group's eventual and full integration into Cambodian society with corresponding civic and social rights and responsibilities. In the long-term, such a process has the potential to contribute to reducing the friction and misperceptions that exist between the Vietnamese minority and the Khmer majority population in Cambodia.

In addition to the human rights aspect of this project, it is linked to the current criminal proceedings at the ECCC. During the Khmer Rouge regime, members of this group were targeted for genocide – acts carried out with an intention to a destroy group based on ethnicity. For some of the beneficiaries of the pilot project, these crimes have caused, in part, the claimants' present day circumstances, in that, during the various occasions in which they were forcibly relocated by the Khmer Rouge, victims were forced to leave behind, or otherwise lost, important documentation demonstrating their ties to Cambodia, and in some cases, citizenship documentation previously acquired. It is the consequences of the

forced deportation, persecution and / or genocide of the ethnic Vietnamese is tried before the court, and the prosecution succeeds in obtaining convictions for the crime of forced deportation of the Vietnamese out of Cambodia, there will be no judicial reparations awarded, in any form.

loss of important documentation that form the basis of the group's civil claims, associated with the direct and personal harm they suffered.¹⁰

Objectives

The **primary objective** of this paper is **to assess the nationality status of the focal group, in Cambodia**. In pursuing this primary objective, this paper seeks to answer the following subordinate research questions:

- (1) What is the **status of the focal group under relevant nationality laws**, in particular the applicable Cambodian and Vietnamese nationality laws?
- (2) What **documentation** is available among the focal group to establish or prove their status under these laws, and how do the **national authorities** view the group?
- (3) In cases where there is an absence of any documents establishing a nationality, could members of the focal group be characterized as **"stateless"**?

This paper concludes by discussing possible solutions and identifying areas for further research.

Limitations

There is little public information available about the current status of the group in Cambodia, and about how individuals can acquire the necessary documentation to establish their status in Cambodia. To determine the extent of the problem in Cambodia, a large-scale survey would need to be engaged. Since a comprehensive mapping exercise is beyond the scope of this pilot project, the project does not purport to determine the extent of the problem for this minority group throughout Cambodia.

As this study is limited in terms of both geographical coverage and the number of persons affected, the report's findings are necessarily also limited. It is therefore difficult to make generalisations based on these specific findings, in order to address the situation of the ethnic Vietnamese minority across all of Cambodia. Whilst the specific information gathered does not provide a representative picture of the broader experiences of other ethnic Vietnamese sub-groups or of all ethnic Vietnamese persons in Cambodia, the few secondary sources available on the topic suggests that the problems experienced by the focal group is a widespread phenomenon, not only limited to Kampong Chhnang province.

¹⁰ Rule 23 of the ECCC, Internal Rules (Revision 8) provides that: (1) The purpose of Civil Party action before the ECCC is to: a) Participate in criminal proceedings against those responsible for crimes within the jurisdiction of the ECCC by supporting the prosecution; and (b) Seek collective and moral reparations, as provided in Rule 23 *quinquies*.

Available Secondary Literature

Few authors have written about the Vietnamese minority in Cambodia, and even fewer have addressed problems related to the nationality status of this group. Generally, the Vietnamese minority group appears to be under-researched, and this report endeavours to make a contribution toward the literature available. The only authors who have specifically addressed this issue of nationality among the ethnic Vietnamese minority in Cambodia are Ehrentraut (2011) and Berman (1996). Both, however, do not seem to have conducted extensive primary data collection among ethnic Vietnamese communities. Other authors, such as Amer (1994 & 2006) and Chou Meng Tarr (1992), have written generally about the situation of this minority group. Apart from these international research endeavours, a number of initiatives also take place in Cambodia. For example, local NGO Khmer Community Development (**KCD**) implements an interesting long-term project in a mixed Khmer-ethnic Vietnamese community near the border with Vietnam¹¹ and Cambodian NGOs collaborating in the framework of the Council for Inter-Ethnic Peace (**CIEP**) have conducted a survey into the development needs of ethnic Vietnamese communities in Cambodia. Both projects concern development aspects of this minority group, rather than the legal or nationality aspects of the lives of individuals from this minority. In 2011, the Cambodian Centre for Human Rights (**CCHR**) published a report concerning similar aspects of access to nationality and citizenship for the Khmer Krom minority in Cambodia.¹²

¹¹ The NGO, Khmer Community Development, has worked with the Vietnamese population at Prek Chrey commune, Kandal province, bordering Vietnam. Around two-third of the 11 000 Vietnamese in this area do not have Cambodian nationality. One-third have Cambodian nationality, although they are able to vote or own land. See http://kcd-ngo.org/Place_and_People.html

¹² Cambodian Center for Human Rights (2011), 'False Promises. Exploring the Citizenship Rights of the Khmer Kromin Cambodia', Phnom Penh: Cambodian Center for Human Rights, July 2011.

1.2 HISTORY OF THE VIETNAMESE IN CAMBODIA

1.2.1 Pre-Independence History

The relationship between mainstream Khmer society and the Vietnamese minority has been largely influenced by different interpretations of the historical relationship between the two groups. A review of secondary literature and the current state of knowledge reveals a historical pattern of human migration throughout the lower Mekong region. During the 18th and 19th centuries, boundaries between areas controlled by the Khmer kings and the Vietnamese emperors were fluid and largely undefined. During that time numerous Vietnamese tradesmen, farmers and fishermen moved up the Mekong River where they encountered opposition by local Cambodian peasants.¹³

New patterns of Vietnamese migration in what is now the state of (independent) Cambodia, emerged during the time of **French colonisation of Indochina (1863-1953)**, when the French staffed much of their colonial administration over the protectorate with Vietnamese civil servants and actively encouraged a large Vietnamese labor force to work on their plantations, mainly in rubber production. The colonial census of 1921 puts the number of ethnic Vietnamese in the protectorate at around 150,000 making up almost 6 percent of the population.¹⁴ Many of the fishing villages around the Lake Tonle Sap date back to that time.¹⁵ During this period of time, French Protectorate laws governed civic matters, including nationality.

1.2.2 Sihanouk Regime (1953 – 1970)

After Cambodia gained independence from France in 1953, the ethnic Vietnamese found themselves in a new political state, under the regime of **Prince Sihanouk (1953 – 1970)**.¹⁶ The Prince introduced a new typology of Cambodia's ethnic groups, distinguishing the indigenous tribes in Cambodia's mountainous areas as 'Khmer Loeu' (Highland Khmer), the Cham as 'Khmer Islam', and the Khmer minority residing in the Mekong Delta, now part of Vietnam, as 'Khmer Krom' (Lowland Khmer). This typology distinguishes between groups that are part of the 'Khmer' nation (indigenous people, Cham, Khmer Krom) and groups that are excluded from it (in particular, the Chinese and ethnic Vietnamese). Ehrentraut (2011) argues "these categories continue to be widely used today and shape Cambodian thinking about nation and citizenship".¹⁷

¹³ Minorities Rights Group International, 'Ethnic Policies under the new Cambodian government', *Minorities in Cambodia* (1995), 17.

¹⁴ Ramses Amer, 'The Ethnic Vietnamese in Cambodia: A Minority at Risk?' *Contemporary Southeast Asia* (1994) 16(2), 213.

¹⁵ Annuska Derks, 'Diversity in Ethnicity: A Picture of the Vietnamese in Cambodia', in: Center for Advanced Studies, *Ethnic Groups in Cambodia* (2009), 536.

¹⁶ Ramses Amer, 'Cambodia's Ethnic Vietnamese: Minority Rights and Domestic Politics' (2006) 34(3) *AJSS* 388 – 409, 389.

¹⁷ Stefan Ehrentraut, 'Perpetually temporary: citizenship and ethnic Vietnamese in Cambodia' (2011) 28(4) *Ethnic and Racial Studies* 5.

Partly based on such thinking, the regime introduced new policies and laws attempting to regulate minority and immigrant communities in Cambodia, including regulating processes of naturalization for Cambodian citizenship. On 27 September 1954, a law on the requirements and procedures for naturalisation was adopted, stipulating that ‘aliens’ who had been residing in Cambodia for at least five years – two years if born in Cambodia or married to a Cambodian – could apply for naturalisation. The law also required the applicant to demonstrate a ‘sufficient’ knowledge of the Khmer language. This provision was amended in 1959 raising the requirement to being able to speak the Khmer language ‘fluently’ and to show ‘sufficient assimilation’ of Khmer customs and traditions.¹⁸

On 30 November 1954, a law on nationality was adopted, stipulating in Article 22 that anyone with at least one Cambodian parent, and anyone born in Cambodia with at least one parent also born in Cambodia, was to be regarded as having Cambodian nationality. The latter applied to all children born after 13 November 1954.¹⁹ Despite the validity of this legislative process, there was mounting political opposition against these provisions. A National Congress, held in July 1963, recommended that naturalisation be refused in principle to all Vietnamese on the grounds that they were ‘unassimilable’. The Congress also made recommendations to set up a committee with the powers to revoke the citizenship of any naturalised person who did not ‘respect our customs’.²⁰ These discriminatory measures seemed to have primarily targeted the ethnic Vietnamese in Cambodia, and cannot be seen separately from the foreign policy context at the time that was characterized by rising tensions with the two Vietnamese states and the Vietnamese war increasingly spilling over onto Cambodian territory.

In addition to the two legal instruments on naturalisation and nationality, an immigration law was adopted on 19 March 1956, stipulating that ‘foreign nationals’ would be prohibited from entering 18 specified occupations, ranging from various civil service functions to hairdresser and salt dealer. Although these provisions led to a reduction of ethnic Vietnamese engaged in the civil service, it is likely that the law encouraged more Vietnamese to naturalise in order to find or retain employment. It is not clear from the existing literature whether and to what extent ethnic Vietnamese owned the land upon which they were living and working. With the adoption of a 1958 law that banned ‘aliens’ from owning land and buildings, only ethnic Vietnamese with Cambodian citizenship were allowed to own land.²¹

Due to the lack of official census data and the use of different criteria to identify or categorize ethnic groups in the country, the historical development of the size of the Vietnamese minority community in Cambodia post-independence is difficult to determine. Using the criterion of citizenship/nationality, the official 1962 census identified 217,774 Vietnamese nationals within a total population of more than 5.7 million (almost 4 percent).

¹⁸ All information cited by Ramses Amer (1994), 214. See also Stefan Ehrentaut (2011), 6.

¹⁹ Ramses Amer (1994), 214-215.

²⁰ Minorities Rights Group International, ‘Ethnic Policies under the new Cambodian government’, *Minorities in Cambodia* (1995), 20; and Stefan Ehrentaut (2011), 6; both citing William E. Willmott, *The Chinese in Cambodia* (1967).

²¹ Ramses Amer (1994), 215-216.

However, Poole (1974) argued that many ethnic Vietnamese may have adopted Cambodian nationality in order to be eligible for certain restricted occupations or due to the general political environment at the time. Using his own estimates based on a criterion of ethnicity, Poole estimated that 394,000 ethnic Vietnamese lived in the country at the time of the 1962 census, with almost one third living in and around the capital, Phnom Penh.²² Poole's estimates, in light of statistics from the census, would seem to indicate that around 40 percent of the ethnic Vietnamese at the time were not regarded as Vietnamese nationals. A further inference could be made that many of those not accounted for in the census as Vietnamese nationals – likely held Cambodian citizenship. More in line with Poole's estimates, Migozzi (1973) placed the estimated number of ethnic Vietnamese in Cambodia at around 450,000 out of a population of 7.3 million by end of the 1960s.²³

1.2.3 Khmer Republic (1970 – 1975)

Following the 1970 coup against Sihanouk and the establishment of the Khmer Republic (1970 – 1975), political propaganda by the Lon Nol regime turned many of the negative sentiments towards the ethnic Vietnamese minority into violent persecution, mainly in Phnom Penh and other urban areas. The subsequent attacks and massacres resulted in the killing of thousands of ethnic Vietnamese.²⁴ In addition, according to observers and official statistics of the Republic of Vietnam (ROV), and as cited by Pouvatchy (1976), some 200,000 to 250,000 Vietnamese fled or were forcibly repatriated to South Vietnam in 1970.²⁵ Amer (1994) cites ROV sources indicating that 28 percent of those who 'repatriated' claimed to be Cambodian citizens.²⁶

1.2.4 Democratic Kampuchea (1975 – 1979)

After further escalation of Cambodia's civil war, the Khmer Rouge captured Phnom Penh in April 1975 and brought the Khmer Republic to an end. Under the Democratic Kampuchea (1975 – 1979) the situation for the remaining members of the Vietnamese minority drastically deteriorated. Shortly after taking power, the new regime implemented policy measures with the aim to expel and forcefully deport the ethnic Vietnamese minority from Cambodia. After the large-scale exodus during the Lon Nol regime at the beginning of the 1970s, most estimates put the number of ethnic Vietnamese in Cambodia at around

²² Peter A. Poole, 'The Vietnamese in Cambodia and Thailand: Their Role in Interstate Relations', *Asian Survey* (1974), 14(4), 332-333. According to the data cited by Poole, there were already more than 16,000 Vietnamese in Kampong Chhnang province in 1950 (last census of the French colonial administration) and between 15,000 to 17,000 during the time of 1962 census (official census data and Poole's estimates).

²³ Jacques Migozzi, *Cambodge Faits et Problemes de Populations*, (1973) Paris: Editions du Centre National de la Recherche Scientifique, 40-47.

²⁴ Chou Meng Tarr (1992) reports at least 4,000 dead. Chou Meng Tarr, 'The Vietnamese minority in Cambodia', (1992) 34(2) *Race and Class* 33 – 47.

²⁵ Joseph Pouvatchy, 'L'Exode des Vietnamiens du Cambodge en 1970', *Mondes Asiatiques*, (1976), 7, 340–347; Peter A. Poole (1974), 328-331; Jacques Migozzi (1973), 44.

²⁶ Ramses Amer (1994), 217.

200,000 in the mid-1970s.²⁷ It is estimated that around 150,000 to 170,000 were forced out of the country between April and September/October 1975, into the Vietnamese provinces of Dong Thap, An Giang and Tay Ninh.²⁸ Many of those expelled were massacred on their way to Vietnam. According to information cited by Amer (1994), Vietnam requested, in 1978, assistance from the United Nations High Commissioner for Refugees (**UNHCR**) to manage the 341,400 refugees who had arrived from Cambodia since 1975, among those being 170,300 ethnic Vietnamese.²⁹

The number of the remaining ethnic Vietnamese after this mass departure ranged between 20,000 (Kiernan 1996) and 30,000 (Amer 1994, 1996), many of those living in mixed marriages. By mid-1976, the Vietnamese were forbidden to leave Cambodia. Largely based on Kiernan's (1996) estimates, a more recent demographic expert report commissioned by the ECCC concluded that 100 percent of a remaining 20,000 ethnic Vietnamese were systematically killed during the Khmer Rouge regime.³⁰ By the end of 1978, the Vietnamese minority had completely disappeared from Cambodia.

In Case 002 before the ECCC, the defendants have been charged with committing genocide against the ethnic Vietnamese minority in Cambodia.³¹ In December 2009, Civil Party Lawyers representing the Vietnamese in Kampong Chhnang Province called for further investigations into the genocide of the group in this area, following their own investigations into mass executions and mixed marriage policies implemented by the Khmer Rouge to kill Vietnamese members of mixed couples in the area.³² The facts investigated by Civil Party Lawyers were ultimately included in the Prosecution's Final Submission in Case 002³³ although to date, these matters have not been heard at the Case 002 trial.³⁴

²⁷ Ramses Amer (2006), 390.

²⁸ Nayan Chanda, *Brother Enemy: The War after the War* (1986), 16; Ramses Amer, 'Cambodia's Ethnic Vietnamese: Minority Rights and Domestic Politics' (2006) 34(3) *AJSS*, 360; Ben Kiernan, *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975 – 1979* (1996), 296.

²⁹ Ramses Amer (1994), 218.

³⁰ Ewa Tableau, 'Khmer Rouge Victims in Cambodia, April 1975-June 1979. A Critical Assessment of Major Estimates', Democratic Expert Report for the Extraordinary Chambers in the Courts of Cambodia [D140/1/1 Public Redacted Version], 30 September 2009, 47-48.

³¹ See Office of Co-Investigating Judges, 'Closing Order', 15 September 2010 (D427), Case File No. 002/19-09-2007-ECCC-OCIJ at <http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D427Eng.pdf>

³² Civil Party Co-Lawyers, 'Civil Parties' Request for Supplementary Investigations Regarding Genocide of the Khmer Krom and the Vietnamese', 3 December 2009 (Document D250/3). Public version available at: http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D250_3_EN.PDF

³³ Co-Prosecutors, 'Rule 66 Final Submission', 16 August 2010 (D390), Case File No. 002/19-09-2007-ECCC-OCIJ (Public redacted version) at http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D390_ENreadacted.pdf (accessed 15 December 2012). In particular, refer to paragraphs 785 and 790 within the part on "Crimes against the Vietnamese" (paras 778 – 814; pages 236 – 245 of the Closing Order / Indictment).

³⁴ Given the limited scope of the factual matters currently tried within the first segment of the Case 002 trial (Case 002/01, dealing with the Khmer Rouge's forced transfer of the population from Phnom Penh and other areas), and in light of the health problems and old age of the defendants, it is most unlikely that the Vietnamese deportation, persecution and genocide will become a topic that reaches a hearing during the trial phase. For this reason, this report may contribute to highlighting the situation of this ethnic minority group outside and beyond the criminal judicial process, for the historical record.

1.2.5 People's Republic of Kampuchea (1979 – 1989)

Soon after the fall of Phnom Penh in January 1979, the People's Republic of Kampuchea (**PRK**, 1979 – 1989) came into existence. The new regime relied on extensive assistance from the Vietnamese officials and military. In the early 1980s the flow of immigration reversed, and a new phase of immigration from Vietnam to Cambodia began. This soon became a major politicized subject in the discourse of Cambodian opposition groups and for those states concerned about growing Vietnamese influence in Cambodia in the context of the Cold War. Estimates of the number of immigrants therefore vary greatly. The PRK's official claim was only 56,000 Vietnamese migrants resided in Cambodia in mid-1983, whereas various statements by the Coalition Government of Democratic Kampuchea (**CGDK**) claimed figures of more than one million Vietnamese 'settlers' at the end of the 1980s.³⁵ The existing literature does not provide a reliable assessment of these claims. Nevertheless, more credible estimates show that there were more ethnic Vietnamese in Cambodia than the authorities acknowledged, but far fewer than the opposition groups claimed. Median estimates range from 300,000 to 500,000 – putting the overall number at around the same level as the Vietnamese population in Cambodia at the end of the 1960s.³⁶

Among those immigrants were Vietnamese soldiers or advisors and their families, newcomers seeking economic opportunities and, most importantly – and for the purposes of this paper – returnees – Vietnamese who had lived in Cambodia prior the mass forced emigrations of the 1970s. Without being able to further substantiate their statements, Heuveline (1998) argues that “a majority of the Vietnamese immigrants were probably return migrants”, and Chou Meng Tarr (1992) writes “the reality is that many of these Vietnamese 'settlers' were either Vietnamese who had lived for several generations in Cambodia prior to the 1970s, or were their descendants”.³⁷ However, this mattered little in the politicized environment of the 1980s. Amer (1996) describes the situation as follows: “Whether they were returnees who had been forced out of Cambodia during the 1970s or new migrants they were all perceived to be part of a larger Vietnamese scheme to gain influence and even to colonize Cambodia.”³⁸

Moreover, at a time when thousands of boat people tried to flee the South of Vietnam by sea, many also made their way across the border into Cambodia. Gottesman (2003) describes how communist Vietnamese security officials in Cambodia were often distrustful of the ethnic Vietnamese living in Cambodia, and closely monitored their communities. One way of ensuring protection and closer oversight was for Vietnamese officials to organise Vietnamese residents in Cambodia into so-called 'solidarity groups' or 'solidarity villages' which were officially designed to assist with upholding Vietnamese cultural practice and

³⁵ Ramses Amer (2006), 390-391.

³⁶ Ramses Amer (1994), 220-222; Chou Meng Tarr (1992), 40; David Chandler, *A History of Cambodia* (1993, 2nd ed); Evan Gottesman, *After the Khmer Rouge: Inside the Politics of Nation Building* (2003), 163; Patrick Heuveline, 'Between one and three million: Towards the Demographic Reconstruction of a Decade of Cambodian History, 1970-79', *Population Studies* (1998), 63 – 64; Jennifer Berman, 'No Place Like Home: Anti-Vietnamese Discrimination and Nationality in Cambodia' (1996) 84 *California Law Review*, 852.

³⁷ Patrick Heuveline (1998), 64; Chou Meng Tarr (1992), 40.

³⁸ Ramses Amer (2006), 390.

providing Vietnamese language education. Gottesman argues, “the Vietnamese Embassy in Phnom Penh considered itself the representative of all Vietnamese residents living in Cambodia, overseeing a network of representatives of various ethnic Vietnamese communities”.³⁹ Some remnants of these networks from the 1980s continue to exist today, albeit within a different context.

The PRK authorities regulated and administered the policies directed towards “Vietnamese residents” through directives. In October 1982, the Council of Ministers issued Directive 38 on the organisation and administration of Vietnamese living in Cambodia, published in a 1983 bulletin by the PRK Ministry of Foreign Affairs entitled ‘Policy of the Peoples Republic of Kampuchea with Regard to Vietnamese Residents’.⁴⁰ Directive 38 distinguishes three different groups of immigrants: former residents returning to Cambodia, Vietnamese immigrants who came to Cambodia after 1979 and those who came to Cambodia after the issuance of the directive. Article 1 of Directive 38 states:

“With regard to former Vietnamese residents in Kampuchea who were the victims of pogroms and massacres under the former regimes and who, thanks to popular protection were able to survive or escape to Vietnam and who have now returned to Kampuchea, the local authorities and populations shall give them assistance and create conditions for them to quickly settle down to a normal life.”⁴¹

According to these policy guidelines it appears that the PRK authorities accepted the ethnic Vietnamese who had lived in the country prior to being expelled in the 1970s as part of the general population. Local authorities were instructed to provide them with assistance to resettle in Cambodia. As to the other two groups, the Directive further states:

“With regard to Vietnamese people who have come to Kampuchea since liberation and are engaged in occupations which contribute to the rehabilitation and development of the economy such as farming, fishing, salt-making, handicraft... and who maintain good relations with the people, the local authorities shall create conditions for them to stay in the country and work.

With regard to Vietnamese people who with the assistance of friends or relatives wish to move to Kampuchea to live and work or to be reunited with their families, they shall have to request authorization from the competent Kampuchean and Vietnamese organs.”⁴²

Thus, those who came to Cambodia after the fall of Phnom Penh in 1979, and were not former residents of Cambodia, were allowed to stay and work in the country, whereas those immigrating after the issuance of the 1982 Directive needed to go through official immigration processes. Furthermore, Article 6 of the Directive stipulated the strengthening

³⁹ Evan Gottesman (2003), 165-166.

⁴⁰ Amer writes: “On 7 May 1982, the Central Committee of the ruling Kampuchean Revolutionary People's Party issued Directive 142 on "ensuring adequate" living conditions and on "providing" jobs to the Vietnamese. On 13 September, the Secretariat of the Party Central Committee issued a circular, providing guidelines on the implementation of the Directive. On 9 October 1982, the Council of Ministers issued Directive 38 on the organisation and administration of Vietnamese living in Cambodia.” Ramses Amer (1994), 220 – 221.

⁴¹ Cited after Minorities Rights Group International, ‘Ethnic Policies under the new Cambodian government’, *Minorities in Cambodia* (1995), 21-22.

⁴² Articles 2 and 4 of Directive 38 as cited in Minorities Rights Group International(1995), 22.

of control, supervision of points of entry and strict prohibition of illegal bordercrossings. In this spirit, a protocol, governing border crossing between the two countries by individuals, was signed between the two states on 20 July 1983.⁴³

Some preliminary conclusions can be drawn from this policy during the early 1980s. Firstly, the PRK authorities at the time distinguished former residents of Cambodia from other groups of migrants. Secondly, they sought to regulate immigration from Vietnam, but not to prevent it. Thirdly, the policy documents refer to all of the various immigration and/or resident groups as 'foreign residents' "notwithstanding the possibility that some of them could have held Cambodian citizenship before they were forced to leave the country in the 1970s".⁴⁴ Finally, even though the PRK intended to control its borders and cross-border immigration, it is unlikely that authorities were able to achieve effective control during that time. As a result, only few Vietnamese immigrants would have had visas or other formal documentation to prove when they entered the country. Gottesman (2003) summarized the situation during the PRK period of the 1980s as follows:

"As a recognised minority in Cambodia, the ethnic Vietnamese enjoyed a certain civic equality [...] The question of whether ethnic Vietnamese could become citizens was, however, never resolved. Instead, their status under the law depended on the ad hoc intervention of Vietnamese military and civilian officials. With the establishment of Cambodian security and judicial institutions, the legal ambiguity became more complex..."⁴⁵

1.2.6 United Nations Transitional Authority in Cambodia (1992 – 1993)

During the peace process at the end of the 1980s, the presence of ethnic Vietnamese in Cambodia remained a contentious issue up to the Paris peace conference. The 1991 Paris Peace Agreement established the United Nations Transitional Authority in Cambodia (**UNTAC, 1992 – 1993**), which carried out a large peacekeeping operation in order to organise free elections. The influx of thousands of foreigners and donor funding created new opportunities, such as jobs in construction work, and it is believed that this led to more recent immigration, predominantly to the urban centers of Cambodia.⁴⁶ At the same time, opposition groups stepped up their rhetoric against these civilians, and the Khmer Rouge instigated a campaign of political violence against Vietnamese civilians. This campaign consisted of systematic armed attacks and kidnappings throughout 1992 and 1993, targeting remote Vietnamese communities, many located around the Tonle Sap Lake. In its final report, UNTAC's Human Rights Component documented the killing of 116 ethnic Vietnamese persons between July 1992 and August 1993; another 87 were injured and 11 were abducted – their whereabouts remained unknown.⁴⁷ A report by the Special Representative of the Secretary-General (**SRS**G) on the situation of human rights in

⁴³ Ramses Amer (1994), 221; Minorities Rights Group International(1995), 22.

⁴⁴ Ramses Amer (1994), 221.

⁴⁵ Evan Gottesman (2003), 166-167.

⁴⁶ Minorities Rights Group International (1995), 23.

⁴⁷ United Nations Transitional Authority in Cambodia, *Human Rights Component: Final Report* (September 1993), 31.

Cambodia described this as a campaign of “ethnic cleansing” and deplored the fact that none of the incidents was seriously investigated by the Cambodian authorities.⁴⁸ These armed attacks continued sporadically after the withdrawal of UNTAC into the mid-1990s.

Prior to its departure, UNTAC organised country-wide general elections. The 1991 Paris Peace Agreements had stipulated that “every person who has reached the age of eighteen at the time of application to register, or who turns eighteen during the registration period, and who was either born in Cambodia or is the child of a person born in Cambodia, will be eligible to vote in the election”.⁴⁹ Despite having raised no objections during the peace negotiations, opposition parties attempted to limit the number of ethnic Vietnamese persons entitled to take part in the election process. This was evident in the heated discussions that preceded the adoption of the 1992 Electoral Law,⁵⁰ which seemed to reconfirm previously held ethnicity-based conceptions of citizenship. Interestingly, the ethnic Chinese were not mentioned during the debates at the beginning of the 1990s, which appears to indicate a shift in the perception among the Khmer population of the Chinese or Sino-Khmer as being more integrated into Cambodian society, as compared to the period of the Sihanouk regime.⁵¹ Little is known about how many ethnic Vietnamese were finally registered for the UN-organised elections, but our own field research indicates that a considerable number, amongst the long-term residents, were never registered, despite the fact that it was likely they fulfilled the criteria entitling them to vote.

1.2.7 Kingdom of Cambodia (1993 – today)

After further violent attacks on Vietnamese civilians in Cambodia in 1994, high-level meetings between the government of Cambodia and the Vietnamese government took place. The issue of the ethnic Vietnamese minority and other Vietnamese immigrants in Cambodia and their security was high on the agenda. Amer (2006) reports about a joint Cambodian-Vietnamese communiqué, which stated that both parties will work towards solutions for the issues confronted by the ethnic Vietnamese in Cambodia, but that the ethnic Vietnamese would be treated as other ‘foreign aliens’.⁵²

Renewed armed attacks on ethnic Vietnamese communities occurred between 1996 and 1998, most allegedly conducted by Khmer Rouge outlets, killing dozens of Vietnamese civilians. In April 1998, a massacre occurred in a predominantly Vietnamese fishing village in Kampong Chhnang province. A total of 23 people were killed, 13 of whom were ethnic

⁴⁸ United Nations, ‘Situation of human rights in Cambodia: Recommendations of the Special Representative for human rights in Cambodia and the role of the United Nations Centre for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights’, Report by the Secretary-General, UN doc. [A/49/635 of 3 November 1994], paras 38 – 40.

⁴⁹ *Agreements on a Comprehensive Political Settlement of the Cambodia Conflict*, Paris, United Nations, 23 October 1991, Annex 3 ‘Elections’, para 4.

⁵⁰ Minorities Rights Group International (1995), 25.

⁵¹ Stefan Ehrentraut (2011), 10-11.

⁵² Ramses Amer (2006), 394.

Vietnamese.⁵³ Following the 1998 elections, violent attacks in Vietnamese communities began to gradually decrease over the years 1999 and 2000. Nevertheless, the legal status and living conditions of many ethnic Vietnamese in Cambodia remained insecure. The Special Representative of the UN Secretary General (**SRS**G) on the situation of human rights in Cambodia reported about an incident occurring in October 1999, when Phnom Penh municipal authorities decided to relocate approximately 700 ethnic Vietnamese families living on floating houses on the Bassac river to Kandal province. Despite that fact that officials did not check the families' identification documents, they were referred to as illegal immigrants. The SRS G report further notes:

“Although many of the affected families possess the legal documents to be recognised either as Khmer citizens or as legal immigrants, many had their documents confiscated by authorities around the time of their removal. As of December 1999, the documents have not been returned...To declare a specific group of people as illegal immigrants without a fair process to determine their legal status in the country is discriminatory and violates Cambodian law and international human rights standards...”⁵⁴

When the Vietnamese families began to arrive at the place designated for their relocation, local authorities attempted to prevent them from staying. Over a hundred families therefore continued further downstream to the Vietnamese border, where they were reportedly prevented from either returning upstream or crossing the border. This example highlights how precarious the status of the ethnic Vietnamese remained in the Kingdom of Cambodia, with the group often stranded between Cambodia and Vietnam. The arbitrary confiscation of national identification documents is a recurring activity by the authorities, and one with no legal basis. The SRS G recognised this situation and “pleaded for clarification of the status of people of Vietnamese origin who have lived for a long period in Cambodia, and in many cases were in fact born in the country”.⁵⁵

Much of the past and current situation of the ethnic Vietnamese in Cambodia may relate to, or result from, prevailing perceptions among Khmer society towards the concept of citizenship for minorities, such as the Vietnamese minority.⁵⁶ According to a 2007 survey conducted by the Alliance for Conflict Transformation (**ACT**) on inter-ethnic relations in Cambodia, out of over 1,100 respondents in Cambodia⁵⁷, when asked how they would rank the criteria as stipulated by the Cambodian citizenship law, 91 percent of respondents found ‘by birth’ most important and 66 percent considered ‘by naturalisation’ to be less important.⁵⁸ In deciding what factors are important in determining whether someone is a Cambodian citizen, 85 percent of respondents found being a ‘pure Khmer’ (referring to

⁵³ United Nations, ‘Situation of human rights in Cambodia’, Report of the Secretary-General, UN doc [A/53/400 of 17 September 1998], para 130.

⁵⁴ Report of the Special Representative of the Secretary-General for human rights in Cambodia, Mr. Thomas Hammarberg, submitted in accordance with resolution 1999/76’, UN doc. [E/CN.4/2000/109 of 13 January 2000], para. 73-74.

⁵⁵ Report of the SRS G human rights in Cambodia, 13 January 2000, para. 92.

⁵⁶ See Chou Meng Tarr (1992), 33 – 47 or Ramses Amer (1994), 228-232.

⁵⁷ ACT (2007): Meas Sokeo and Tania Miletic, *Understanding Inter-Ethnic Relations and National Identity in Cambodia*, Phnom Penh: Alliance for Conflict Transformation (2007), 66-68.

⁵⁸ Meas Sokeo and Tania Miletic (2007), 89-91.

parents and ancestors being Khmer) to be important; 57 percent considered ‘following Khmer traditions’ to be important; and 54 percent mentioned ‘speaking well Khmer’.⁵⁹ These figures indicate that a culture or ethnicity based conception of citizenship continues to dominate the attitudes of the majority population, despite the fact that the legal framework has changed over time. Interestingly, among the small sample of ethnic Vietnamese respondents, around 75 percent agreed or strongly agreed with the statement ‘I would rather be a citizen of Cambodia than any other country’.⁶⁰

There is little public information available as to the number and scope of the ethnic Vietnamese population in the Kingdom of Cambodia. Similarly, there are no specific breakdowns available to determine how many were born in Cambodia or acquired citizenship by birth, and how many immigrated and later settled. One source of information is Cambodia’s regularly updated Committee on the Elimination of Racial Discrimination (**CERD**) figures on minorities and ethnic groups in Cambodia. In its 1997 periodic report to CERD, the government cites statistics from the Ministry of Interior, of Cambodia’s ‘foreign population’, stating that 17,099 Vietnamese families comprising of 98,590 individuals lived in Cambodia.⁶¹ Similarly, the government’s 2010 periodic report to the CERD refers to 72,775 individuals whose ‘mother tongue’ is Vietnamese.⁶² Official census data, which could provide a more nuanced picture of the different groups of ethnic Vietnamese living in Cambodia today, are not publically available. Overall, these government figures are below most contemporary estimates. The Central Intelligence Agency (**CIA**) World Fact Book updated in September 2012 estimates that the Vietnamese population accounts for 5 percent of the country’s population of almost 15 million.⁶³ The next national census to collect vital statistics on the composition of Cambodia’s population is scheduled to take place in 2018.

⁵⁹ Meas Sokeo and Tania Miletic (2007), 92-95.

⁶⁰ Meas Sokeo and Tania Miletic (2007), 100.

⁶¹ United Nations, ‘Seventh periodic reports of States parties due in 1996’, Addendum Cambodia, UN doc. [CERD/C/292/Add.2 of 5 May 1997], para. 20.

⁶² Written replies by the Kingdom of Cambodia concerning the list of issues (CERD/C/KHM/Q/8-13) formulated by the Committee on the Elimination of Racial Discrimination relating to Cambodia’s eight to thirteenth periodic reports (CERD/C/KHM/8-13), UN doc. [CERD/C/KHM/Q/8-13/Add.1 of 17 February 2010], Annex I, Table A3.

⁶³ Central Intelligence Agency (USA), “The World Fact Book. Cambodia”, at <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html> (accessed 23 September 2012).

PART II: NATIONALITY AND STATELESSNESS LEGAL FRAMEWORKS

This part identifies and describes the domestic nationality legal instruments from both Cambodia and Vietnam, relevant to the legal assessment of the civil status of the focal group in Part III.

2.1 CAMBODIAN NATIONALITY LAWS

2.1.1 Preliminary Remarks

Nationality laws, in essence, involve provisions affecting the substantive rights of individuals. Recognising that nationality laws have changed throughout time, when assessing a person's nationality status, it is important to apply the nationality laws in force at the time relevant to that individual's life. Substantive provisions of nationality laws *currently* in force, therefore, do not have a place in determining the status of individuals who were born before the current laws took effect.

In view of that fact that Cambodia's ethnic Vietnamese minority, including their ancestors, have been migrating to Cambodia for over a century, any assessment of the nationality status of the focal group must apply and include an analysis of the relevant laws and regulations in place at the time relevant to the persons to whom the law apply (see Part 1.2 on historical background). For the purpose of determining the validity of a nationality claim, it is thus necessary to acknowledge the place and timing of an individual's birth, the approximate timing of immigration and movements, residence, and if applicable, any naturalisation.

However, an analysis of the legal status of the focal group in Cambodia is complicated by a lack of certainty over the degree of respect for, and enforcement of laws and policies, from one political regime, of preceding regimes. Even though it is a widely established principle that the acquisition of citizenship in accordance with the law of one legitimate government should be respected by the following governments, in light of Cambodia's particular history of violent transitions and regime changes, it is difficult to assess the extent to which new governments have honoured, acknowledged and respected individuals' nationality, obtained under earlier regimes.

In analysing the relevant laws as an essential aspect of examining the citizenship claims of the focal group, it is important to note that the rule of law has not been deeply rooted in Cambodian contemporary history. Thus, laws on nationality and other relevant regulations have rarely been implemented as written. When assessing the claims of the focal group in Part III of this report, it is necessary to also consider the practical application of these laws, including the approach and attitudes taken by the Cambodian authorities towards the focal group.

The nationality laws applicable to the focal group and their descendants include **three different nationality laws**, known to have been in force in Cambodia since the 1930s:

- **1934 – 1954 Laws from the French Protectorate;**
- **1954 – 1996 Law on Nationality** introduced under the Sihanouk regime; and
- **1996 Law on Nationality** (current).

In order to facilitate an understanding of the hierarchy of Cambodian laws and regulations applicable to the focal group, the ranking of laws, as currently applied under the Kingdom of Cambodia, is outlined below.⁶⁴ Lower laws and regulations must conform with higher laws – for example, a Proclamation must conform with a Sub-Decree, which must conform with a Royal Decree. In the event of a conflict between legal instruments, the higher legal instrument prevails, with the highest law being the Constitution.⁶⁵

- 1. The Constitution:** The Constitution is the supreme source of law in Cambodia
- 2. Laws (*Chbab*):** A law is adopted by the National Assembly and the Senate, and promulgated by the King or the acting Head of State. A law must be in strict conformity with the Constitution.
- 3. Royal decrees (*Reach Kret*):** A Royal decree is issued by the King in the exercise of his constitutional powers. A Royal decree must be in strict conformity with the Constitution.
- 4. Sub-decrees (*Anu-Kret*):** A Sub-decree is adopted by the Council of Ministers and signed by the Prime Minister. A sub-decree must be in strict conformity with the Constitution and conform to the Law to which it refers.
- 5. Proclamations (*Prakas*):** A proclamation is a ministerial or inter-ministerial decision signed by the relevant Minister(s). A proclamation must conform to the Constitution and to the law or sub-decree to which it refers.
- 6. Circulars (*Sarachor*):** A circular is an instrument that a Ministry or higher authority use to clarify a point of law or to provide instructions. A circular is only advisory and does not have the force of law.

⁶⁴ Taken from OHCHR Cambodia : see http://cambodia.ohchr.org/KLC_pages/klc_english.htm

⁶⁵ See also OHCHR Cambodian Office, 'A Selection of Laws Currently in Force in the Kingdom of Cambodia' (18 August 2006), also at http://cambodia.ohchr.org/KLC_pages/klc_english.htm .

2.1.2 1934 Nationality Law (from French Protectorate, 1934 – 1954)

Prior to Cambodian independence in 1953, French Protectorate laws governed the acquisition of nationality, primarily through **Royal Ordinance No. 66 of 5 June 1934** ('1934 Nationality Law'). The provisions of this ordinance have been integrated into the revised 1920 Civil Code, as well as the former 1951 Cambodian Civil Code.⁶⁶ Given the age of this law, and the historical turmoil that befell Cambodia since the 1934 nationality law was in force, it is difficult to determine how the law was actually implemented by the French Protectorate and the Cambodian administrations that followed it. Upon a proper application of the law, its provisions would apply to everyone who was born on Cambodian territory between 1934 and 1954, or undertook a naturalisation process during that time period.

Under the 1934 Nationality Law, nationality is defined largely under the principle of *jus sanguinis*. Article 22 lists categories of people who “are Cambodian” as being:

- Article 22(1): Individuals born of Cambodian parents
- Article 22(2) and 22(3): An individual born of a Cambodian father or mother, regardless of the nationality of the other parent, unless that nationality is French, in which case the child takes on French nationality
- Article 22(4) and 22(5): Individuals born of an unknown father and a Cambodian mother, or unknown parents (unless French nationality is attributed by the competent French authorities, the father, or both parents, although their nationality is unknown, are presumed to have French nationality in accordance with conditions stipulated by French law).
- Article 22(6): Individuals who are part of an ethnic group “fixed” in Cambodia and not forming part of an independent political unit, such as “les Malais, Cham, Kha, Kouy, Phnong, Por Stierend, etc”.

Although the ethnic Chinese and Vietnamese were large immigrant populations during the French Protectorate, there is no specific reference to any of these groups. Likewise, the 1934 Nationality Law does not contain any explicit provisions for naturalisation. However, despite the absence of explicit naturalisation provisions in the law, there are some indications of how nationality questions were dealt with, within French Indochina, including with regards to its three nations of Vietnamese, Laotians and Cambodians. Notably, Article 21 of the 1934 Law provides that the law only has effect within the borders of Cambodia, and that there is no jurisdiction over Cambodians in foreign territory, particularly those residing in other parts of French Indochina. Therefore, children born of Cambodian parents abroad may not necessarily qualify for Cambodian citizenship under Article 22. However, there is an argument that, since the justification for Article 21 is that ethnic Cambodians who resided in Vietnam or Laos had become naturalised as Vietnamese or Laotians due to having “assimilated in every manner with the native French subjects”, then the same would

⁶⁶ The provisions of Royal Ordinance No. 66 of 1934 used in this paper are cited after a revised version of the 1920 Cambodian Civil Code (available in French language). See ‘Code Civil Cambodgien’, Société d’Éditions Khmer: Phnom Penh (1936).

have applied to ethnic Vietnamese residing in Cambodia during the French Protectorate. If the Vietnamese in Cambodia were deemed to have become naturalised Cambodians, their place under the 1934 Nationality Law should be clarified through further legal research so that their descendants, today, are not rendered at risk of statelessness.

In summary, the 1934 law does not contain any provision dealing with the principle of *jus soli* (acquisition of nationality through birth on the territory of Cambodia). In addition, it is uncertain whether any claims to Cambodian nationality potentially acquired under the 1934 Nationality Law would be recognised by the Cambodian authorities of today, unless an individual who obtained citizenship during that period has retained the original documentary proof.

2.1.3 1954 Nationality Law (1954 – 1996)

The 1954 *Law on Nationality*, introduced under the Sihanouk regime is regulated by **Kram No. 913-NS of 30 November 1954** ('1954 Nationality Law', only available to the authors in the French language).⁶⁷ This law contained more comprehensive provisions than the 1934 Nationality Law and reflected nationality requirements of the new independent state of Cambodia. Given that no further nationality laws were adopted until the time of the Kingdom of Cambodia, the 1954 Nationality Law arguably provides the legal basis by which questions of citizenship and naturalisation for the period 1954 – 1996 should be assessed.

At the outset, the law contains a definition of Cambodian nationality, which takes into account ethnic groups present in Cambodia for centuries. Accordingly, the law expressly states that “no distinction is made in favour [of] or to the detriment of Cambodian ethnic minorities living in the territory of Cambodia, such as Malays, Chams Burmese, Lao, Kha, Kouy, Phnong, Por, Stiengs etc, nor the Tagalog Cambodians and former Thai nationals remaining in the territories surrendered to Cambodia by the Treaty of 23 March 1907”.⁶⁸ There is no specific mention of the ethnic Vietnamese in Cambodia. Ethnic Chinese and Vietnamese groups, who arrived relatively recently, were not mentioned under these provisions, but were considered as “foreign residents”.⁶⁹ Although the 1954 Law provided important prohibitions against discrimination of certain non-Khmer ethnic groups, the exclusion of other groups, such as the ethnic Vietnamese, fostered an approach of linking

⁶⁷ Kram No. 913-NS of 30 November 1954 Regulating Nationality, as found in Marcel Clairon, *Droit Civil Khmer*, Enterprise Khmère de Librairie, d'imprimerie et de papeterie, Phnom Penh (1960) (hereinafter referred to as “**1954 Nationality Law**”).

⁶⁸ The relevant extract from the original French version of the law is replicated here, to ensure accuracy. See definition section, “Chapitre II, La Nationalité”, *Nationality Law 1954* (Cambodia): “Notamment aucune distinction n'est faite au préjudice ou en faveur des Cambodgiens appartenant aux minorités ethniques habitant sur le territoire du Cambodge, tels les Malais, Chams, Birmans, Lao, Kha, Kouy, Phnong, Por, Stiengs, etc, ainsi qu'en faveur ou au préjudice des Cambodgiens de race tagale, de ceux originaires des Philippines et sans autre nationalité que la nationalité cambodgienne, les anciens ressortissants thaïlandais demeurés sur les territoires rétrocédés au Cambodge par le traité du 23 mars 1907.”

⁶⁹ Minorities Rights Group International (1995), 27 – 28.

citizenship with ethnicity, which made other ethnic minorities vulnerable to politicisation and statelessness.⁷⁰

Under Article 22(1), the ***jus sanguinis*** principle of citizenship by descent allowed automatic inheritance of Cambodian citizenship from parents to child “regardless of place of birth”. Article 22(1) of the original French version is replicated here:

Est Cambodgien, quelque soit le lieu de sa naissance:

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

The most important change to the previous nationality law, however, was the **introduction of a *jus soli* mode of conferral of nationality**. Under Article 22(2), the principle of *jus soli*, under which nationality is conferred automatically to a person born in Cambodia after 13 November 1954,⁷¹ where one of the parents was also born in Cambodia. Article 22(2) is replicated as follows:

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.⁷²

This new provision, conferring nationality to children of non-citizen parents born on Cambodian territory, is extremely important for the case of the focal group. It is through this provision that non-Khmer ethnic groups whose family members resided in Cambodia for generations were able to access citizenship, without having to go through an often discriminatory naturalisation process.

Article 23 of the 1954 Law enables a foreign woman who marries a Cambodian husband to acquire her husband’s Cambodian nationality. However, if a Cambodian national marries a foreigner, they retain their Cambodian nationality.⁷³

Article 24*bis* of the law describes the situations in which Cambodian citizenship can be renounced. The detailed provisions ensure that **renunciation of nationality** will only be recognised where an individual can prove that he or she has secured citizenship from another state. For example:

⁷⁰ Minorities Rights Group International (1995), 28.

⁷¹ This specific date of 13 November 1954 appears to have been introduced by the subsequent Circular No. 475-A of 18 April 1955, which further clarified that “les enfants, nés au Cambodge après le 13 novembre 1954, sont cambodgiens de plein droit, quelle que soit la nationalité des parents, si leur père ou leur mère est née au Cambodge, sauf renunciation par voie judiciaire, dans les cas où elle est premise, si la mere seule était née au Cambodge. Faute de disposition dans la loi, ils doivent garder le nom d’origine”: 1954 Nationality Law as cited in Marcel Clairon, *Droit Civil Khmer*, Enterprise Khmère deLibrairie, d’imprimerie et de papeterie, Phnom Penh (1960).

⁷² Article 22 of the original French version of the 1954 Nationality Law is replicated here.

⁷³ Refer to original French text of Article 23 of the 1954 Nationality Law, at Annex.

- A woman of foreign origin whose marriage to a Cambodian national is dissolved can only renounce her (naturalised) Cambodian nationality if her country of origin reinstates her original nationality.
- A person whose mother is born in Cambodia and whose father is born outside Cambodia can renounce her or his nationality provided that another state provides him/her a non-Cambodian nationality.
- A person of unknown parents born in Cambodia can renounce his or her nationality if that person can provide proof of lineal descent and nationality from another state.⁷⁴

Interestingly, Article 24^{ter} of the 1954 law provides for “**claims**” to Cambodian nationality by certain individuals.⁷⁵ This procedure involves the replacement of the word “naturalisation” with the word “claim” when taking the oath. The procedure of claiming nationality conveys Cambodian nationality not only to the claimant, but also to his or her children.

Articles 26 and 27 govern the **procedures for renouncing or claiming** Cambodian nationality. The law requires that any judicial decisions concerning renunciation or claiming shall be recorded in an official register and also published in an official gazette.⁷⁶ Article 27 states that a person’s renunciation of their nationality does not affect the “Cambodian quality” of the person’s spouse and children.⁷⁷

Article 25 governs the **forfeiture of Cambodian nationality** and provides that nationality may be forfeited in a number of circumstances, for instance, where a national voluntarily participates in the armed services of another state without authorisation; or continues to work in a foreign public office abroad, when asked to resign.⁷⁸ Any forfeiture action is brought by a public prosecutor acting on the written order of the Minister of Justice.⁷⁹

Naturalisation Law

Unlike the 1934 Nationality Law, the newly independent Cambodian state incorporated naturalisation provisions into its legal framework governing access to citizenship. The process of naturalisation was thereby governed by **Kram No. 904-NS of 27 September 1954** (1954 Naturalisation Law), which was amended under Kram No. 357-NS of 26 October 1959.

The 1954 Naturalisation Law begins by emphasising that naturalisation is not a right, but a “favour” under administrative discretion, exercised upon a request. The law required that an applicant seeking naturalisation cannot simultaneously make a claim for Cambodian nationality. According to Article 2, the applicant must further:

⁷⁴ Refer to original French text of Article 24bis of the 1954 Nationality Law, at Annex.

⁷⁵ Persons who may claim Cambodian nationality include individuals who are ethnically Cambodian, but live abroad and wish to return to Cambodia with the intention to live there permanently. For other classes of persons entitled to make this claim, refer to French text of 1954 Nationality Law, at Annex.

⁷⁶ Refer to original French text of Article 26bis (Publicité des jugements en matière de déchéance) of the 1954 Nationality Law, at Annex.

⁷⁷ Refer to original French text of Article 27bis (Effets de la renonciation) of the 1954 Nationality Law, at Annex.

⁷⁸ Refer to original French text of Article 25bis of the 1954 Nationality Law, at Annex.

⁷⁹ Refer to original French text of Article 25bis *nouveau* (Déchéance de la nationalité cambodgienne), at Annex.

- be of good character
- speak fluently Khmer and “demonstrate sufficient assimilation to the manners, customs and traditions of Cambodia”
- have five years of residency in Cambodia prior to the application
- reside in Cambodia at the time of the application, and
- not present a “physical or mental danger” or “a burden for the nation”.⁸⁰

It may be relevant to note that Article 2(3) in this version of the 1954 law, resulted from an amendment made through Kram No. 357 in 1959. This amendment changed this specific requirement from “*justifier d’une assimilation suffisante de la langue cambodgienne*” in the original 1954 Naturalisation Law to “*savoir parler couramment le cambodgien et justifier d’une assimilation suffisante aux mœurs, coutumes et traditions cambodgiennes*”. Some of these provision appear to have influenced the drafting of similar provisions in the 1996 Nationality Law.

Article 3 reduces the five year residency requirement to two years for foreigners born in Cambodia or foreigners married to a Cambodian national.⁸¹ Articles 6 to 11 of the 1954 Law set out that the “formalities” for an application to naturalise should take the following consecutive administrative steps:

- Applicant submits an application/request to naturalise
- The Governor conducts an administrative investigation into the conditions of residence in Cambodia and the applicant’s morality, as well as a health examination
- The file is transferred by the Governor to the Ministry of Justice with an appropriate recommendation, within three months of the application request, and
- An decision by Royal Decree (Kret) is announced.⁸²

If a decision to grant nationality is made, the applicant’s acquisition of Cambodian nationality is effective when the applicant makes an oath:

"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."

In terms of the effect of naturalisation on an individual’s civil interests, the law specifies that a naturalised person will be subject to all laws applicable to a person of Cambodian origin. However, the person’s nationality status does not have retroactive effect in terms of circumstances and rights lawfully acquired earlier in time, through laws applicable to the person previously.⁸³ The law also specifies that under Article 7 of the Kram No 904-NS, an

⁸⁰ Chapter III, “Naturalisation”, *Nationality Law 1954* as located in Marcel Clairon, *Droit Civil Khmer*, (1960).

⁸¹ Refer to the original French text of Article 3 of the 1954 Nationality Law at Annex.

⁸² See: Chapter III, “Naturalisation”, 1954 Nationality Law, as cited in Marcel Clairon, *Droit Civil Khmer* (1960).

⁸³ The relevant text in Chapter III, “Naturalisation”, *Nationality Law 1954*, reads: “Il convient toutefois d’apporter une restriction, dans le temps à cet effet, de la naturalisation : elle n’a pas de caractère déclaratif, le

individual's naturalisation may lead to the naturalisation of the individual's spouse and children.⁸⁴

In summary, the 1954 legal framework governing access to Cambodian citizenship introduced a number of novelties in comparison with the 1934 Nationality Law, for example:

- (1) It incorporated *jus soli* provisions under which citizenship was conferred automatically to a person born in Cambodia after 13 November 1954, where one of the parents was also born in Cambodia. Arguably, these provisions remained in force until a new nationality law was adopted in 1996, although this legal framework remained largely inaccessible after 1975, and
- (2) It opened avenues to apply for naturalisation for other individuals who wished to acquire Cambodian nationality.

A Flow Chart providing an overview about how nationality can be acquired under the 1954 Nationality Law is annexed to this report.

2.1.4 The Place of Ethnic Minorities in Cambodia's 1993 Constitution

Following the 1993 elections, a Constituent Assembly was established, creating a national Constitution. A new Constitution was adopted in September 1993, Constitution, apparently strong in the language of human rights, but with little substance in practice.⁸⁵ Article 31 recognised and upheld respect for human rights throughout the newly established Kingdom of Cambodia. However, the Constitution's specific reference to "Khmer citizens" in relation to Cambodia's "recogni[tion] and respect [for] human rights as defined in the United Nations Charter, the UDHR and all treaties and conventions concerning human rights, women's rights and children's rights"⁸⁶ caused much ambiguity about the application of these provisions. There was strong concern that, whilst Cambodia's Constitution is eloquent in its language of human rights protections, the reference to "Khmer citizens"⁸⁷ leaves open an argument that constitutionally protected human rights are only applicable to Khmer nationals, and not to ethnic minority groups.⁸⁸

In particular, Article 31 of the Constitution provides that, "[Every] Khmer citizen[s] shall be equal before the law"; Article 32 states that "[E]very Khmer citizen shall have the right to life,

changement de statut qu'elle implique ne saurait avoir d'effet rétroactif et porter atteinte aux situations et aux droits régulièrement acquis sous l'empire de la loi précédente."

⁸⁴ The relevant text reads: "Effets de la naturalisation quant à la famille du bénéficiaire.— Aux termes de l'article 7 du Krâm n^o 904-NS précité, la naturalisation entraîne de droit la naturalisation du conjoint et des enfants mineurs."

⁸⁵ 'Cambodia and the United Nations: An Interview with Justice Michael Kirby, Former Special Representative of the Secretary-General For Human Rights in Cambodia' (1996) 28 Human Rights Defender at <http://www.austlii.edu.au/au/journals/HRD/1996/28.html>, accessed 3 November 2012.

⁸⁶ *Constitution of the Kingdom of Cambodia* 1993, Article 31.

⁸⁷ See *Constitution of the Kingdom of Cambodia* 1993 (hereinafter referred to as "**Cambodian Constitution**"), Articles 31 and 33.

⁸⁸ See Part II of this Legal Report for a more in-depth discussion of the legal instruments adopted by the Kingdom of Cambodia regulating immigration (1994 *Immigration Law*) and nationality/citizenship (1996 *Nationality Law*).

personal freedom and security”; and Article 33 provides that “Khmer citizens shall not be deprived of their nationality, exiled or arrested and deported to any foreign country”. The SRSR for Human Rights was critical of other passages in the new Constitution:

“While such a recognition of human rights is welcomed, there are serious deficiencies in the Constitution. The most important is that the human rights guarantees are provided only to “Khmer citizens”. For example, article 32 of the Constitution states that “every Khmer citizen shall have the right to life, personal freedom and security”. This and many other articles are similarly worded. This formulation excludes many Cambodians, such as non-citizens and visitors, who do not qualify as Khmer citizens, from the ambit of the Constitution. In the absence of a clear law on citizenship and nationality, this may also result in the exclusion of ethnic groups who are not Khmer from constitutional protection. This is contrary to article 2 of the International Covenant on Civil and Political Rights, to which Cambodia is a party. [...] In the historical context of the relationship between ethnic groups in Cambodia, the provisions of the Constitution relating to human rights as they are presently worded may give rise to risk that they could be used to justify discrimination against non-Khmer ethnic groups, such as Cambodians of Vietnamese or other non-Khmer ethnic origin.”⁸⁹

Concern was expressed by human rights organisations and UN officials that this drafting could be used by state organs to exclude certain minority groups from full enjoyment of fundamental rights and freedoms on the basis that the constitutional human rights guarantees are only provided to “Khmer citizens”⁹⁰ – particularly when read with the 1994 *Immigration Law* and the 1996 *Nationality Law*. Concern was also expressed over the potential violation of provisions in international human rights treaties signed by Cambodia, which call for the non-discriminatory application of human rights.⁹¹ The UN Special Representative for Human Rights, Michael Kirby, called for Article 31 to be “construed to embrace all Cambodian citizens, widely defined, to include persons of all ethnic communities having their established origin within the Kingdom of Cambodia or with other appropriate connections with Cambodia” and that, if the provision were to be interpreted as being “confined exclusively to Cambodian citizens of Khmer nationality, its discriminatory provisions should be immediately deleted by constitutional amendment”.⁹²

2.1.5 Law on Nationality (1996)

Article 33 of the Constitution of the Kingdom of Cambodia stipulates that Khmer nationality should be determined by a law. Consequently, Article 2 of the 1996 Nationality Law provides that “any person who has Khmer nationality/citizenship is a Khmer citizen”. This circular definition fails to provide any insight into what Khmer nationality actually means. One view is that the intended effect was to enable access to citizenship for ethnic Khmer

⁸⁹ Report of the Special Representative of the Secretary-General, Mr. Michael Kirby, on the situation of human rights in Cambodia, submitted in accordance with Commission resolution 1993/6', UN doc. [E/CN.4/1994/73 of 24 February 1994], paras 132-133. See also Stefan Ehrentraut (2011), 9-11.

⁹⁰ Minorities Rights Group International (1995), 26.

⁹¹ Minorities Rights Group International (1995), 28, 27.

⁹² Michael Kirby, 'Report of the Special Representative of the Secretary-General for Human Rights in Cambodia', UN Economic and Social Council (E/CN.4/1996/93), 26 February 1996, 22.

persons outside of Cambodia and exclude access for other ethnicities inside of Cambodia.⁹³ It is important to note that the notion of “Khmer nationality/citizenship” is maintained throughout the 1996 Nationality Law, as is the case with the Constitution. This is in contrast with the previous laws, which were drafted in the French language and referred to the term “Cambodgien” (“Cambodian”, signifying, on the face of it, ethnicity as well as nationality). However, in daily use, the word “Khmer” is often utilized in a way that refers to something that *is* “Cambodian”. These semantics need to be considered when interpreting the legal provisions in a non ethno-centric way.

Although the Law on Nationality provides that nationality can be acquired by virtue of birth, marriage, naturalisation, or other means⁹⁴, the lack of definition of a “Khmer citizen”, insofar as clarity over when one has obtained the status of a national, can become particularly problematic when establishing whether a parent may be considered a Khmer national for the purpose of passing that on to a child.

A Flow Chart providing an overview about how nationality can be acquired under the 1996 Law is annexed to this report.

Acquisition of Nationality by Birth

The 1996 Nationality Law provides for both *jus sanguinis* and *jus soli* conferral of nationality. Firstly, Article 4(1) provides that, in order to obtain ‘Khmer’ nationality by birth, a child must be born from a parent who has Khmer nationality/citizenship.⁹⁵ This provision thus allows for automatic conferral of citizenship, “regardless of place of birth” to children born to a parent with Cambodian nationality (*jus sanguinis*) – including, for example, the Khmer Krom minority residing in southern Vietnam.

Secondly, **Article 4(2) provides that “any child who is born from a foreign mother and father (parents) who were born and living legally in the Kingdom of Cambodia” shall obtain ‘Khmer’ nationality.** Likewise, nationality can be granted to a child from unknown parents and who is found in Cambodia.⁹⁶ Thus, for ethnic Vietnamese children born in Cambodia, nationality could be acquired under this provision, which allows automatic conferral for a child born in Cambodia from foreign parents (*jus soli*) – *if* it can be demonstrated that *both* of the child’s parents were born and *had legal residence*.⁹⁷ As such, the scope of persons to whom Article 4(2) of the 1996 law applies is more limited than the scope of persons to whom the 1954 law applies, since the 1996 law requires that *both* parents are born in Cambodia *and* had legal residence in Cambodia, whereas the 1954 law only requires (at least) one parent born in Cambodia, and does not contain any “legal residence” requirement.

⁹³ Stefan Ehrentraut (2011), 13.

⁹⁴ There are also specific provisions in the Law on Nationality that provide for the acquisition of nationality/citizenship by virtue of investment in the country, or for individuals for offer “special merit or achievement”, these provisions, of presumably limited application will not be discussed below.

⁹⁵ *Law on Nationality* 1996, Article 4(1). In the case of illegitimate children they must be either recognised by either parent, or a court may issue a judgment stating that the child was born from a Khmer national/citizen.

⁹⁶ *Law on Nationality* 1996, Article 4(2)b.

⁹⁷ *Law on Nationality* 1996, Article 4(2)a.

The 1996 law does not stipulate what is meant by “living legally” in Cambodia and what status or documents would be required to prove legal residence in the country. Further, it is not clear whether these provisions sufficiently take into account the many deficiencies of Cambodia’s legal and administrative system. With no clear, accessible system in place to govern all “immigrant aliens”, in terms of providing the necessary residence or immigration documents, it would be difficult for parents of a newborn child to prove that they were “living legally” in Cambodia. Finally, as Article 4(2) specifically refers to the “Kingdom of Cambodia”, it is not clear whether further documentation would be required to prove the legality of residence under previous regimes. This task is made more difficult by virtue of the more than two decades of civil war during Cambodia’s modern history.

Acquisition of Nationality by Marriage

The Law on Nationality stipulates in Article 5 that in order to obtain Khmer nationality by marriage, a foreigner must live together for a period of three years after the registration of a marriage certificate (see section on Registration of Marriages). The legislation further provides that a sub-decree will be implemented to formalise the procedure for application for Khmer nationality/citizenship. It is unclear whether such a sub-decree has ever been drafted. However, the final decision as to the conferral of nationality/citizenship is made by Royal Decree.⁹⁸ This provision would apply to all ethnic Vietnamese living in mixed marriages and their children.

Acquisition of Nationality by Naturalisation

Article 7 (Chapter 4) of the *Law on Nationality* provides that a foreigner may apply for nationality/citizenship through naturalisation, which involves a discretionary administrative decision, if the following documentary and other requirements are met:

- Document issued by the Commune Chief, certifying that the applicant is of “good behaviour” and “moral conduct”⁹⁹
- A letter certifying that applicant has no criminal record history¹⁰⁰
- Documentation certifying that applicant has lived in Cambodia continuously for seven years from the date of receipt of a residence card¹⁰¹
- Residence in Cambodia at the time of the application¹⁰²
- An ability to speak Khmer, “know Khmer scripts” and possession of “some knowledge of Khmer history” and prove that the applicant “can live in harmony in Khmer society”, and “can get used to good Khmer custom and tradition”¹⁰³, and
- A “mentality and physical attitude, which will neither cause [any] danger or burden to the nation” (requiring a health report by a local doctor).¹⁰⁴

⁹⁸ *Law on Nationality* 1996, Article 5

⁹⁹ *Law on Nationality* 1996, Article 8(1)

¹⁰⁰ *Law on Nationality* 1996, Article 8(2)

¹⁰¹ *Law on Nationality* 1996, Article 8(3). Note residency cards are issued in accordance with the Law on Immigration. Those who are born in Cambodia only need to prove 3 years of continual residence in Cambodia.

¹⁰² *Law on Nationality* 1996, Article 8(4)

¹⁰³ *Law on Nationality* 1996, Article 8(5)

¹⁰⁴ *Law on Nationality* 1996, Article 8(6)

Article 16 states that naturalisation, if granted, shall be decided by a royal decree, and that “the formality and procedure for applying for naturalisation shall be determined by a sub-decree”.¹⁰⁵ Unlike the 1954 Nationality Law, which sets out the competent authorities for decision-making on naturalisation applications, the 1996 Nationality Law is silent on the authorities and procedure. Since 1996, **no known sub-decree for naturalisation processes has been issued** and the existing laws and sub-decrees do not offer any guidelines as to the process available to apply for naturalisation or citizenship. Thus, there exists a significant gap in this legal framework, as it fails to provide a mechanism and clear procedures for the implementation of the relevant provisions of the 1996 Nationality Law. This situation provides a wide discretion¹⁰⁶ for low-level enforcement officers on vague, unquantifiable and unclear criteria, to base their decisions.

In addition, the requirement that an applicant reside in Cambodia continuously for seven years from the date of receipt of a residence card is problematic. As the Law on Immigration was only passed in 1994, no individual would have been eligible to apply for naturalisation until 2001 – and this does not yet take into account the fact that authorities only began issuing residence cards years after the adoption of the Law.

Article 18 states that a Cambodian national may apply to renounce their nationality if they are 18 years old or over, and have acquired another nationality.¹⁰⁷ This provision also states that the procedure and conditions for renunciation of nationality shall be determined by sub-decree. However, again, the authors are not aware of a sub-decree governing the renunciation of nationality.

2.1.6 Law on Immigration (1994)

Because of the extent to which the 1996 Nationality Law refers to immigration issues, the 1994 Immigration Law plays an important role in relation to nationality. Additional sub-decrees or regulations by the Ministry of Interior provide further guidance with regards to the entry to, exits from, and residence in Cambodia. The Immigration Law was one of the first laws to be considered by the new National Assembly following the UNTAC-organised elections. Article 2 considers an “alien” to be “any person who got no Cambodian nationality” (sic). Again, this circular definition has received some criticism, as the 1996 Nationality Law – which was drafted *after* the Immigration Law – defines as Cambodian national “any person who has Khmer nationality/citizenship”.¹⁰⁸

Further, there may be a danger of interpreting the 1994 *Law on Immigration* as having retro-active effect. Article 3 states, “this law shall be applicable for all aliens ... even though [they] have come to settle their residences since before this law comes into force (sic)”.¹⁰⁹ However, a retroactive application of current immigration laws is counter to a proper

¹⁰⁵ *Law on Nationality* 1996, Article 16.

¹⁰⁶ *Law on Nationality* 1996, Article 7

¹⁰⁷ *Law on Nationality* 1996, Article 18.

¹⁰⁸ *Law on Immigration* 1994, Article 2.

¹⁰⁹ The Immigration Law, adopted on 26 August 1994, during the Extraordinary Session of the National Assembly’s First Legislature, was “proclaimed as urgent”. *Law on Immigration* 1994, Article 41.

application of nationality and immigration laws relevant to the determination of a person's current legal status. What legal status a person held in the past has direct relevance to their current status, and application of past laws through different periods of time are crucial to determining a person's past and present legal status.¹¹⁰

Article 4 of the Immigration Law distinguishes between three types of aliens: (1) non-immigrant aliens (short-term visitors, including tourists, business people, foreign students and diplomatic staff); (2) immigrant aliens (aliens who are legally in Cambodia to perform their professions, or aliens who have not been included in any of the categories mentioned under non-immigrant aliens); and (3) immigrant aliens as private investors.¹¹¹ Although these definitions do not necessarily seem to provide operable criteria for immigration officers to identify certain groups, many long-term ethnic Vietnamese residents are classified as "immigrant aliens" by Cambodian authorities.

The 1994 Law stipulates that aliens entering Cambodia shall be required to obtain incoming visas beforehand from the government through its diplomatic missions.¹¹² Article 11 further lists the conditions for an individual to qualify as an immigrant alien, many of which are similar to conditions required for naturalisation, including: "an aptitude which benefits to the economy", depositing "an appropriate amount of money as a bond", "have sufficient physical aptitude for performing their own profession", and "conditions concerning national security".¹¹³

The recognition of any alien as an immigrant alien, shall be decided by a Proclamation (Prakas) of the Ministry of Interior. It is not clear whether such proclamations have been issued in practice. Finally, Article 14 states that "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".¹¹⁴ This provision is crucial as Article 16 stipulates, "this resident card must be shown... during any search conducted by the competent authority". In cases where the residency card is removed from the holder, this individual must leave the territory of Cambodia within seven days.¹¹⁵ Despite the importance attached to residency permits in both the 1994 Immigration Law and the 1996 Nationality Law, local authorities encountered considerable delays before the first residency cards were issued to "immigrant aliens".

The inadequacies of the 1994 Immigration Law and its implementation therefore have significant consequences for many of Cambodia's long-term residents. The onerous but unclear requirements of the Law; the lack of guidance for implementation; the lack of

¹¹⁰ A retroactive application of the substantive law granting rights and entitlements, would have an inherently unfair effect upon those who have "settled their residences" prior to the entering into force of the law, and Cambodia would be in breach of human rights provisions in the range of treaties it is a signatory to, such as the human right to possess a nationality, and to not be subjected to arbitrary detention, to name a few.

¹¹¹ Law on Immigration 1994, Chapter 2 to 4.

¹¹² Law on Immigration 1994, Article 8 and 11.

¹¹³ Law on Immigration 1994, Article 11.

¹¹⁴ Law on Immigration 1994, Article 14.

¹¹⁵ Law on Immigration 1994, Article 16.

provisions for judicial appeal or oversight, and the delay in actually issuing residency cards in practice, have put many long-term residents of Cambodia, who are not recognised as Cambodian nationals by the authorities, at risk of being expelled from the country. Unsurprisingly, the *Immigration Law* was met with protest from international NGOs, the UNHCR and the UN Secretary General, Boutros Boutros Ghali, who were all concerned that, in the absence of citizenship laws, ethnic groups who have lived in Cambodia for generations could be categorised as “aliens” and subsequently deported without the prospect of any fair hearing.¹¹⁶ Although the provisions of the Immigration Law have not been broadly applied to the letter by the Cambodian authorities, there remains a considerable degree of uncertainty for long-term residents.

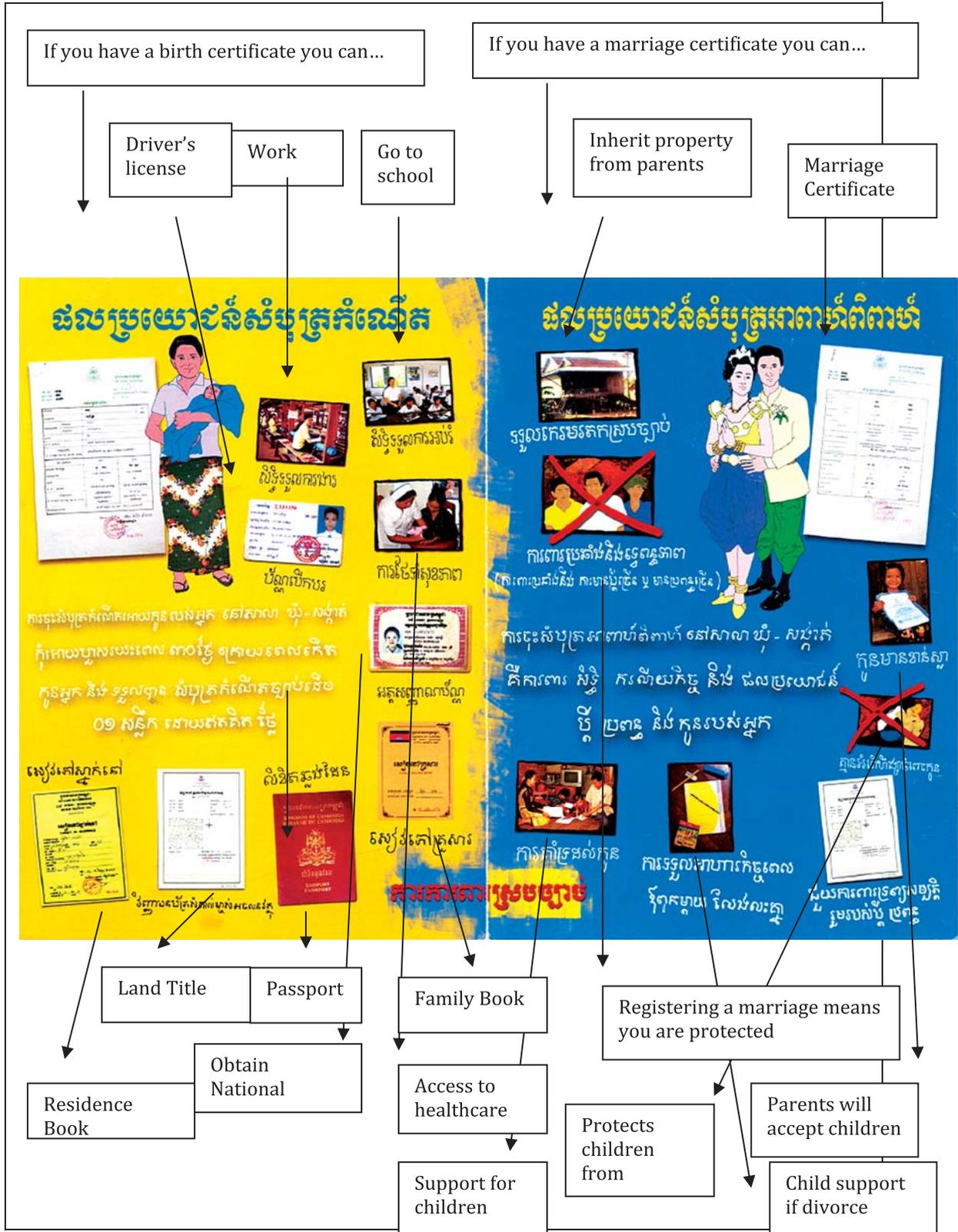
2.1.7 Cambodian Identification Documents

Article 19 of the 1996 Law on Nationality stipulates that only Khmer nationals have the right to receive and hold national identity cards, and passports. The acquisition of a National Identity Card is the key to engaging in civic life as it unlocks the mechanisms to enroll in voter registration, obtain birth and marriage certificates, enable a holder to work, open bank accounts, acquire land and property, open a business and receive travel documents. The acquisition of a Cambodian Identify Card is also significant in that the national ID card appears to constitute proof of Cambodian nationality. For this reason, an analysis of nationality status requires an analysis of the civil documentation held by individuals, particularly insofar as it assists to establish how such persons are regarded the competent authorities of a state.

A summary of the relevant instruments that relate to various state-issued documents available to Khmer nationals (and in certain cases, to foreigners) appears below. These documents assist to establish how individuals are regarded by the competent authorities, and in particular, whether a person is regarded as being a Cambodian national. Particular focus is given to the provision of Cambodian Identity Cards from which rights to accessing birth and marriage certificates, permission to work, voter registration, permission to buy land and other property and enter into commercial agreements.

Since its establishment, the Kingdom of Cambodia has begun to recreate various administrative systems for registration, including for civil registration. In outreach materials prepared by Plan International, focus has been put on the benefits of civil registration, particularly to obtain both birth certificates and marriage certificates.

¹¹⁶ Minorities Rights Group International(1995), 27 and Jennifer Berman (1996), 818.



Source: Plan International, in partnership with Ministry of Interior, Kingdom of Cambodia (1996)

Nationality Identity Cards

Khmer identity cards are currently issued in accordance with **Sub-decree No. 60 of 2007** on “Cambodian Nationality Identity Cards”.¹¹⁷ This sub-decree replaced the earlier Sub-decree No. 36 dated 26 July 1996.¹¹⁸ However, all identity cards issued under the earlier Sub-decree will be valid until “its expiry date”¹¹⁹ (ten years from date of issue). The 2007 Sub-decree reduced the age of eligibility from 18 to 15 and removed a provision that the criteria could be satisfied through “any document which could prove that such a person is a Khmer citizen”. In providing that “Cambodians of both sexes from age 15 years and up shall hold the Khmer ID Card for their personal identity for the purpose of filling administrative forms or the implementation of other rights and obligation in accordance with the laws” (sic), the 2007 Sub-Decree also made the application for ID cards compulsory.¹²⁰

Article 5 of Sub-decree 60 provides that all individuals of Khmer nationality over 15 are obliged to apply for an ID card using: (a) a birth certificate which proves that the person is a Khmer citizen; (b) a family book which confirms that his or her spouse is a Khmer national; (c) documents, judgments of a court or other evidence stating that the person was born from a father or mother with Khmer nationality, or (d) a Royal Decree proclaiming the recognition of the application for Cambodian nationality to the person. Identity Cards cannot be issued to those who do not meet documentation requirements, which prove Cambodian nationality.¹²¹

Article 6 of Sub-decree 60 stipulates that the procedures, qualifications for application, issuance and usage of the Cambodian ID cards shall be determined by the Ministry of Interior. In accordance with this Article, the Ministry of Interior issued **Proclamation No. 2473 on Procedures and Terms of Application for Issuance and Usage of Khmer ID** dated 14 July 2007 (Prakas No. 2473). Article 2 of Proclamation 2473 adds to the above conditions to apply for a Cambodian ID card “official documents or proof proving that the person concerned was born from a Cambodian father or mother”.

Article 3 of the Proclamation sets out the procedure for applicants, which include reporting to authorities about his or her registration, affixing a fingerprint (signature), and paying a charge in exchange for the issuance of the Khmer ID card.¹²² Article 4 of the Proclamation details the procedure to be taken by authorities for the processing of applications as follows:

¹¹⁷ *Sub-decree No. 60 on Cambodian Nationality Identity Cards* (2007), signed 12 June 2007. Hereinafter referred to as “**Sub-decree 60 of 2007**”.

¹¹⁸ The previous Sub-decree on Khmer Nationality Identity Cards, the 1996 Sub-decree 36, provided that nationality ID cards may “be only delivered to Khmer citizens of both sexes of 18 years of age and up” (Article 3, Sub-decree No. 36). Article 4 of the 1996 Sub-decree states that in delivering these ID cards, the competent authority shall, among others, consider evidence proving birth in Cambodia and/or birth from parent(s) who were born in Cambodia; and evidence that a person used to have Khmer nationality or any document proving that the person is a Khmer citizen.

¹¹⁹ Sub-decree 60 of 2007, Article 1.

¹²⁰ Sub-decree 60 of 2007, Article 2.

¹²¹ Sub-decree 60 of 2007, Article 3.

¹²² *Proclamation No. 2473 on Procedures and Terms of Application for Issuance and Usage of Khmer ID* dated 14 July 2007 (hereinafter referred to as “**Proclamation No. 2473**”; also known as “**Prakas No. 2473**”), Article 3.

- Village chief, administration station police and commune clerk make a written summary of the villager’s name list after checking the above-referenced documents, then forward the summary to the chief of the administration post police and commune chief to sign it
- District police chief inspects and signs the villager’s name list and forward it to the district governor for his or her inspection and approval
- Provincial or municipal police commissioner assigns mobile groups to visit and deal with villager’s completion of forms, then forward the forms to permanent groups dealing with the production of Khmer ID papers
- Khmer ID paperwork is then reviewed by provincial/municipal governor, and
- ID card is produced by the provincial/municipal governor.¹²³

The possible uses for the national identity card are also outlined in Article 7 of Proclamation No. 2473, as follows: registration for ballot candidacy (voter registration), application for marriage, application for birth certificate, application for work, application for opening a business, application for a passport, application for property ownership, and contacts with banks as well as various other sale and purchase agreements.¹²⁴

Civil Documentation

As seen with the provisions of the three relevant nationality laws of 1934, 1954 and 1996, particular relevance is attached to whether a person or their parents were born in Cambodia. Documentation proving birth (or marriages in case of mixed marriages) are therefore key to proving a claim to Cambodian citizenship under the *jus sanguinis* provisions. **Sub-decree No. 103 on Civil Status of 29 December 2000**¹²⁵ sets out that the purpose of the Sub-decree is “to determine the procedures and formalities of civil status” in Cambodia.¹²⁶ Article 2 sets out that:

“Civil status is one of an attachment of nationality to [the] State and actual status which a person has in his or her family tree in a nation and which creates rights and duties to such persons. 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 (sic).”

This definition establishes that civil status refers to a status that is also accessible to foreigners who legally reside in Cambodia. Given that many Cambodians had no birth certificates at that time, Article 59 of the Sub-decree 103 states that applications for attestation of civil status on birth, marriage or death registers during a transitional period apply three years from the date of entry into force of this Sub-decree – but only for Cambodian citizens. The amended Article 59 (new) of Sub-Decree No. 60 of 2002 redefines

¹²³ Proclamation No. 2473, Article 4.

¹²⁴ Proclamation No. 2473, Article 7.

¹²⁵ Sub-decree 103 on Civil Status (2000) (also known as “Sub-decree No. 103 on Civil Registration”). Hereinafter referred to as “**Sub-decree 103 of 2000**”.

¹²⁶ Sub-decree 103 of 2000, Article 1.

the transitional time period, but also restricts the scope of persons able to register for civil status documentation to “Khmer citizens” by setting out:

“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 (sic).¹²⁷

This specific provision was further amended by Sub-decree No. 17 of 14 July 2004¹²⁸, stating that “Khmer people” who have no birth certificate after 31 August 2005 shall apply for a civil registration letter under the conditions of Article 40(new), which in turn provides that:

“Khmer citizens, 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 (sic).¹²⁹”

These consecutively amended provisions open avenues for “Khmer citizens” to apply retroactively for birth certificates. This is vital as many Cambodians were not able to obtain such certificates during previous regimes. However, it appears that no avenue for retroactive recognition of birth exists for “foreign aliens” who have legal residence in Cambodia. Given the importance attached to proof of birth in any nationality law, this presents a clear obstacle to individuals who wish to attain proof of their birth on Cambodian territory prior to the enactment of the Sub-decree on civil registration. Moreover, these provisions appear to lead to circular and impossible requirements in that documentary proof of birth is required to establish or to prove Cambodian nationality under the nationality law, but that there is a requirement that one is a Cambodian to be able to retroactively apply for birth certificates. This situation would present an impasse to any Cambodian national who wished to attain proof of birth, but who could not produce any proof of their status as a Cambodian national, or likewise, to individuals who need to obtain proof of Cambodian nationality, without being able to produce any proof of their birth in Cambodia.

Chapter 2 of Sub-decree 103 specifies that a Khum (Commune) or Sangkat (City Quarter) leader shall be a “civil status official” of his or her Khum or Sankat’s territorial jurisdiction¹³⁰ – that is, the “**competent authority**” for issuing civil status documentation.

*Sub-decree No. 62 on Fee of Civil Registration Paper and Stamp (2002)*¹³¹ sets out fees for Marriage Declarations, Marriage Certificates, and letters certifying marriage, birth and death.

¹²⁷ *Sub-decree 60 on Amendment to Article 8 and 59 of the Sub-Decree on Civil Registration (2002)*, signed and sealed 24 June 2002, Article 59 (new). Hereinafter referred to as “**Sub-decree 60 of 2002**”.

¹²⁸ *Sub-decree No. 17 on Amendment to Sub-Decree on Civil Registration (2004)*, signed and sealed 14 July 2004. Hereinafter referred to as “**Sub-decree 17 of 2004**”.

¹²⁹ Sub-decree 17 of 2004, Article 40(new).

¹³⁰ Sub-decree 103 of 2000, Article 8.

Birth Certificates

Article 17, within Chapter 4 of Sub-decree 103, provides that a child's father or mother has a duty to report before a "civil status official" at the commune of their permanent residence, the birth of a baby for recording into the birth book, no later than 30 days after the birth.¹³² Birth certificates are administered at the Commune level, per Sub-decree No. 103 as follows:

- Registration is to occur within 30 days of birth
- If the parents are married, they must present marriage certificate
- If the parents are unable to register, then someone who witnessed the birth can take the marriage certificate of the parents and register the birth on their behalf

Previously, under Article 25 of Sub-decree 103, if the parents of a child are unable to register the child's birth within 30 days after birth, they were able to present to a provincial or municipal court to request a judgment, and then take that civil judgment to the commune office for the issue of a birth certificate. However, Article 25 (new) of Sub-Decree 17 of 2004 was enacted to provide that a failure to report a birth within 30 days means that the parent(s) can apply for a birth certificate from the Commune Chief by paying 1000 Riel or 4000 Riel, depending on place of residence.¹³³

If child is born from foreign parents who have legal residence in Cambodia, the child's birth can also be registered, and "such baby shall be neutralized [*naturalised*] under the Law on Nationality of the Kingdom of Cambodia (sic)" in accordance with Article 27 of Sub-decree 103.¹³⁴

Importantly, Article 43 of Sub-decree 103, dealing with "**Birth Attestation Letters**", sets out:

"Any Cambodian citizen [who] was born prior to the entry into force of this Sub-decree on Civil Status and has no birth certificate may apply for registration in accordance with a new sample [template] at the khum or sangkat of his/her current 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 (sic)."¹³⁵

¹³¹ *Sub-decree No. 62 on Fee of Civil Registration Paper and Stamp* (2002), signed and sealed 24 July 2002. Hereinafter referred to as "**Sub-decree 62 of 2002**". Article 1 sets out that for residents of Ratanakiri, Mondulakiri, Steung Treng, Preah Vihea and Uddor Meanchey, the fee for issuance of a letter certifying marriage, birth or death is 100 Riel per page. For a Marriage Declaration, the fee is 200 Riel per page and for residents of other provinces, the fee per page is 400 Riel. Article 2 sets out stamp fees for the various documents, ranging from 300 Riel to 1500 Riel per page.

¹³² Sub-decree 103 of 2000, Article 17.

¹³³ Article 25 (new) of Sub-decree 17 of 2004 specifies that for residents of Ratanakiri, Mondulakiri, Stung Treng, Preah Vihear and Uddor Meanchey, the fee is 1000 Riel; and for residents of other provinces or municipalities, the fee is 4000 Riel.

¹³⁴ Sub-decree 103 of 2000, Article 27. The authors note that the word "neutralize" from the English translation is likely to be an error, and is likely meant to read as "naturalise".

¹³⁵ Sub-decree 103 of 2000, Article 43.

This Article corresponds with the amended provisions adopted after the end of the transitional period and thus confirms the procedure currently in place under the law – with the same obstacles for people not regarded as Cambodian nationals by the authorities. The competent authority shall then register the person’s birth in a birth register and issue one original “birth attestation letter” to the applicant and photocopy of the same if requested.¹³⁶

Marriage Certificates

Marriage certificates are administered at the Commune level, per the provisions of Chapter 5 of Sub-decree 103. Applications to marry must first be made at the commune office of the permanent residence of the woman before the application is reviewed for compliance with the *Law of Marriage and Family*.¹³⁷ A Marriage Declaration, including the name, occupation and residence of the prospective couple and their parents, is then publicly posted 10 days prior to the marriage to enable any counterclaim to be made against the marriage.¹³⁸ The marriage is recorded in the Marriage Book at the Commune Office, with the thumbprints of each spouse, witnessed by two others. Foreigners who are residing legally in Cambodia may be issued a Marriage Certificate upon seeking the permission of the registrar, and upon marrying a Khmer national or another foreigner.¹³⁹

Death Certificates

Death certificates are administered at the Commune level, per Chapter 6 of Sub-decree 103 as follows:

- When a person dies, the death should be reported to the commune office at the commune of their permanent residence
- If the person dies outside of the commune in which they resided, then the death should be reported to that commune, and then notified to the commune in which they resided
- The registrar (“civil status official”) is to issue permission for the cremation or burial of the deceased person in the event of death by natural causes, and
- The death registration should be done no later than 15 days from time of death. If reported outside 15 days, the family of the deceased requires a judgment from the provincial or municipal court before the death can be registered by the civil status official.¹⁴⁰

The death of a foreigner who has had legal residence in Cambodia may also be recorded by the Commune registrar, or by an embassy or general consulate office.¹⁴¹

¹³⁶ Sub-decree 103 of 2000, Article 44.

¹³⁷ Sub-decree 103 of 2000, Article 28.

¹³⁸ Sub-decree 103 of 2000, Article 29.

¹³⁹ Sub-decree 103 of 2000, Article 34.

¹⁴⁰ Sub-decree 103 of 2000, Article 35-40.

¹⁴¹ Sub-decree 103 of 2000, Article 42.

Residency Permits

The issuance of residency cards is regulated by **Proclamation No. 555 on the Management of the Issuance of Residents Cards to Aliens** dated 10 November 1995.¹⁴² Resident cards are provided to aliens residing in Cambodia and may be either temporary or permanent.¹⁴³ Permanent residency cards are issued to immigrant aliens who are recognised by the Minister of Interior.¹⁴⁴ The competent authority to issue a residency card is the Ministry of Interior who will be forwarded applications from Provincial/Municipal Governors, which are initially received from Provincial/Municipal Police Commissioners.¹⁴⁵ The acquisition of a residency card for a foreigner wishing to naturalise is vital in accordance with Article 8(3) of the Nationality Law.

In order to apply for a permanent residency permit in accordance with Article 2 of the Proclamation:

- An application for a Permanent Resident Card must be filed with the Ministry of Interior
- A copy of the Proclamation on recognition as an immigrant alien or immigrant alien who is as a private investor
- A copy of the passport or any equivalent document, with proper visa, must be enclosed with the application
- Three photos are to be provided, and
- Certification must be provided from any bank in the Kingdom of Cambodia, which states that the concerned person has properly deposited a bond as required by the Sub-Decree.¹⁴⁶

It is not clear from the Proclamation 555, on what grounds the Ministry of Interior decides to issues permanent residency cards to immigrant aliens and exactly when the Ministry began issuing such cards in practice.

Employment Card & Work Permits

Both Cambodian nationals and foreign workers are to be issued with an Employment Card and Employment workbook.¹⁴⁷ According to Article 261 of the 1997 Labour Law, no foreigner can work unless they possess a work permit and an employment card issued by the “Ministry in Charge of Labour”. These foreigners must also meet the conditions under Article 261 as follows (sic):

“Employers must beforehand have a legal work permit to work in the Kingdom of Cambodia

¹⁴² *Proclamation No. 555 on the Management of the Issuance of Residents Cards to Aliens* (10 November 1995). Hereinafter referred to as “**Proclamation 555 of 1995**”.

¹⁴³ Proclamation 555, Articles 1 and 2.

¹⁴⁴ Proclamation 555, Article 2(b).

¹⁴⁵ Proclamation 555, Article 3.

¹⁴⁶ Proclamation 555, Article 2(b).

¹⁴⁷ Kram on Labour Law (promulgated 13 March 1997), Articles 32 and 261.

These foreigners must have legally entered the Kingdom of Cambodia;
These foreigners must possess a valid passport
These foreigners must possess a valid residency permit
These foreigners must be fit for their job and have no contagious diseases. These conditions must be determined by a Prakas (ministerial order) from the Ministry of Health with the approval of the Ministry in Charge of Labour
The work permit is valid for one year and may be extended as long as the validity of extension does not exceed the fixed period in the residency permit of the person in question.”

2.2 VIETNAMESE NATIONALITY LAWS

Given that the focal group is of Vietnamese ethnicity, a question is raised as to whether members of the group hold, or have access to, Vietnamese nationality. Answering this question is a complex undertaking, since members of the focal group claim to have been long-term residents in Cambodia, some for several past generations. Similar to Cambodia, there have been frequent changes in political regimes in Vietnam, and an assessment of legal status under the laws of Vietnam would require consideration of a diverse set of legal frameworks. In many cases, the authors were not able to locate the applicable Vietnamese laws, and more research is required to address some of the gaps, particularly those relating to earlier periods of time.

Most families of the focal group trace their roots to immigration from areas in Southern Vietnam. Therefore, these areas form the focus of the observations made in this chapter. Since the end of the 19th century, Vietnam formed part of **French Indochina**. However, there have been important differences in the ways through which political entities within French Indochina were governed. The Southern areas – known as *Cochinchine* – until 1946, held the status of a colony, whereas Cambodia was a protectorate. The inhabitants of the colony were treated as “subjects” and generally enjoyed more rights and access to privileges than people in the protectorates. By and large, French laws, including the French Civil Code, applied to the colony, following practices of the French courts in *Cochinchine* with local modifications. Therefore, people in the colonies often found it easier to access French citizenship, and most laws dealing with matters of nationality were concerned with naturalisation to French citizenship. It is not clear from this preliminary research how nationality was regulated for the “subjects”, and what regulations were in place if people moved from the colony (*Cochinchine*) to a protectorate (Cambodia).

After the end of French colonial rule, Vietnam was divided into two states. In 1955, the **Republic of Vietnam (ROV, 1955-1975)** was proclaimed in the South, adopting its own constitution in 1956. As the ROV existed in an almost constant state of warfare, political leaders mostly ruled through executive decrees and military law, although a number of French legal provisions remained in force. Without further research, it is not clear how the ROV regulated nationality and how it viewed the ethnic Vietnamese who lived in Cambodia since the colonial times. However, it was the state of the ROV that received the ethnic

Vietnamese refugees fleeing from the persecutions under the Lon Nol regime at the beginning of the 1970s.

Overall, the authors have not been able to identify the applicable law and administrative practice in place when most members of the focal group were born. This is an important limitation to the study, and requires further research in the future.

After the fall of Saigon in 1975, the South became part of the newly united **Socialist Republic of Vietnam** (since 1976). A new constitution was enacted in 1980. The contemporary legal system was successively established since 1986 when the Doimoi (Renovation) policy was introduced. A new Nationality Law was adopted on 15 July 1988 (**1988 Law**).¹⁴⁸ This law was later replaced by the *Law on Vietnamese Nationality* No. 07/1998/QH10 (**1998 Law**).¹⁴⁹ The current *Law on Vietnamese Nationality* No. 24/2008/QH-12 (**2008 Law**)¹⁵⁰ was passed by the National Assembly of the Socialist Republic of Vietnam on 13 November 2008 and came into effect on 1 July 2009. There have been no significant changes or developments in Vietnamese nationality law since the 2008 law was introduced.¹⁵¹

The following sections provide a brief overview of the 1988, 1998 and 2008 laws. Further information and flow charts are annexed to this report.

2.2.1 Nationality Law (15 July 1988)

Article 1 of Vietnam's 1988 Nationality Law provides that the State of Vietnam "is the united State of all nationalities living together on the Vietnamese soil, all members of various nationalities have Vietnamese nationality (sic)".¹⁵² Article 3 provides that the State only recognises one nationality – Vietnamese nationality – for Vietnamese citizens. Article 4 provides that marriage, divorce, or cancellation of illegal marriage with foreign or stateless persons does not alter a person's nationality. Nor does the loss of a person's spouse's nationality impact on that person's nationality.

Article 5 provides that a person has Vietnamese nationality if that person has nationality by birth, is admitted or re-admitted into Vietnamese nationality, has Vietnamese nationality in

¹⁴⁸ *Nationality Law* (Vietnam) (17 July 1988). Unofficial translation at <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=country&docid=3ae6b5200&skip=0&category=LEGAL&coi=VNM&rid=4562d8cf2&querysi=nationality%20law&searchin=title&display=10&sort=date> (hereinafter referred to as "**1988 Nationality Law (Vietnam)**").

¹⁴⁹ *Law on Vietnamese Nationality*, No. 07/1998/QH10 (20 May 1998) (entered into effect on 1 January 1999) (hereinafter referred to as "**1998 Nationality Law (Vietnam)**").

¹⁵⁰ *Law on Vietnamese Nationality*, No. 24/2008/QH-12 (13 November 2008) (hereinafter referred to as "**2008 Nationality Law (Vietnam)**").

¹⁵¹ Since the 2008 Nationality Law was introduced the Government has released one related Joint Circular in 2010 (Joint Circular No. 05/2010/TTLT-BTP-BNG-BCA on the Implementation of Decree No. 78/2009/ND-CP (1 March 2010) (**Joint Circular No. 5 of 2010**) and one related Decree in 2009 (Decree No. 78/2009/ND-CP Detailing and Guiding a number of articles on the Law on Vietnamese Nationality (22 September 2009) (**Decree No. 78 of 2009**)).

¹⁵² 1988 Nationality Law (Vietnam).

accordance with an international treaty of which Vietnam is a signatory, or obtains nationality in accordance with the law.

Article 6 provides very generously for the nationality of children as follows:

- Children whose parents are Vietnamese citizens have Vietnamese nationality, regardless of where the child is born (*jus sanguinis*)
- If a child has one parent with Vietnamese nationality and the other parent is stateless, that child will have Vietnamese nationality
- A child born to stateless parents who have permanent residence in Vietnam will have Vietnamese nationality
- A child born in Vietnam to parents who are citizens or who have permanent residence in Vietnam, has Vietnamese nationality unless the parents choose another nationality for them, and
- Children found on Vietnamese territory, whose parents are unknown, have Vietnamese nationality.¹⁵³

Article 7 provides that foreign citizens and stateless persons residing in Vietnam may be admitted into Vietnamese nationality if they are 18 years or older, have knowledge of the Vietnamese language, and have lived in Vietnam for at least five years.¹⁵⁴ If there are legitimate reasons, these conditions may be waived.¹⁵⁵

Both Vietnamese citizens living abroad and persons who have acquired Vietnamese nationality may be deprived of their Vietnamese nationality if they are involved in serious acts damaging national independence or national interests.¹⁵⁶ Those who have lost their Vietnamese nationality can be re-admitted if they show good cause.¹⁵⁷

A Flow Chart providing an overview of how Vietnamese nationality can be acquired under the 1988 Vietnamese Nationality Law is annexed to this report.

2.2.2 Law on Vietnamese Nationality (20 May 1998)

Article 1 of Vietnam's 1998 *Nationality Law* provides that 'the Socialist Republic of Vietnam is a unified State of all ethnic groups living on the Vietnamese territory'¹⁵⁸ in which each individual is entitled to have a nationality.¹⁵⁹ Similarly to the 1988 law, Article 3 of the 1998 law, provides that the state only recognises one nationality – Vietnamese nationality – for Vietnamese citizens. Article 9 provides that a person's Vietnamese nationality is not altered in the event of marriage, divorce or annulment of an unlawful marriage. The 1998 Law also

¹⁵³ 1988 Nationality Law (Vietnam), Article 6(1-5).

¹⁵⁴ 1988 Nationality Law (Vietnam), Article 7(1).

¹⁵⁵ 1988 Nationality Law (Vietnam), Article 7(2).

¹⁵⁶ 1988 Nationality Law (Vietnam), Article 10(1) and (2).

¹⁵⁷ 1988 Nationality Law (Vietnam), Article 11.

¹⁵⁸ 1998 Nationality Law (Vietnam), Article 1(2).

¹⁵⁹ 1998 Nationality Law (Vietnam), Article 1(1).

states that a person will retain their Vietnamese nationality where that person's spouse changes their nationality.¹⁶⁰

Article 15 of the 1998 Law provides that a person is considered to have Vietnamese nationality by reason of birth, naturalisation, restoration, or in accordance with an international treaty to which Vietnam is a signatory. Articles 16 to 19 of the 1998 law, concerning the acquisition of nationality by birth, expands on provisions stipulated in Article 6 of the 1988 law¹⁶¹ and provide for the nationality of children as follows:

- Children whose parents are Vietnamese citizens have Vietnamese nationality, regardless of where the child is born (*jus sanguinis*);
- If a child has one parent with Vietnamese nationality and the other parent is stateless, that child will have Vietnamese nationality, regardless of where the child is born;
- If a child's mother has Vietnamese nationality and their father is unknown, that child will have Vietnamese nationality, regardless of where the child is born;
- Children found on Vietnamese territory, whose parents are unknown, have Vietnamese nationality.¹⁶²

Article 20 provides that foreign citizens and stateless persons residing in Vietnam *may* be granted Vietnamese nationality if they "fully meet the following conditions":

- Have capacity to engage in "civil acts as prescribed by Vietnamese law"
- Abide by Vietnamese laws and the Constitution (in addition to "respecting the traditions, customs and practices of the Vietnamese people")
- Have sufficient knowledge of the Vietnamese language to enable integration into the social community of Vietnam
- Have lived in Vietnam for at least five years, and
- Have (financial or other) capacity to "ensur[e] their living" in Vietnam".¹⁶³

Certain foreign citizens and stateless persons may be granted Vietnamese nationality without having to fully meet these conditions in certain cases, including situations in which

¹⁶⁰ 1998 Nationality Law (Vietnam), Article 10.

¹⁶¹ The 1998 Law expands on Article 6 of the 1988 Law by explicitly ensuring Vietnamese nationality by birth in cases in which the child's father is unknown. Article 17(1) of the 1998 law's stipulates that a child will be granted Vietnamese nationality in cases where their mother is Vietnamese and their father is unknown. An equivalent Article is not provided for in the 1988 Law. The 1998 Law also inserts an additional provision under which a child born in Vietnamese territory whose mother is stateless and father unknown shall be granted Vietnamese nationality. See 1998 Nationality Law (Vietnam), Article 18(2).

¹⁶² 1998 Nationality Law (Vietnam), Article 16-17. Article 19 of the 1998 law, stating that children found on Vietnamese territory, whose parents are unknown, have Vietnamese nationality, expands upon the equivalent provision in the 1988 law, by limiting the availability of nationality by birth to children under the age of 15 in certain situations. Article 19(2) states that in situations in which that child is less than 15 years old and has found his parents, both of whom hold foreign nationality (or one parent holds foreign nationality or their guardian holds foreign nationality) than that child will no longer hold Vietnamese nationality. Where the child is aged between 15 and less than 18 years, then their written consent will be required.

¹⁶³ 1998 Nationality Law (Vietnam), Article 20(1).

nationality is obtained by birth or marriage, or where they have been helpful towards, or made meritorious contributions to “the Vietnamese fatherland”.¹⁶⁴

Article 21 stipulates situations in which a person who has lost their Vietnamese nationality may apply for it to be restored. Article 23 stipulates that Vietnamese citizens can lose their nationality by relinquishment; deprivation; by means of an international treaty of which Vietnam is a signatory, or under circumstances prescribed by the nationality law. Of interest, Article 6.2 compliments this provision by stipulating that the State will draft policies to create favourable conditions for persons who have lost their nationality to have it restored.

A Flow Chart providing an overview of how Vietnamese nationality can be acquired under the 1998 Vietnamese Nationality Law is annexed to this report.

2.2.3 Law on Vietnamese Nationality (13 November 2008)

Article 2 of Vietnam’s 2008 Nationality Law provides that “the Socialist Republic of Vietnam is a unified State of all ethnic groups living on [the] Vietnamese territory”¹⁶⁵ in which each individual is entitled to have a nationality.¹⁶⁶ Consistent with provisions of the 1998 and 1988 laws, Article 4 provides that the state only recognises one nationality – Vietnamese nationality – for Vietnamese citizens. Article 9 provides that a person’s Vietnamese nationality is not altered in the event of marriage, divorce or annulment of an unlawful marriage. The 2008 Law also states that a person will retain their Vietnamese nationality where that person’s spouse changes their nationality¹⁶⁷.

Article 14 of the 2008 law provides that a person is considered to have Vietnamese nationality on the grounds of birth, naturalisation, where their nationality is restored or in accordance with an international treaty to which Vietnam is a signatory.

Articles 15 to 18 (inclusive) provide for the nationality of children as follows:

- Children whose parents are Vietnamese citizens have Vietnamese nationality, regardless of where the child is born (*jus sanguinis*)
- If a child has one parent with Vietnamese nationality and the other parent is stateless, that child will have Vietnamese nationality, regardless of the child’s place of birth
- If a child’s mother has Vietnamese nationality and their father is unknown, that child will have Vietnamese nationality, regardless of place of birth
- If a child is born to parents, one of whom is a Vietnamese citizen and the other is a foreign national, that child shall hold Vietnamese nationality if so agreed in writing by the child’s parents at the time their birth is registered. In cases where the parents

¹⁶⁴ 1998 Nationality Law (Vietnam), Article 20(2).

¹⁶⁵ 2008 Nationality Law (Vietnam), Article 2(1).

¹⁶⁶ 2008 Nationality Law (Vietnam), Article 2(2).

¹⁶⁷ 2008 Nationality Law (Vietnam), Article 10.

fail to reach an agreement about the selection of the child's nationality, the child will be deemed to have Vietnamese nationality.

- A child born to stateless parents who have permanent residence in Vietnam will have Vietnamese nationality, and
- Children found on Vietnamese territory, whose parents are unknown, have Vietnamese nationality.¹⁶⁸

Similarly to Article 20 of the 1998 Law, Article 19 of the 2008 Law provides that foreign citizens and stateless persons residing in Vietnam may be granted Vietnamese nationality if they are capable of civil acts as prescribed by Vietnamese law, agree to abide by the Vietnamese Constitution and laws (in addition to “respecting the traditions, customs and practices of the Vietnamese nation”), have sufficient knowledge of the Vietnamese language to integrate into the Vietnamese community, have lived in Vietnam for at least five years, and are capable of earning their living in Vietnam.¹⁶⁹

Certain foreign citizens and stateless persons may be granted Vietnamese nationality without having to fully meet these conditions in particular cases, including situations in which nationality is obtained by birth or marriage, or where they have been helpful or have made meritorious contributions to Vietnam. The 2008 Law adds an additional requirement that those who apply for Vietnamese nationality must have Vietnamese names.¹⁷⁰

Article 23 stipulates situations in which a person who has lost their Vietnamese nationality may apply for it to be restored and includes two categories additional to any preceding nationality law: those who conduct investment activities in Vietnam and those who have previously renounced their nationality in order to acquire a foreign nationality, but have been unsuccessfully in doing so.¹⁷¹ This Article also stipulates that persons applying for restoration of Vietnamese nationality “shall use their previous Vietnamese names”¹⁷² and must renounce their foreign nationality.¹⁷³ Consistent with the 1998 Law, Article 7(1) of the 2008 law compliments Article 23 by stipulating that the State will draft policies to create favourable conditions to persons who have lost their nationality to have it restored.

Article 26 states that Vietnamese citizens can lose their nationality by being deprived of Vietnamese nationality, under an international treaty of which Vietnam is a signatory, or under circumstances prescribed by the nationality law. Article 27 provides that citizens may renounce their Vietnamese nationality if they have legitimate reasons, except in certain

¹⁶⁸ 2008 Nationality Law (Vietnam), Article 15-18. Article 18(2) stipulates that children under the age of 15 will lose their Vietnamese nationality if they discover that one of their parents holds a foreign nationality. Unlike the 1998 Law, the 2008 law does not stipulate conditions governing children aged 15 but younger than 18. See 2008 Nationality Law (Vietnam), Article 19.

¹⁶⁹ 2008 Nationality Law (Vietnam), Article 19(1).

¹⁷⁰ 2008 Nationality Law (Vietnam), Article 19(2-4).

¹⁷¹ 2008 Nationality Law (Vietnam), Article 23(1)(f).

¹⁷² 2008 Nationality Law (Vietnam), Article 23(4) (new provision).

¹⁷³ Except for some categories of persons, including those who are spouses or children of Vietnamese citizens. 2008 Nationality Law (Vietnam), Article 23(5)(a) (new provision).

circumstances.¹⁷⁴ Both Vietnamese citizens living abroad and persons who have acquired Vietnamese nationality, may be deprived of their Vietnamese nationality if they commit acts that cause serious harm to national independence or national interests.¹⁷⁵

2.2.4 Current Procedures Governing Acquisition and Loss of Vietnamese Nationality

Unlike the 1988 and 1998 laws, the 2008 Vietnamese Nationality Law contains detailed provisions setting out procedures for both applicants and decision makers in relation to applications for Vietnamese nationality through naturalisation¹⁷⁶ and restoration¹⁷⁷ as well as the loss of Vietnamese nationality by means of renunciation¹⁷⁸, deprivation¹⁷⁹ and annulment.¹⁸⁰

Acquisition of Nationality by Naturalisation

Persons who apply for Vietnamese nationality by naturalisation are required to pay fees, as set by the Ministry of Finance¹⁸¹, except for applicants who are deemed ‘poor’ and / or are Stateless.¹⁸²

Article 20(1) of the 2008 law provides that “a dossier of application for Vietnamese nationality” comprises:

- An application for Vietnamese nationality
- A copy of the Applicant’s birth certificate, passport or other substitute papers
- A curriculum vitae
- A judicial record issued by a competent Vietnamese authority for the period the Applicant has resided in Vietnam and their previous foreign country
- Papers proving the Applicant’s Vietnamese language skills, and
- Papers proving the Applicant’s ability to ‘make a livelihood in Vietnam’¹⁸³.

Article 21 provides that a person applying for Vietnamese nationality must file their dossier of application with the Justice Service at the provincial level where they reside.¹⁸⁴ Steps to be taken by the provincial-level Justice Service, as well as timeframes for action to be taken,

¹⁷⁴ Exceptional circumstances include where the individual belongs to the military service (Article 27(4)); have unpaid tax or other financial obligations toward an agency, organisation or individual in Vietnam (Article 27(2)(a)); are under examination for a penal liability (Article 27(2)(b)); or where the renunciation of Vietnamese nationality would affect Vietnam’s national interests (Article 27(3)).

¹⁷⁵ 2008 Nationality Law (Vietnam), Article 31.

¹⁷⁶ 2008 Nationality Law (Vietnam), Article 21.

¹⁷⁷ 2008 Nationality Law (Vietnam), Article 25.

¹⁷⁸ 2008 Nationality Law (Vietnam), Article 29.

¹⁷⁹ 2008 Nationality Law (Vietnam), Article 32.

¹⁸⁰ 2008 Nationality Law (Vietnam), Article 34.

¹⁸¹ Decree No. 78 of 2009, Article 4.

¹⁸² Article 4.2 (b) provides an exemption for those who are considered ‘poor under law’ and Article 4.2 (c) exempts Stateless persons who apply for naturalisation in Vietnam under Article 22 of the Law on Vietnamese Nationality. See Decree No. 78 of 2009, Article 4.

¹⁸³ 2008 Nationality Law (Vietnam), Article 20(1)(g).

¹⁸⁴ 2008 Nationality Law (Vietnam), Article 21(1).

are also set out in this provision, and in Joint Circular No. 5.¹⁸⁵ The applicant's identity must be verified at the provincial level Public Security Department¹⁸⁶ and then submitted to the provincial level People's Committee President¹⁸⁷, before being submitted to the Ministry of Justice with a recommendation.¹⁸⁸ Within 20 working days¹⁸⁹, the Ministry of Justice must re-examine the dossier, record the application in a dossier register¹⁹⁰, and, assuming that all conditions for naturalisation in Vietnam are met, notify the applicant in writing about the procedures for renunciation of their foreign nationality.¹⁹¹ Once written permission from the Applicant concerning the renunciation of their foreign nationality is received, the Minister for Justice must report the case to the Prime Minister for submission to the President.¹⁹² The President has 30 working days to make a decision¹⁹³ and the Ministry of Justice is then required to send the Applicant a copy of this decision to within 10 working days.¹⁹⁴

Article 22 of the 2008 Law provides that stateless persons who do not have adequate personal identification papers but have been residing in Vietnam for at least 20 years and obey Vietnam's laws and Constitution will be permitted for naturalisation under the order, procedures and dossiers specified by the Government.¹⁹⁵

Acquisition of Nationality by Restoration

Article 24 of the 2008 Law provides that a dossier of application for restoration of Vietnamese nationality comprises:

- An application for restoration of Vietnamese nationality
- A copy of the applicant's birth certificate, passport or other substitute papers
- A curriculum vitae

¹⁸⁵ The provincial level Justice Service is required to register the application in a registry of applications for naturalisation in Vietnam, and at the same time, issue the Applicant with an official receipt. In the event that the Applicant's dossier is incomplete, the Justice Service must immediately notify the Applicant: Article 2(1), Joint Circular No. 5 of 2010.

¹⁸⁶ Within five working days of receiving a complete dossier, the Justice Service must request written verification of the applicant's identity from the provincial level Public Security Department. Verification must be conducted and a response provided to the Justice Service within 30 working days: 2008 Nationality Law (Vietnam), Article 21(2).

¹⁸⁷ Within 10 days of receiving results from the Public Security Department, the Justice Service must complete the dossier for submission to the provincial level People's Committee President: 2008 Nationality Law (Vietnam), Article 21(2).

¹⁸⁸ The relevant People's Committee President has 10 working days to consider, conclude and make their proposal to the Ministry of Justice: 2008 Nationality Law (Vietnam), Article 21(2).

¹⁸⁹ 2008 Nationality Law (Vietnam), Article 21(3).

¹⁹⁰ Including uploading on its portal, the list of the Applicants for settlement of nationality related matters: Joint Circular No. 5 of 2010, Article 3(2).

¹⁹¹ Except for cases in which the Applicant wishes to retain their foreign nationality or is stateless: 2008 Nationality Law (Vietnam), Article 21(3).

¹⁹² The Minister for Justice must report the case to the Prime Minister for consideration and a decision, within 10 working days: 2008 Nationality Law (Vietnam), Article 21(3).

¹⁹³ 2008 Nationality Law (Vietnam), Article 21(4).

¹⁹⁴ Joint Circular No. 05 of 2010, Article 4(1).

¹⁹⁵ 2008 Nationality Law (Vietnam), Article 22. See also Article 7 of Joint Circular No. 05 of 2010, and Article 8 of Decree No. 78 of 2009.

- A judicial record issued by a competent Vietnamese authority for the period the Applicant has resided in Vietnam and their previous foreign country
- Papers proving that the applicant is a former Vietnamese nationality, and
- Papers proving the eligibility for restoration of Vietnamese nationality as per the 2008 law.

Article 25 sets out the procedure¹⁹⁶ and applicable time limits for applications for restoration of nationality for both applicants residing in Vietnam¹⁹⁷ and applicants residing abroad.¹⁹⁸ Persons who apply for the restoration of their Vietnamese nationality are required to pay fees, as set by the Ministry of Finance.¹⁹⁹

A Flow Chart providing an overview of how Vietnamese nationality can be acquired under the 2008 Vietnamese Nationality Law is annexed to this report.

With regards to **procedures governing the loss of Vietnamese nationality**, Article 26 of the 2008 law provides that a person's Vietnamese nationality may be lost on the grounds of renunciation, deprivation, or by failing to correctly register for the retention of their nationality.²⁰⁰

Loss of Nationality by Renunciation

Article 27 of the 2008 Law sets out various grounds for **renunciation of Vietnamese nationality** (for example, to apply to acquire a foreign nationality)²⁰¹ and situations in which Vietnamese nationals may not renounce their Vietnamese nationality.²⁰²

Article 28 of the 2008 Law provides that a dossier of application for renunciation of Vietnamese nationality comprises of:

- an application for renunciation of Vietnamese nationality
- a curriculum vitae

¹⁹⁶ An applicant residing in Vietnam must file their dossier of application with the Justice Service at the provincial level where they reside. Applicants residing abroad must file their dossier to the overseas Vietnamese representative mission in their host country. If the applicant's dossier is incomplete, the agency that receives the dossier must immediately notify the applicant. Refer to 2008 Nationality Law (Vietnam), Article 25(1) and Joint Circular No. 5 of 2010, Article 2(1).

¹⁹⁷ Article 25(2) stipulates very specific time limits for each responsible agency to deal with applications for restoration of Vietnamese nationality from applicants residing in Vietnam.

¹⁹⁸ Article 25(2) stipulates very specific time limits for applications for restoration of Vietnamese nationality from applicants residing abroad. For time limits governing further steps in the process, see Article 25(4) and Joint Circular No. 5, Article 3(2). These laws are provided in the Annex.

¹⁹⁹ Decree No. 78 of 2009, Article 4.

²⁰⁰ Failing to register in accordance with Article 13 as stipulated in Article 26(3) is a new provision under which Overseas Vietnamese who have not yet lost their Vietnamese nationality as prescribed by Vietnamese law before the effect date of this law may retain their Vietnamese nationality and within 5 years after the effective date of this Law, shall register with overseas Vietnamese representative missions to retain Vietnamese nationality – see Article 13(2).

²⁰¹ 2008 Nationality Law (Vietnam), Article 27(1).

²⁰² For example, where the individual is subjected to criminal investigations or procedures (Article 27(2)(b) – (d)); employed as civil servants, serving in the armed forces (Article 27(4)); owe a tax debt to the state (Article 27(2)(a)); or where it is deemed to be detrimental to Vietnam's national interests (Article 27(3)).

- a copy of the applicant’s Vietnamese passport, identity card or other papers²⁰³
- a judicial record issued by a competent Vietnamese authority
- papers proving that the applicant is carrying out procedures for the acquisition of foreign nationality²⁰⁴, and
- written certification of clearance of tax debts.

Article 29 provides for the procedure to be taken by applicants who reside in Vietnam²⁰⁵ and the relevant time limits for such applications.²⁰⁶

Loss of Nationality by Deprivation

Article 31 stipulates that Vietnamese citizens residing abroad may **lose their nationality by deprivation** if they commit acts that cause serious harm to the national independence, construction and defense, or the prestige of Vietnam. These conditions are extended to persons who have been naturalised in Vietnam, regardless of whether they reside inside or outside of the State. Article 32 sets out the procedure and administrative authorities dealing with the verification of a complaint.²⁰⁷

2.2.5 Overview and Key Differences between the Vietnamese Nationality Laws

Vietnam’s 2008, 1998 and 1988 laws all explicitly provide for the right to Vietnamese nationality for all individuals in the Socialist Republic of Vietnam²⁰⁸. The 2008 law does not change the 1998 Law in any substantive way. However, the 1998 law extends conditions to be met for an application for Vietnamese nationality, from the previous law. Whilst the 2008 law attempts to simplify the terminology of the 1998 law, the provisions governing the application, restoration, retention, loss, renunciation, deprivation and annulment of Vietnamese nationality remain essentially the same in substance.

There have been developments in the terminology and definitions used across the 1998 and 2008 laws – for example, Article 2(3) of the 1998 Law uses the terms “Vietnamese residing abroad”, to mean “Vietnamese citizens and people of Vietnamese origin, who permanently reside and earn their living in foreign countries”²⁰⁹ and “Vietnamese living abroad” to mean “Vietnamese citizens and people of Vietnamese origin who are permanently or temporarily residing in foreign countries”²¹⁰, whereas Article 3.3 of the 2008 Law defines only the term

²⁰³ ‘Other papers’ are listed in Article 11 of the 2008 law – see Article 28(c).

²⁰⁴ This requirement provides protection from potential statelessness that may result in the renunciation of a person’s Vietnamese nationality by requiring proof of foreign nationality as a necessary requirement of the person’s renunciation of Vietnamese nationality: Article 28(e).

²⁰⁵ For processes for filing applications from both applicants residing in Vietnam and applicants residing abroad, see Article 29(1) and Joint Circular No. 5 of 2010, Article 2(1) at Annex.

²⁰⁶ Article 29(2) sets out time limits for applicants residing in Vietnam. See also Article 29(3) for timeframes over verification and decision-making processes at Annex .

²⁰⁷ 2008 Nationality Law (Vietnam), Article 31-32. Article 31(1) sets out the competent authorities for decision making as including courts, the President, the Ministry of Justice and the Prime Minister.

²⁰⁸ 2008 Nationality Law (Vietnam), Article 2(1); 1998 Nationality Law (Vietnam), Article 1(1) and 1988 Nationality Law (Vietnam), Article 1.

²⁰⁹ 2008 Nationality Law (Vietnam), Article 2(4).

²¹⁰ 2008 Nationality Law (Vietnam), Article 2(3)

“overseas Vietnamese”, to mean “Vietnamese citizens and persons of Vietnamese origin who permanently reside in foreign countries.”²¹¹ Article 3(4) of the 2008 Law creates a new category of persons – “Persons of Vietnamese origin residing abroad” – and defines this class of persons as “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 (sic) and grandchildren are permanently residing in foreign countries”.²¹² It appears that by including these additional categories of persons into the definitions of the 2008 Nationality Law, the legislature intended to provide opportunities for a greater scope of persons to access the naturalisation provisions – including persons of Vietnamese origin who fled from Vietnam as refugees in the 1980s.

The main distinguishing feature of the 2008 Law is the detailed manner in which it stipulates the order and procedures governing nationality applications and related processes, including clear stipulations of time limits within which applications must be processed and decisions made. Where the 1998 Law provides for a single, more general provision governing the process for the filing of applications for settlement of nationality matters and associated time limits, the 2008 Law stipulates individual provisions governing the granting, restoration, renunciation, deprivation and annulment of Vietnamese nationality.²¹³ The 1988 Law, by contrast, provides no provisions on the processes governing nationality processes.

Regulations which supplement the provisions of the 2008 Law include the 2010 Joint Circular²¹⁴ and the 2009 Decree on Nationality Law,²¹⁵ which together, stipulate procedures for the receipt, verification and translation of supporting documents in citizenship applications, fees, notification or outcomes, the recording of Vietnamese nationality status in Civil Status Registers and the settlement of stateless persons in Vietnam. These regulations appear to be efforts taken by the Vietnamese government to make the procedures governing nationality applications more uniform and transparent.

²¹¹ 2008 Nationality Law (Vietnam), Article 3(3).

²¹² 2008 Nationality Law (Vietnam), Article 3(4).

²¹³ 2008 Nationality Law (Vietnam), Articles 20-38.

²¹⁴ Joint Circular No. 05 of 2010.

²¹⁵ Decree No. 78 of 2009.

2.3 STATELESSNESS INTERNATIONAL LEGAL FRAMEWORK

2.3.1 Definition of “Stateless Person” in International Law

The 1954 and 1961 Statelessness Conventions comprise the specific body of international law for protecting the human rights of stateless persons, and for the prevention and reduction of statelessness.²¹⁶ The 1954 Convention defines a stateless person as *one who is not considered to be a national of any state, under the operation of its law.*²¹⁷ This definition has been recognised by the International Law Commission as customary international law, applicable by all states regardless of membership to the Convention.²¹⁸ The 1954 Convention also establishes a set of minimum rights that a contracting state must provide to stateless persons in its jurisdiction, including provision of juridical status (personal status, property rights, right of association, access to courts), welfare rights (housing, education, labour and social security), access to administrative measures (identity papers, travel documents, freedom of movement, transfer of assets, expulsion and naturalisation) and employment rights.²¹⁹

2.3.2 UNHCR Guidelines on Definition of “Stateless Person”

In assessing whether individuals or groups are stateless, the starting point is legal definition of whether a person has a nationality by operation of national laws. The definition has two limbs: (1) “not considered as a national under the operation of its law” and (2) “by any State”.²²⁰ For the Kampong Chhnang focal group, Cambodia and Vietnam are the only states with which individuals have any relevant links – either by virtue of birth on the relevant territory, descent, marriage or residence.

Recent guidelines from the UNHCR on the “Definition of Stateless Persons” (Guideline No. 1)²²¹ and that “Status of Stateless Persons at the National Level” (Guideline No. 3)²²² assist policy bodies, civil society and government authorities to assess and determine a person’s stateless status in accordance with the terms of the relevant conventions.

Nationality

The UNHCR’s *Guidelines on the Definition of “Stateless Person”* (February 2012), provide that the Convention’s concept of a “national” is in accordance with the use of the term under international law, being “a person over whom a State considers it has jurisdiction on

²¹⁶ These Conventions supplement the 1930 *Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws*, under the League of Nations.

²¹⁷ 1954 Statelessness Convention, Article 1.

²¹⁸ UNHCR, ‘The Concept of Stateless Persons under International Law: Summary Conclusions’, (UNHCR Expert Meeting, Prato, Italy, 27 – 28 May 2010), 2 (para 2).

²¹⁹ United Nations High Commissioner for Refugees, ‘Guidelines on Statelessness No 3: The Status of Stateless Persons at the National Level’ (UNHCR HCR/GS/12/03, 17 July 2012), para 10.

²²⁰ UNHCR (February 2012) ‘Guidelines on Statelessness No. 1’, para 10.

²²¹ UNHCR (February 2012) ‘Guidelines on Statelessness No. 1’.

²²² UNHCR (July 2012) ‘Guidelines on Statelessness No 3’.

the basis of nationality, including the right to bring claims against other States for their ill-treatment”.²²³ The question whether a person is “not considered as a national” under a State’s law and practice is a mixed question of fact and law, which requires a thorough analysis of how a State applies its nationality laws to individual cases, including any relevant review or appeal decisions.²²⁴ In making this assessment, it is important to determine whether a change in nationality status occurs automatically, by operation of law (for example, by birth on a territory or birth to nationals of a state), or requires an administrative decision by a state authority (non-automatic).²²⁵

The “Laws” of a State

Interpretation of “law” in Article 1 of the 1954 Convention is to be read broadly to cover a range of legal instruments, including regulations, ministerial decrees, orders, judicial case law and customary practice, where appropriate.²²⁶ Of great significance to the application of the stateless definition for those tasked with assessing and determining a person’s status, the UNHCR *Guidelines on the Definition of “Stateless Person”* suggest that the reference to “law” in the statelessness definition “covers any modification of the written law in implementation and practice”, where a state does not follow the letter of its own law in practice.²²⁷

This means that where a person is “not considered as a national” by a competent authority exercising an administrative or discretionary function, despite the person being entitled to the state’s nationality by operation of its laws through automatic acquisition, the final decision (that the person is not a national) is taken to be ultimately made “**under the operation of [the state’s] laws**”. A person in this situation may be considered as meeting the definition of “stateless person” under Article 1 of the 1954 Convention.

Likewise, the UNHCR guidelines state that, where an individual’s nationality status has been reviewed or appealed by a higher judicial authority, that higher authority provides the ultimate decision (in countries that respect the rule of law).²²⁸ However, in countries where a state’s executive routinely ignores judicial decisions and acts with impunity – particularly where there is a systemic practice in state institutions of discriminating against certain groups – the determination of the executive authorities (or the approach taken by them) would be the position taken, for the purposes of determining whether a person is considered a national by that state.²²⁹

²²³ UNHCR (February 2012) ‘Guidelines on Statelessness No. 1, para 45.

²²⁴ UNHCR (February 2012) ‘Guidelines on Statelessness No. 1, para 16.

²²⁵ UNHCR (February 2012) ‘Guidelines on Statelessness No. 1, paras 18 – 19.

²²⁶ UNHCR (February 2012) ‘Guidelines on Statelessness No. 1, para 15.

²²⁷ UNHCR (February 2012) ‘Guidelines on Statelessness No. 1’, para 17.

²²⁸ UNHCR (February 2012) ‘Guidelines on Statelessness No. 1, para 40.

²²⁹ UNHCR (February 2012) ‘Guidelines on Statelessness No. 1, para 41.

“Competent Authority” for Decision Making

A competent authority for decision making in nationality matters must be identified, either from the nationality law, from lower legislation, or from a state’s practice. Both the individual’s personal history, as well as the relevant legislation applicable to that person, must be identified, understood and applied. For non-automatic acquisitions, if a positive decision is made, the competent authority will usually issue documentation, which comprises evidence of a person’s nationality – for example, a Citizenship Certificate.²³⁰

The UNHCR has stated that where a competent authority treats an individual as a non-national, despite that person having met the criteria for automatic acquisition of nationality by operation of that state’s laws, it is the authority’s decision rather than the letter of the law that is determinative as to the state’s position on the matter. This may happen where, despite a law providing for automatic acquisition of nationality, discriminative practices against particular groups, on the part of decision-making bodies, result in decision makers ignoring or misapplying the law and/or requiring additional proofs for an application. In these cases, where a state’s practice considers those who do not meet their additional (non-legal) requirements to be considered as nationals, the UNHCR states that applicants could be rendered stateless.²³¹

A person may never have come into contact with a competent authority, for instance, because their acquisition of nationality was automatic, or because they live in remote areas with little access to the authorities. In these cases, the approach that the state takes to the nationality status of those in a similar situation – indicative, for example, from the manner in which the state issues identity card or other relevant documents – may reveal whether or not the state considers the person to be its national. If state condoned or state sponsored discrimination exists against the group to whom the person belongs, that may also indicate that the state does not consider the person (or members of the group to which the person belongs) to be nationals.²³²

Where enquiries with a competent authority regarding documentation or proof of nationality (usually, in circumstances where there is automatic deprivation or acquisition of nationality) is met with silence or a refusal to respond, a conclusion concerning the lack of a response may be made after a reasonable period of time. The conclusion to be drawn will depend on the approach the authority takes to responding to such requests or enquiries, and if a pro forma response is made which clearly does not align with considerations about the individual’s circumstances, consideration can be given to how much weight to apply to the response.²³³

²³⁰ The UNHCR suggests that in the absence of such documentary evidence, it can be assumed that a decision granting nationality was not made and that nationality was not acquired. UNHCR (February 2012) ‘Guidelines on Statelessness No. 1, para 26.

²³¹ UNHCR (February 2012) ‘Guidelines on Statelessness No. 1, para 30. See also footnote 22 of the Guidelines.

²³² UNHCR (February 2012) ‘Guidelines on Statelessness No. 1, para 31.

²³³ UNHCR (February 2012) ‘Guidelines on Statelessness No. 1, para 34.

Where an individual has been faced with inconsistent treatment by various competent authorities, this brings a layer of complexity to the analysis. However, a subsequent act such as the issuance of identification cards, passports or other documentation often confirms acquisition or deprivation of nationality.²³⁴

Other Guidelines

The UNHCR Guidelines articulate that where a decision to grant nationality in a non-automatic mechanism is made in error or in bad faith, this does not necessarily invalidate a person's nationality status. This is also the case in applications, which contain **mistakes or fraud** on material facts. For the purposes of the Article 1 definition, conferrals of nationality under non-automatic mechanisms are to be considered valid, even if there is no legal basis for the conferral.²³⁵

A person's **voluntary renunciation of nationality** generally takes the form of an oral or written declaration. The treaty's aims and purposes in facilitating the enjoyment of human rights by stateless persons apply equally in cases of voluntary renunciation as it does to those who have lost or otherwise do not have a nationality because of other reasons.

The UNHCR Guidelines provide that the assessment of a person's nationality is neither a historic or predictive exercise – it must be assessed as *at the time of a determination as to the person's status under the 1954 Convention*. If a person is in the middle of an application process, the person cannot be considered a national for the purposes of Article 1 of the Convention. Likewise, if the procedures for renunciation, deprivation or loss is not yet complete, the person remains a national for the purposes of the Convention definition.²³⁶

2.3.3 Protections for Stateless Persons under the 1954 and 1961 Conventions

The traditional view is that the right to a nationality is “the right to have rights”, being the necessary precursor to access full civil, political, social and economic rights within a state.²³⁷ However, the 1954 and 1961 Conventions, coupled with a number of non-derogable provisions in other international human rights instruments, provide fairly comprehensive safeguards for the protection of the human rights of non-citizens and stateless persons.²³⁸

The **1954 Convention** safeguards the rights of stateless persons by providing that state parties shall:

²³⁴ UNHCR (February 2012) 'Guidelines on Statelessness No. 1, paras 35 – 57.

²³⁵ UNHCR (February 2012) 'Guidelines on Statelessness No. 1, para 38.

²³⁶ UNHCR (February 2012) 'Guidelines on Statelessness No. 1, para 43.

²³⁷ UNHCR, 'Information and Accession Package: The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness' (UNHCR, Geneva, first published June 1996; revised January 1999), 3. 1.

²³⁸ This includes, for example, Article 2, ICCPR, and Article 2, *Universal Declaration of Human Rights (UDHR)*, requiring State parties to ensure that all individuals in its territory are afforded rights without discrimination on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

- Grant stateless persons rights equal to nationals or foreign nationals residing on the state's territory, including in the area of religion, association, labour, welfare, primary education, housing, access to courts, and property²³⁹
- Issue identity and travel documents to stateless persons in the state's territory²⁴⁰
- Facilitate the assimilation and naturalisation of stateless persons, including expediting proceedings and reducing costs for applicants²⁴¹
- Refrain from expelling a stateless person except on grounds of national security and public order, and
- Ensure due process is taken in any decision to expel a stateless person.²⁴²

In essence, the 1954 Convention establishes a broad range of civil, economic, social and cultural rights, which States are obliged to provide to stateless persons, based on their degree of attachment to the State, with some provisions applicable to individuals who meet the stateless definition, and the application of other provisions conditional upon whether the person is "lawfully in" or "lawfully staying in" or "habitually resident" in the territory of the state.²⁴³ The rights in the 1954 Convention which apply to a person subject to the jurisdiction of a State party include personal status (Article 12), property (Article 13), access to courts (Article 16(1)), public education (Article 22), administrative assistance (Article 25) and facilitated naturalisation (Article 32).²⁴⁴ In addition, the right to identity papers (Article 27) accrue for individuals present in the State's territory.²⁴⁵

The 1954 Convention sets out that the standards of treatment along a scale as follows:

- Treatment afforded to stateless persons irrespective of the treatment afforded to citizens or other aliens
- The same treatment as nationals
- Treatment as favourable as possible and, in any event, not less favourable than that accorded to foreigners generally in the same circumstances
- The same treatment as that accorded to foreigners generally.²⁴⁶

The **1961 Convention** focuses on legal safeguards to reduce statelessness,²⁴⁷ and provides that:

- State parties grant nationality to a person born in the state's territory who would otherwise be stateless²⁴⁸

²³⁹ 1954 Statelessness Convention.

²⁴⁰ 1954 Statelessness Convention, Articles 27 and 28.

²⁴¹ 1954 Statelessness Convention, Article 32.

²⁴² 1954 Statelessness Convention, Article 31.

²⁴³ UNHCR (July 2012) 'Guidelines on Statelessness No 3', p4, para 13.

²⁴⁴ UNHCR (July 2012) 'Guidelines on Statelessness No 3', p4, para 14.

²⁴⁵ UNHCR (July 2012) 'Guidelines on Statelessness No 3', p4, para 14.

²⁴⁶ UNHCR (February 2012) 'Guidelines on Statelessness No. 1', para 11.

²⁴⁷ While international law provides that it is for each State to determine its citizens through domestic laws, general principles of international law concerning the acquisition, loss or denial of citizenship should be applied. UNHCR, 'Information and Accession Package: The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness' (UNHCR, Geneva, first published June 1996; revised January 1999), 3.

- Any loss of nationality is conditional upon a person's acquisition of another nationality if the loss results from marriage, divorce, or adoption;²⁴⁹ loss of nationality by a person's spouse or children²⁵⁰; or renunciation of nationality by operation of domestic law,²⁵¹ and
- State parties do not deprive a person of a nationality because of a transfer of territory;²⁵² or on discriminatory grounds;²⁵³ or where the person would become stateless.²⁵⁴

It is important to note that neither Vietnam nor Cambodia are signatories to either of the 1954 or 1961 Conventions.

2.3.4 Protections under International Human Rights Instruments

Neither Cambodia nor Vietnam are signatories to the two Statelessness Conventions. However, these two Conventions are not the only source of norms for protecting against, reducing and preventing statelessness. Many international human rights instruments, which Cambodia and Vietnam have both ratified, contain important provisions against statelessness.²⁵⁵ These human rights treaties contain provisions upholding human rights, which apply irrespective of nationality and immigration or stateless status.

For instance, Cambodia is a party to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*²⁵⁶, *International Covenant on Civil and Political Rights (ICCPR)*²⁵⁷, *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*²⁵⁸, *International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*²⁵⁹ and *the Convention on the Rights of the Child (CRC)*. The government of Vietnam has ratified the five human rights treaties: the ICCPR²⁶⁰, CEDAW²⁶¹, CERD²⁶², ICESCR²⁶³, and CRC.²⁶⁴

²⁴⁸ The grant could be at birth, by operation of law, or upon the lodging of an application with the appropriate authority – see 1961 Statelessness Convention, above n.7, Article 1.

²⁴⁹ 1961 Statelessness Convention, Article 5.

²⁵⁰ 1961 Statelessness Convention, Article 6.

²⁵¹ 1961 Statelessness Convention, Article 7.

²⁵² 1961 Statelessness Convention, Article 10.

²⁵³ 1961 Statelessness Convention, Article 9.

²⁵⁴ 1961 Statelessness Convention, Article 8.

²⁵⁵ For more information, see for instance Laura Van Waas, 'Nationality Matters: Statelessness under International Law', Doctoral thesis (2008), available at <http://arno.uvt.nl/show.cgi?fid=113179>.

²⁵⁶ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

²⁵⁷ *International Convention on Civil and Political Rights*, opened for signature on 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

²⁵⁸ *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

²⁵⁹ *Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

²⁶⁰ Ratified on 24 September 1982, and entering into force on 24 December 1982.

²⁶¹ Ratified on 17 February 1982, and entering into force on 19 March 1982.

²⁶² Ratified on 9 June 1982, and entering into force on 9 July 1982.

²⁶³ Ratified on 24 September 1982, and entering into force on 24 December 1982.

²⁶⁴ *Convention on the Rights of the Child*, opened for signature on 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

One of the most significant contributions of international human rights law is that it establishes a **right to a nationality**. For example, Article 15 of the UDHR states that “everyone has the right to a nationality” and that “no-one shall be arbitrarily deprived of his nationality”. Moreover, Article 24 of the ICCPR provides that “every child has the right to acquire a nationality”. The Human Rights Committee responsible for monitoring the implementation of the ICCPR provided the following interpretation of this provision through its general comments:

“While the purpose of this provision is to prevent a child from being afforded less protection by society and the State because he is stateless, it does not necessarily make it an obligation for States to give their nationality to every child born in their territory. However, States are required to adopt every appropriate measure, both internally and in cooperation with other States, to ensure that every child has a nationality when he is born.”²⁶⁵

Likewise, Article 7 of the Convention on the Rights of the Child stipulates that every child shall “be registered immediately after birth” and shall have “the right to acquire a nationality”. The same Article continues: “States parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless”. Thus, the ICCPR and the CRC both provide clear **obligations on state parties to adopt measures to prevent statelessness at birth**. From this basic provision flows an emerging consensus in state practice with regards to the normalising of the principle of *jus soli* for children born to non-citizen parents²⁶⁶, and for measures to reduce and prevent statelessness, particularly where the child would otherwise be stateless.²⁶⁷ Such provisions are included in both Cambodian and Vietnamese nationality laws.

Further, a number of these human rights instruments provide, in general terms, for **due process and an effective remedy**, for example, in cases concerning arbitrary deprivation of nationality. In this regard, Article 2 of the ICCPR ensures “that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy”. This would also apply to any individual who feels that a state fails to recognise a nationality or that their right to acquire a nationality has been violated. In such a case, the individual should have the right to make a complaint to a competent executive or judicial authority.

Human rights provisions, which apply a principle of equality and non-discrimination generally, prohibit discrimination on the application of rights based on lack of nationality status. Examples include:

- Article 2 of the ICCPR asserts that contracting States shall ensure that all individuals within its jurisdiction are accorded civil and political rights “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Ratified on 28 February 1990 and entering into force on 2 September 1990.

²⁶⁵ Human Rights Committee, ‘CCPR General Comment No. 17: Rights of the Child (Art. 24)’, 7 April 1989, para. 8.

²⁶⁶ Article 7, CRC and Article 5, CERD.

²⁶⁷ Articles 7 and 8, CRC.

- Article 26 of the ICCPR states that all persons are equal before the law and are entitled equal protection of the law without any discrimination, including on the basis of “national or social origin” and “birth of other status”.
- The CRC expressly calls for the non-discriminatory enjoyment of rights by all children, regardless of nationality or statelessness.²⁶⁸
- The CERD prohibits racial discrimination, including on the basis of nationality.²⁶⁹

Moreover, some human rights treaty regimes provide for a higher standard of treatment or rights, which are not found in the Convention. Article 9(1) of the ICCPR, setting out the protection against arbitrary arrest or detention, is one such example. Some international human rights can also be interpreted in favourable ways for stateless persons. For example, the UNHCR guidelines refer the right to enter one’s “own country” (under Article 12(4) of the ICCPR), as a right to remain – a safeguard for individuals with special ties to a State, which goes beyond the right of entry to one’s country of nationality, and which has (extended) application – for example, to persons stripped of their nationality in violation of international law or denied nationality because of State succession.²⁷⁰

In conclusion, it should be stressed that, despite the fact that Cambodia and Vietnam are not parties to the two Statelessness Conventions, they have nevertheless, by ratifying important international human rights instruments, taken on various obligations with regards to reducing and preventing statelessness.

2.3.5 Challenges in Assessing Statelessness

Even with the 2012 Guidelines, which provide better clarification of the determinations to be made in assessing whether a person is stateless, the exercise still requires analysis beyond the drafting and operation of a state’s nationality laws, and therefore remains a complex, multi-dimensional task. For instance, if a person might have a claim to nationality under another state’s nationality laws (indicated in most cases by any community or ancestral ties to that other state), an analysis of multiple nationality laws, and sometimes, the nationality status of close family members of the individual, is necessary, since the operation of *jus sanguinis* can perpetuate statelessness for generations in situations where a person’s status is dependent on that of someone without a nationality.²⁷¹

Legal and social factors giving rise to statelessness include state succession/transfer of territory, conflict of nationality laws, irregular domestic administrative practices (including for marriage and birth registration), discrimination in decision-making, and renunciation or

²⁶⁸ Committee on the Rights of the Child, *General Comment No. 6: Treatment of unaccompanied and separated children outside their country of origin*, 1 September 2005.

²⁶⁹ Article 5(a)(iii), CERD.

²⁷⁰ UNHRC (July 2012) ‘Guidelines on Statelessness No 3, para 23.

²⁷¹ David Weissbrodt and Clay Collins, ‘The Human Rights of Stateless Persons’ (2006) 28 *Human Rights Quarterly*, 258.

automatic loss of citizenship by operation of law.²⁷² Further, a stateless person could be undocumented, lack official documentation, hold an irregular immigration status, or meet the definition of a “refugee”.

The UNHCR has recognised that most stateless persons have never crossed borders and are stateless in the country of their birth or long-term residence,²⁷³ and that statelessness often results from discrimination on the part of authorities in interpreting and implementing nationality laws.²⁷⁴ Statelessness, therefore, is not only a matter of inadequacies in the drafting of nationality laws or a lack of formal protection for stateless persons, it can also arise due to ineffective administrative systems, inconsistencies in the interpretation and application of the relevant laws, discrimination and corruption by decision making personnel, and lack of access to the means to become a national of a state.

Therefore, a comprehensive analysis of an individual’s stateless status also requires an assessment of regulations, sub-laws and administrative policies governing the protocol for decision-making on nationality, as well as a person’s access to information about the correct body to apply to, access to the relevant forms, information about any fees payable, and an ability to pay the fees. Ultimately, a conclusion about a person’s stateless status requires the answering of the question, “Does the person have a nationality under the operation of *any* State’s laws?” If there is a gap in any relevant information concerning the application of an individual’s factual scenario to the nationality laws of the relevant State(s), it is unlikely that a conclusion as to an individual’s status under the 1954 Convention definition can be made.

2.4 COMMENTARY ON CAMBODIAN AND VIETNAMESE NATIONALITY LAWS

As neither Cambodia nor Vietnam are state parties to the two Conventions on Statelessness, it may be relevant to examine whether the current nationality laws of these two countries comply with international customary law regarding statelessness. As a first step, any inclusion of the stateless definition or references to statelessness in domestic nationality laws comprises an essential measure toward avoiding statelessness and protecting the rights of stateless people. It is also crucial to encouraging an understanding and use of the term among state authorities.²⁷⁵

Even though Vietnam is not a signatory to the 1954 or 1961 Conventions, its nationality laws, from the 1988 Law to the 2008 Law, have included reference to statelessness and provisions

²⁷² UNHCR, ‘Information and Accession Package: The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness’ (UNHCR, Geneva, first published June 1996; revised January 1999), 3.

²⁷³ United Nations High Commissioner for Refugees, ‘Guidelines on Statelessness No 3: The Status of Stateless Persons at the National Level’ (UNHCR HCR/GS/12/03, 17 July 2012), para 3.

²⁷⁴ UNHCR (July 2012) ‘Guidelines on Statelessness No 3’, para 4.

²⁷⁵ UNHCR, ‘Good Practices: Addressing Statelessness in South East Asia’ (Report of the *Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons in South East Asia*, Bangkok, 28 and 29 October 2010), 4.

which provide effective safeguards to protect against, and prevent, statelessness. Similarly, Cambodia has neither signed nor ratified the Statelessness Conventions.²⁷⁶ However, in contrast with Vietnam, none of the nationality laws of Cambodia, from 1954 to the present 1996 *Law on Nationality*, contain any references to statelessness. Therefore, neither the 1954 Law, nor the 1996 Law, defines statelessness.

However, **Cambodia's** 1954 Nationality Law appears to have been drafted with the problem of statelessness in mind, as certain provisions in that legislation assist with alleviating or eliminating statelessness. For example, Article 25 ensures that loss of Cambodian nationality with the permission of the government, only occurs if an individual acquires a foreign nationality by naturalisation, and that the loss of nationality is effective the day the foreign nationality is granted.²⁷⁷ Further, loss of nationality does not effect the spouse of children of the person. Another example is the provision whereby, in dissolution of marriage between a foreign woman and a Cambodian man, the woman can only renounce her Cambodian (naturalised) citizenship if the laws in her country of origin did not deprive her of her nationality as a result of her marriage.²⁷⁸

Importantly, the current Cambodian *Law on Nationality* 1996, does not, on the face of it, provide any safeguards for ensuring proper interpretation and application of the substantive law. In fact, some provisions in the 1996 law, such as the *jus soli* provision in Article 4, requiring that *both* foreign parents of a child born in Cambodia must have *legal* residence in Cambodia, *prima facie*, entail that if the foreign parents were refugee and/or stateless, or otherwise considered by authorities *not* to have “legal” residence, their stateless status, or their non-nationality status, would flow down to their children, regardless of the child’s birth in Cambodia. In some such cases, statelessness could perpetuate for generations.

Theoretically, substantive compliance with the ICCPR, ICSCER, CERD, CEDAW, CRC and other human rights instruments to which Cambodia is a state party, should also ensure that stateless persons have access to the labour market, education, public assistance and basic health without the need for recourse to provisions of the Statelessness Conventions. However, theory is always different in practice, and as there is no reference to “statelessness” in the Cambodian legislation, there are likewise no formal guidelines on the status determination of persons who may be stateless. Contrary to this, there is a wide scope for discretionary decision-making, in which decisions could be based on arbitrary, unreasonable or discriminatory grounds, without any possibility of judicial review.

On the other hand, whilst **Vietnam** is not a signatory to 1954 or 1961 Conventions²⁷⁹, Vietnam’s 2008 Vietnamese Nationality Law expressly aims to “restrict the situation of non-nationality” and provides a definition of a “stateless person” as “a person who has neither

²⁷⁶ UN Status of Treaties website at <http://treaties.un.org> , accessed on 4 June 2011.

²⁷⁷ See full text of 1954 Nationality Law, Article 25 (Perte de la nationalité cambodgienne) at Annex.

²⁷⁸ See full text of 1954 Nationality Law, Article 24*bis* at Annex.

²⁷⁹ UN Status of Treaties website at <http://treaties.un.org> , accessed on 4 June 2011.

Vietnamese nationality nor foreign nationality”.²⁸⁰ This definition accords with the Convention definition. The Vietnamese law also explicitly provides for conditions, which are aimed at positively preventing statelessness (Articles 8 – 10). The 2008 Law also provides procedures that have an effect of preventing and reducing statelessness – for example, children born in Vietnam, whose parents are stateless, have Vietnamese nationality under the law, and that children who have been abandoned on Vietnamese territory, likewise, have Vietnamese nationality (Article 17 & 18). Further, Article 22 providing that stateless persons who lack identification documents but have resided in Vietnam for at least 20 years will be permitted naturalisation in Vietnam. The Vietnamese law also contains detailed provisions governing the application process and processing time limits.

It is clear that, based on the letter of the law, Vietnam’s legislation generally has stronger protections against statelessness, including clearer and more detailed provisions on the application and decision-making processes, whereas Cambodia’s law offers no protection or prevention of statelessness, and leaves open a wide scope of discretion for government decision-makers, creating a higher risk of inconsistent application of its nationality law provisions.

One good news example of the implementation of the statelessness provisions in the 2008 Vietnamese Nationality Law was when 287 out of around 2,300 former Cambodian refugees who had lived for decades as stateless people in Vietnam were granted Vietnamese nationality through assisted naturalisation procedures.²⁸¹ Under the new legal provisions, and the naturalisation facilitated procedures, stateless persons who had resided in the country for over 20 years were exempt from paying the usual application fees, did not have to produce a Vietnamese language certificate, and did not need to provide proof of having renounced their previous nationality. This process recognised that proof of having Cambodian nationality was impossible to meet for this group, specifically because any records held were lost due to events surrounding the Khmer Rouge period.²⁸² It is hoped that Cambodian authorities would likewise one day provide similar naturalisation facilitation processes for any stateless ethnic Vietnamese people residing in Cambodia.

²⁸⁰ 2008 Nationality Law (Vietnam), Article 8 provides that the law “creates conditions for children born in the Vietnamese territory to have a nationality and stateless persons permanently residing in Vietnam to acquire Vietnamese nationality”.

²⁸¹ UNHCR, ‘Good Practices: Addressing Statelessness in South East Asia’ (2010), 19. Also see: UNHCR, ‘Viet Nam ends stateless limbo for 2,300 former Cambodians’, 19 July 2010 at <http://www.unhcr.org/4c447a796.html> (accessed 6 October 2012) and Intellasia.net, ‘UN praises Vietnam for plan to give citizenship to 2357 Cambodian refugees’, 22 July 2010, at <http://www.intellasia.net/un-praises-vietnam-for-plan-to-give-citizenship-to-2357-cambodian-refugees-132684> (accessed 6 October 2012).

²⁸² UNHCR, ‘Good Practices: Addressing Statelessness in South East Asia’ (2010), 19.

PART III: THE CASE STUDY
THE VIETNAMESE MINORITY IN KAMPONG CHHNANG PROVINCE

3.1 BACKGROUND TO THE CASE STUDY RESEARCH

As stated in Part I, this report focuses on a specific sub-group of ethnic Vietnamese individuals who reside in three different communities along the Tonle Sap River and Lake in Kampong Chhnang province, Cambodia (hereinafter referred to as '**the focal group**'). These three communities comprise approximately 1,500 to 1,600 families. Work engaged in with ethnic Vietnamese persons applying to participate as Civil Parties at the ECCC (**Vietnamese civil party applicants**), has identified the single most significant problem faced by the members of this minority group as being their lack of documentation evincing Cambodian nationality²⁸³ (for details, see "Background to the Legal Report").

3.1.1 Phases of Research throughout 2008 – 2012

The analysis conducted in this report relies on three different sets of research conducted over the period from mid-2008 to 2012.

Phase I Research (September to October 2008)

In collaboration with KKKHRA, one of the authors of this report supervised the implementation of an informal survey among 150 adult persons in the provinces of Kampong Chhnang, Pursat and Kandal, using a convenient sample and thereby limiting any generalizations from the findings. The purpose of this survey was to gain an understanding of the minority group in order to effectively prepare targeted ECCC-related outreach activities. The average age of those interviewed in the three provinces was 51 years, and most respondents were aged between 40 and 70. Of these interviews, 70 were conducted in the three communities in which members of the focal group reside, and the average age within those communities was 55 years. For the purposes of this report, *only* these 70 interviews will be considered, and only insofar as they provide important quantitative information about the situation of the focal group. These interviews were conducted in the Khmer or Vietnamese language and subsequently translated into English.²⁸⁴

²⁸³ The author is the International Civil Party Lawyer representing ethnic Vietnamese victims and civil parties at the ECCC, and has represented victims and civil parties with her national counterparts from Legal Aid of Cambodia, NY Chandy (2009 – 2010) and SAM Sokong (2011 to presently, 2012).

²⁸⁴ Christoph Sperfeldt (ed) with Ang Chanrith and Mychelle Bathazard, 'Survey among the ethnic Vietnamese minority in Cambodia' (conducted by the KKKHRA), December 2009 (unpublished paper).

Phase II Research (July to August 2010)

Additional in-depth interviews were conducted in July and August 2010 with approximately 25 ethnic Vietnamese individuals in the three communities where the focal group resides. Interviewees provided additional information about their personal family history, violence suffered by the community through different Cambodian administrations, their immigration and nationality documentation (or lack thereof) and the myriad of social, economic and political problems they face. The ages of those interviewed ranged from 33 to 79. Of those 25 interviews, 16 were conducted the member of the focal group. For the purpose of this report, *only* these 16 interviews will be considered, and only insofar as they provide valuable background information about the history, living conditions and documentation status of the focal group. All interviews were conducted in Vietnamese language and were later translated into English.²⁸⁵

Phase III Research (April to December 2012)

Within the framework of the current project, in April and December 2012, the co-implementing partners undertook three field trips to Kampong Chhnang province to conduct in-depth case assessment interviews with eight ethnic Vietnamese individuals, focusing this time on their legal status in Cambodia, including their nationality claims, migration history and any available documentation on birth, residency, or legal status in both Cambodia and Vietnam (if applicable). Most interviewees were in their 60s, and the age range of interviewees was between 48 to 72 years old. These eight interviews present the core information for the legal assessment made under this report. Two additional focus group discussions were held about the forced expulsion out of Cambodia in 1975, access to documentation, and the current experiences of the group relating to their abilities to access legal, political, social and economic rights. These interviews were conducted in the Khmer or Vietnamese language. Considerable overlap exists with the interviews conducted in 2010. As a reference for the purposes of this report, these eight interviews are coded (KG1-KG8) in order to protect the identities of the interviewees. Further interviews were later held with local officials.

3.1.2 Limitations in the Research

Some limitations and challenges identified in gathering and analysing information for this report came in the way of linguistic difficulties, including problems inherent in the use of interpretation through multiple languages, as well as confusion and misconceptions amongst interviewees about legal concepts related to technical terminology describing legal documents and legal statuses.

²⁸⁵ Lyma Nguyen, Jessica Pham, and Christoph Sperfeldt, Interview with Ethnic Vietnamese Persons (names of interviewees suppressed; Kampong Chhnang Province and Pursat Province, Cambodia, 19 – 22 July 2010), Transcripts No. 1 – 25.

Some degree of inaccuracy may result from **linguistic challenges** while working in three different languages (Vietnamese, English and Khmer), including the analysis of laws in these languages, and the conduct of the interviews by different personnel across the Vietnamese, Khmer and English languages. Limitations and issues arising in the conduct of the interviews include the variations and meaning assigned to various Vietnamese words used by interviewees (“nationality”, “citizenship”, “immigration”, “Vietnamese abroad” etc), in contrast with the legal definitions for those terms, under differing nationality laws, and further, in how they are used by interviewers and interviewees. The interviewees’ confusion, (mis)understandings and misconceptions of various terms used to connote different types of legal statuses, was, in some instances, able to be identified from the responses they gave, in which they used different terms, such as “citizenship” and “temporary residence”, synonymously, as though these terms meant the same thing.²⁸⁶ Some interviewees also gave answers that appeared to be contradictory across interviews conducted in 2010 and 2012. This may again, reflect the lack of education around the issues of nationality and citizenship provided to members of this group.

One challenge in piecing together the information required to make an assessment on the nationality status of members of the focal group included the **discrepancies in information provided by interviewees**. Apart from current immigration documents and family books, information provided by participants was difficult to verify, as there were no documentary records regarding birth, or residence in Cambodia prior to the period of the Khmer Rouge regime, and any claims to these ties with Cambodia were given orally. In addition, there is an issue as to what interviewees meant when they referred to certain concepts and documents. With some interviewees, there was a clear lack of understanding about the documents they claimed to have, and their rights and entitlements under these documents. Readers of this report have to bear in mind these limitations of the research.

3.1.3 Historical Experience of the Focal Group

This section provides a brief and much generalised account of the **background** and history of the focal group. Whilst individual stories necessarily varied, the congruence in the stories of the majority of respondents was significant. As this project derived from earlier outreach activities with victims of the Khmer Rouge regime, it is important to note that almost all respondents of the three different research projects belong to the age group above 40 years, with an average age of 50 to 60 years. The vast majority of people living in the three communities where the focal group resides adhere to Buddhism. Most speak both the Vietnamese and Khmer languages, and only few speak Vietnamese only.

The three communities that were interviewed share a number of further similarities. The most significant similarity is that the villages are all predominantly comprised of people from the ethnic Vietnamese minority group, and few other Khmer or ethnic minority groups lived

²⁸⁶ Lyma Nguyen, Jessica Pham, and Christoph Sperfeldt, Interview with Ethnic Vietnamese Persons (names of interviewees suppressed; Kampong Chhnang Province and Pursat Province, Cambodia, 19 – 22 July 2010), Transcripts No. 10.

amongst the Vietnamese. The Cham minority occupied a separate area, and the Khmer majority, another area. Another similarities between the villages include their mode of living on floating houses (thus the villages are also known as “floating villages”). Almost one third of the respondents in the 2008 research project claimed that their occupation was ‘fishing’. As discussed further below, each of these ethnic Vietnamese villages experienced similar stories of discrimination and violence before, during, and after the Khmer Rouge period.

All respondents across the three research projects indicated that they were **born in Cambodia**, although some were not able to recount their exact date of birth. In addition, a majority of interviewees in the 2008 and 2010 research projects claimed that their parents were also born in Cambodia. Taking account of the average age of the respondents, it is inferred that these ethnic Vietnamese communities – although not necessarily of the current composition – existed at the time of the French protectorate, with many of the interviewees born on Cambodian territory, either before or shortly after the country’s independence in 1953. These statements indicate that the **focal group belongs to one of the longest-existing ethnic Vietnamese communities in Cambodia** and distinguishes the group from Vietnamese who immigrated to Cambodia at later stages in contemporary history.

Respondents recounted that during the **Sihanouk and Lon Nol regimes**, it was difficult to engage in business or to earn a proper living, because of government fees and taxes constantly imposed on them. “Whatever they wanted to accuse us of, they could do (even if it was not true),” one respondent said. Another said that if they did not have money to hand over, they would be arrested. Some respondents discussed that poverty or financial strains were worsened under the two regimes, because of requirements to obtain certain documentation, which incurred further fees. One respondent said, “If we did not have documents, then we had to run and hide because we could not do business. We ran and hid so that we did not have to have those documents – the birth certificates, the residential papers, and papers like that.”²⁸⁷

Few interviewees reported any violent or armed attacks during the Lon Nol regime, confirming presumptions in the secondary literature that it was largely ethnic Vietnamese people residing in urban areas who were targeted by violence and the exodus during that time. None of the interviewees reported to have left the country. Nevertheless, some describe measures imposed on the group such as forcible relocation of all Vietnamese people to live together in one area. One respondent recounted, “They did not arrest the Chinese people. They did not arrest the Khmer people. But when it came to the Vietnamese people, they arrested [them]. It was very miserable”. Another respondent recalled that the police took all of their possessions, gathered the Vietnamese people together and rounded them up to relocate so that they all lived together in one place, where they were not allowed to wander far or engage in any business to earn a living.

²⁸⁷ Jessica Pham, ‘The Ethnic Vietnamese Minority in Cambodia: The Fight for Citizenship’, (unpublished paper submitted as part of coursework for ‘Comparative Studies in Race and Ethnicity’, Stanford University, August 2010), 7-8.

The consensus amongst all survivors was that crimes they experienced under the **Khmer Rouge regime** were considerably worse than the situation they experienced under the Lon Nol regime, mainly because the Khmer Rouge killed many people. “Worse! ...Almost by one hundred times,” one survivor commented. At around the time of the fall of Phnom Penh in April 1975, most participants interviewed recounted that they were first forcibly relocated to areas within their province, to a temporary relocation site.²⁸⁸ There, they endured forced labor and starvation, having endured extreme working days on agricultural projects, with meager porridge meals. Most reported acts of killing, having directly witnessed family members being killed, and other acts of violence at this temporary relocation site.²⁸⁹

Following several months of being subjected to starvation, forced labor, enslavement, ill-treatment and executions, **all members of the focal group were deported en masse**, down the Tonle Sap River, through several fleets, **to Vietnam**. According to most interviews, the deportations occurred between July and September 1975. The interviewees reported that they had to leave behind all of their belongings, and most victims lost important identification documents during the forced deportations. The boats they travelled on were in poor condition and hygiene and the Vietnamese subjected to the forced deportations were treated badly. A few Khmer people accompanied their Vietnamese spouses out of Cambodia because they did not want to separate. However, once at the Vietnamese border, Vietnam did not always accept the Khmer people, some of whom were forced to turn back on the boats back to Cambodia.²⁹⁰ None of the interviewees could remember anyone who stayed behind being able to survive the regime.

Most of those interviewed were first brought to Vietnamese provinces near Cambodia’s border where they stayed until it was safe to return to Cambodia in the early 1980s. The victims looked back positively upon their **time in Vietnam**, due to the fact that the Vietnamese government provided them basic necessities they required to survive. It appears that these Vietnamese survivors did not live in traditional refugee camps, but resided in groups in local communities where they could farm or engage in work. Even though the conditions of life in Vietnam were decent, all survivors returned to Cambodia for the same reason: family and ancestral ties. One survivor said, “...I loved my ancestors who lived here [in Cambodia]. I returned here [for my] grandparents’ graves.” Another agreed, “My grandparents died here... and so I missed [them] and [returned to] their burial sites.” Another reason cited as to why the ethnic Vietnamese returned to Cambodia was their livelihood. One survivor commented, “I was used to living here [Cambodia]. Onshore [in Vietnam], what was there to eat? I lived by the water [in Cambodia], with the fish... I had my profession and skills here. I live comfortably because I know how to live here.”²⁹¹

²⁸⁸ See also facts about the forced deportation from Civil Party Co-Lawyers, ‘Civil Parties’ Request for Supplementary Investigations Regarding Genocide of the Khmer Krom and the Vietnamese’, 3 December 2009 (Document D250/3). Public version available at: http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D250_3_EN.PDF

²⁸⁹ Annuska Derks confirms these relocations through her own research. See Annuska Derks, ‘Diversity in Ethnicity: A Picture of the Vietnamese in Cambodia’, in: Center for Advanced Studies, *Ethnic Groups in Cambodia* (2009), 535-558.

²⁹⁰ Jessica Pham (2010), 8-9.

²⁹¹ Jessica Pham (2010), 9-10.

Most of these survivors reported about their **return to Cambodia** between 1980 and 1983. Some interviewees recounted that they could not return to the original location of their villages, as other people had since occupied the area. Thus, generally, the returnees re-established their ‘floating’ communities at around the same location or in close proximity to their previous location, along the Tonle Sap River and Lake. In *After the Khmer Rouge*, Evan Gottesman wrote about the reemergence of these communities:

“Prior to 1975, tens of thousands of Vietnamese had lived on Cambodia’s riverbanks and lakeshores, their lives organised around traditional fishing practices. Gathered together along waterways, on the shores of the Tonle Sap, or in floating villages of houseboats connected by plank walkways, they proved easy targets for the purges of the Lon Nol and Khmer Rouge regimes. According to Vietnamese advisors, all but 20 percent of the ethnic Vietnamese fishermen died during the 1970s; almost all the rest fled to Vietnam. The reemergence of Vietnamese fishing villages – now called Fishing Solidarity Groups – was therefore presented to the Cambodians as a partial correction of earlier brutality.”²⁹²

Most interviewees reported about a rapid deterioration of the security situation in their communities following the withdrawal of the Vietnamese military from Cambodia and the arrival of the **UNTAC** mission, particularly around the time of the first UNTAC-organised general elections. Some interviewees described how the Khmer Rouge continued to terrorize their village by coming into their homes on the river and shooting at the people. One survivor recounted, “They came to shoot. They randomly shot into the neighborhood. [Many people] were injured. (They) died. Many people died in their homes.” During this time, some ethnic Vietnamese ran away, while a few went temporarily back to Vietnam for a second time.²⁹³ Many of these stories correspond with the accounts of these attacks as documented by the UNTAC Human Rights Component. Sporadic violent attacks on these communities, allegedly conducted by the Khmer Rouge, continued until 1997, when one of the respondents lost her daughter through an armed attack by the Khmer Rouge.

Many interviewees recalled the UNTAC times with anger and disappointment, because despite this being a significant time in which they were supposed to be able to participate in a democratic process, they were, ultimately, not only prohibited from voting on a perception of being “foreign nationals”, but their communities were subjected to violence including arbitrary killings. None of the respondents was registered for the 1993 UNTAC-organised general elections. When asked why not, they either said that they were not allowed to vote; were too scared to vote; or simply did not know what was going on. Some described the violence that continued during this time, which caused them to worry more about their survival than about voting.²⁹⁴ It appears from these accounts that no effort was made during the UNTAC period, to assess whether or not the ethnic Vietnamese of these communities were eligible to vote in accordance with Cambodia’s 1992 *Electoral Law*.

²⁹² Evan Gottesman, *After the Khmer Rouge: Inside the Politics of National Building* (2003), 155.

²⁹³ Jessica Pham (2010), 10-11.

²⁹⁴ Jessica Pham (2010), 11.

3.1.4 Respondents' View of their Status in Cambodia

Despite the fact that almost all interviewees in the focal group were born in Cambodia and most indicated that they speak the Khmer language, none were in possession of any proof of Cambodian citizenship. In the **2008 research project**, all of the 70 respondents from Kampong Chhnang province indicated that they lacked Cambodian nationality and relevant documentation. It should be noted that the data formed from interviews in Kampong Chhnang province differed from data gathered in Pursat province and Kandal province, where a larger number of ethnic Vietnamese people appeared to have Cambodian ID cards. Interestingly, on the currently available information, it appears that these differences bear no relation to whether the ethnic Vietnamese respondents were born in Cambodia or speak the Khmer language. Thus, alternative explanations may relate to attitudes of provincial authorities in issuing Cambodian citizenship documentation to minority groups and/or the economic situation and living conditions in the floating villages where respondents reside.²⁹⁵

These findings were re-confirmed through the **2010 research project**. None of the respondents in the 2010 interviews were able to show any documents relating to their nationality status. All respondents had lived in Cambodia since they were born (apart from the period in which they were forcibly deported to Vietnam between 1975 and 1980-83, when they returned), however, none have Cambodian citizenship documents. Similarly, none of the respondents were able to show any Vietnamese nationality documents. Most interviewees indicated that they only held temporary resident papers in Cambodia and documents depicting them as foreign nationals or “Vietnamese abroad”. However, many were not certain about what documents they held at various times in the past and present, and what rights or entitlements the documents give rise to. Many interviewees used the terms “immigration status” and “nationality status” interchangeably, demonstrating a lack of understanding about the differences between the two.²⁹⁶

In terms of civic life, interviewees recounted the denial of full citizenship rights to ethnic Vietnamese living in Cambodia during the Sihanouk and Lon Nol period,²⁹⁷ although a few respondents claimed to have possessed citizenship during those times. One survivor used the terms “citizenship” and “temporary residence” synonymously, saying that, during the Sihanouk regime, “I did have citizenship ... I had (temporary) residents documents ...”²⁹⁸ Such statements among the interviewees demonstrate and confirm that their general understanding of the different statuses – and the different terms used to refer to various statuses – is often confused. Nevertheless, documentation such as birth certificates, residential documents and identification papers appear to have been well policed, with authorities often forcing villagers to pay large fees for these. As one interviewee remembered:

²⁹⁵ Christoph Sperfeldt (ed) with Ang Chanrith and Mychelle Balthazard (2009).

²⁹⁶ Lyma Nguyen, Jessica Pham, and Christoph Sperfeldt (2010), Transcripts No. 1 – 25.

²⁹⁷ Under Sihanouk, specific measures were introduced to deny full citizenship rights to Vietnamese living in Cambodia. Chou Meng Tarr (1992), 34.

²⁹⁸ Lyma Nguyen, Jessica Pham, and Christoph Sperfeldt (2010), Transcript No. 10.

“They made us have documents. If we did not have documents, then we had to run and hide because we could not do business. We ran and hid so that we did not have to have those documents—the birth certificates, the residential papers, and papers like that. But we could run and hide. If we did not have money to pay for the documents, then we could not do business comfortably. So after Lon Nol until now, they (still) make us pay like that.”²⁹⁹

Almost all interviewees claimed to have lost vital documents that they obtained under the Sihanouk and Lon Nol regimes when the Khmer Rouge forced them to abandon their homes and possessions. One survivor testified about his immigration status:

“I had it. I know that I had it. My grandmother and grandfather (on mother’s side) had it. My mother and father had it. I had it too, but at that time, I was too young and so I did not have (my) birth certificate back then. But now... they do not have those documents anymore. During the time of the genocide, they destroyed it all. They were from a long time ago. The documents from the Sihanouk and Lon Nol times, they don’t have them anymore.”³⁰⁰

Another survivor expanded on the previous survivor’s testimony, saying:

Respondent (R): Yes, I had them all [the documents]. (But) when (Pol) Pot relocated us, I left them all behind. I filled out and had all of the papers, but when he made us leave our homes, then I left with only myself and could not take anything with me. There was a time when I went to Vietnam for a time and then returned here, because down there, there were no fish to catch, I did not have family, so I came back here in 1980. I had all (of the documents after 1980).

Interviewer (I): So you had all of the documents before the Khmer Rouge regime?

R: Before the Khmer Rouge, I had all of the proper documents. The Khmer Rouge came and told us to leave our homes. They said (that we would) escape as refugees and later everyone would return with their families, (so) do not take anything. “Run, below (near) the river,” they said, “the plane that dropped bombs had come already.” So I just had enough time to jump into a small boat and run away, and could not take anything (with me).

I: So during the Khmer Rouge regime, you lost all of your documents?

R: I lost them all. We jumped and ran alone and no one could take anything (with them).

This **loss of previous documentation represents a key challenge for these individuals to formally prove their presence in the country prior to 1975.**³⁰¹ Upon return to Cambodia during the 1980s most of the respondents were treated as ‘foreign nationals’ by the authorities and only given immigration documents. This precarious situation continues to this day.

²⁹⁹ Lyma Nguyen, Jessica Pham, and Christoph Sperfeldt (2010), Transcript No. 2.

³⁰⁰ Lyma Nguyen, Jessica Pham, and Christoph Sperfeldt (2010), Transcript No. 3.

³⁰¹ Jessica Pham (2010), 12-13; Lyma Nguyen (2011), ‘The Civil Claim for Cambodian Nationality by Statelessness Vietnamese at the Extraordinary Chambers in the Courts of Cambodia’, Graduate Research Unit, Masters in International Law, Australian National University (not published).

3.1.5 Contemporary Issues and Living Conditions

Without citizenship and other documentation, the ethnic Vietnamese of the focal group do not have access to many basic economic, political, and social rights. Whereas phase II of the research focused on the historical background and structural violence experienced by the focal group before and after the Khmer Rouge regime, phase III of the research focused on what rights the respondents could not and/or cannot access, as a result of a lack of documentation, rather than due to any discrimination against the group on the basis of ethnicity. As part of phase III of the research, the purpose of the focus group discussions conducted in April 2012 was to compile an understanding of how the rights of this community are being protected by providing an opportunity for participants to discuss issues in an open space, separately from the more rigid case-by-case interviews. Three separate sessions were held, each with approximately seven individuals from the affected community.

Participants of the Phase II Research complained that, without Cambodian national ID cards, they faced an array of legal, political, economic and social disadvantages, including difficulty accessing employment, education, health care, legal protection, registration of births and marriages, an inability to travel, own property or open a bank account, and higher taxes for fishing.³⁰² This summary will present some of the most pressing issues:

Inability to Access Economic Rights

Employment

The minority population resort to fishing to earn a livelihood as their lack of Cambodian nationality renders formal employment in the bigger cities almost impossible. However, even this occupation cannot be performed in peace. One of the most recurrent themes during the interviews was the higher taxes for fishing, that respondents are subjected to in Cambodia, whereby corrupt officials can force the payment of arbitrary fees with threats of arrest, fines and forfeiture of their fishing equipment. Should they be unable to pay however, there is little protection under the law for these people, as non-citizens. According to one interviewee, during phase II of the research:

“They make us pay different taxes. They are heavier. For example, if they drink (and are drunk), they can go into our houses and if they want to yell at us, they can just yell at us. We are stuck with that and just have to put up with it so that they go away.”³⁰³

Another respondent recounted a similar scenario:

Respondent (R): They make money. And the fisherman, they arrest and ask (us) for money. (The people who) throw the net, they also ask (them) for money.

Interviewer (I): Only the Vietnamese people?

³⁰² See also Stefan Ehrentraut (2011), 13.

³⁰³ Ethnic Vietnamese research. Transcript #3. 2010.

R: Yes!

I: What about the Khmer?

R: No, and they don't arrest the Chams either.

I: Then there are police who go on the boat to ask for money?

R: They find them. They find the people who fish. They go and arrest all of them. But they don't arrest just those people... all together, they arrest all of us. It did not matter what profession we had. They arrested us all.

I: And if you did not have money, then they just put you into prison?

R: They do not put us into prison, but they take your things. They take (your) fishing rod, everything.

Participants in phase III of the research believed that government jobs are impossible to access without Cambodian nationality documentation. They also highlighted that formal private jobs are very difficult to get. It is not clear whether they would obtain a formal legal contract if they were to obtain a job in the private sector. The vast majority of the participants work in the non-formal sector, mostly fishing, but sometimes also as day laborers. The process of getting a license to fish legally is unclear, although most interviewees held documents from various police administrations. For men who engage in fishing without the fishing license, there is a threat of regular short periods of detention, as the local authorities know that they can get payments by detaining these Vietnamese fishermen.

Property Ownership

In phase II of the research, interviewees claimed that ethnic Vietnamese persons who are considered non-citizens do not have a right to own land and property, and therefore live on "floating houses" on the Tonle Sap River because of a gap in the legal system which excludes rivers or water sources from the definition of "land". However, when the water levels rise with the monsoons and the shoreline diminishes, they are sometimes accused by their Cambodian neighbors of encroaching on "their land".³⁰⁴

In phase III of the research, the focus groups again claimed that the ethnic Vietnamese Kampong Chhnang community is prevented from buying land because they do not have nationality documentation. Many expressed that the inability to obtain land or property is one of the most detrimental problems for them, as this means they are unable to provide good quality accommodation for their families or access benefits such as a larger employment market. The Vietnamese therefore necessarily resort to residing on the floating houses, but it was not clear from the groups if this accommodation needed to be officially registered. They are able to buy movable property such as motorbikes, and register them in their names, but they cannot obtain a vehicle drivers license.

³⁰⁴ Jessica Pham (2010), 11.

Bank Access

The inability of individuals to open a bank account or borrow money from financial institutions creates a serious problem for social and infrastructural development in Vietnamese communities. Without a bank account, the ability to earn and save money can become inherently problematic. Looting and burglaries also render individuals at risk of being unable to save their earnings. In addition, overseas NGOs and other donors that would provide funds to assist Vietnamese villages build schools and other infrastructures are generally reluctant to transfer large sums of money to a community if there is no mechanism for banking and accountability. This presents a real obstacle to developing infrastructure and social, health and educational programs in already-impooverished communities.³⁰⁵

Inability to Access Political Rights

Access to Justice

Interviewees frequently stated that various police forces from the local and state levels enter their villages and harass the population into handing over money and other material possessions. However, lack of access to the judicial process renders the people unable to file complaints or appeal for justice in the way that ordinary Cambodian citizens would be able to. This has resulted in victims simply “put[ting] up with it so that [the police would] go away”,³⁰⁶ leaving corrupt officials able to continue to operate in this way with impunity.

Voting and Political Participation

Since the interviewees are treated as ‘foreign nationals’, they are not allowed to vote during elections. This leaves them deprived of influencing local government issues and policies. All interviewees in phase III of the research claimed that they never took part in the UNTAC 1993 elections. This appears not to have been a simple oversight – KG6 for example, was residing in a different region that was participating in the vote, but was still excluded from voting. KG3, states that in his village, there are no commune council members from among the Vietnamese, as they are not eligible for commune council elections due to the lack of citizenship documentation. None of the interviewees possessed voter IDs and they have never been allowed to participate in election voting. With regards to participatory activities and initiatives, apart from their activities at the village Pagoda and at the Vietnamese Association, there was no indication that the interviewees (as a group) were involved in any other community initiatives.

³⁰⁵ Jessica Pham (2010), 11.

³⁰⁶ Lyma Nguyen, Jessica Pham and Christoph Sperfeldt (2010), Transcript 3.

Registration of Marriages, Births and Deaths

Respondents stated that they cannot access the procedures for civil registration, including registering marriages, births and deaths or obtaining the relevant certificates. One serious consequence of being unable to register births in the communities of the focal group is that there is then no record of the fact of a child's birth in Cambodia. The problem of an inability to prove birth in Cambodia perpetuates the cycle of a lack of citizenship in new generations, because of an inability to prove birth in Cambodia and lack of identification documents from a child's early years.

Freedom of Movement

A lack of citizenship results in an inability to obtain passports, without which the ethnic Vietnamese people are hindered in their freedom of movement within the country, across borders, and overseas. During phase II of the research, interviewees recounted that at the borders, officials either exploit this situation by making them hand over money to pay their way through, or prohibit them from passing altogether. According to one interviewee who travelled to Vietnam to visit his extended family:

“The Cambodian side made money, but not the Vietnamese side. It did not cost anything. If we paid a dollar, we could go. If we did not have money, then we could beg, but that would take a longer time. If we wanted to go quickly, then we paid them a dollar. To go quickly.”³⁰⁷

Interviewees in phase III of the research claimed that they are able to travel freely around Cambodia. However, they also say that if they happen to cross a police check, although this is rarely problematic, they are sometimes made to pay a fine of approximately 5000 Riel, although it is unclear why they are made to pay this fine. As the participants are unable to obtain a passport, legal travel abroad is not possible. However many of the interviewees seem to travel from time to time to Vietnam, either through unofficial border crossings or by paying a bribe to officials at the border. Some of the travel is for medical treatment, which some interviewees claim they can only access in Vietnam.

Inability to Access Social Rights

Health Services

During phase II of the research, interviewees from the focal group claimed that access to health care and primary schools is a huge problem, as there are virtually no doctors or medical services on the floating villages – apart from a few irregular vaccination programs – and the government appears not to provide any such public services to these ‘non-citizens’.³⁰⁸ The respondents also had difficulties accessing state medical care in larger towns or cities. Many stated that this was too expensive, and two reported that they believed they have to pay more than the Cambodians to access this service.

³⁰⁷ Lyma Nguyen, Jessica Pham and Christoph Sperfeldt (2010), Transcript No. 3.

³⁰⁸ Lyma Nguyen, Jessica Pham, and Christoph Sperfeldt (2010), Transcript No. 3, 12.

Educational Services

Likewise, interviewees from phase II of the research recounted that, until recently, Vietnamese children were not allowed to go to school.³⁰⁹ Respondents in phase III of the research claimed that although few from amongst them attended school, access to lessons in Khmer and Chinese were available to the children of ethnic Vietnamese persons during the 1960s. Some also attended non-official lessons in Vietnamese. Currently they believe that their children and grandchildren would be able to access all stages of education if they possess birth registration certificates. However, many of the few children with these certificates had not tried to access education, due to the high costs and the lack of schools nearby. As KG3 stated, there are three villages without a public school. Further, it seems that children without these certificates would not be able to access education. KG1 stated that all her eight grandchildren had not gone to school because they did not have birth registration certificates.

³⁰⁹ Lyma Nguyen, Jessica Pham, and Christoph Sperfeldt (2010), Transcript No. 15.

3.2 ASSESSMENT OF LEGAL STATUS OF THE GROUP

The objective of the Phase III Research in 2012, in which individual case assessments were documented and focus group discussions were held, was to conduct a case-by-case analysis in order to understand the issues regarding access to citizenship faced by the focal group, and to further understand the resulting protection situation faced by this community.

In line with the primary objective of this report, this section will:

- 1) Evaluate the situation of the interviewees participating in the Phase III Research in an attempt to **assess their nationality status** and establish any links they may have to claim citizenship under the nationality laws of either Cambodia or Vietnam
- 2) Examine, what **documentation** is available among the focal group to establish or prove their status under these laws
- 3) Examine, to the extent possible, and in accordance with the responses from interviewees, whether the two respective States consider these individuals and the group as a whole, to be nationals under the **operation of their laws**, including in their administrative practices, and
- 4) Finally, in cases where no nationality documents exist and no status can be established, this report ends with some preliminary observations as to whether members of the focal group could be characterised as **stateless**.

3.2.1 Overview of Individual Interviewees

The ages of those interviewed ranged from 48 to 72 – most were in their 60s – and all testified orally that they had been residing for many decades in Cambodia. All persons interviewed were born in the country, and only one person was unsure as to where their parents were born. Three stated that their grandparents were born in Cambodia, which in a survey of eight people is a significant proportion.

The following summary establishes whether the respective individuals fulfill the legal requirements to access nationality in any of the four potential ways: *Jus Sanguinis* and *Jus Soli* access, under either or both of the Cambodian or the Vietnamese nationality laws, where the laws are available. This summary of the individual assessments includes an overview of the individuals' and their families' documentation, and attempts to verify whether each interviewee in the affected community fulfills the legal criteria to access citizenship.

Name	Access to Cambodian Nationality <i>Jus Sanguinis</i>	Access to Cambodian Nationality <i>Jus Soli</i>	Access to Vietnamese Nationality <i>Jus Sanguinis</i>	Access to Vietnamese Nationality <i>Jus Soli</i>	Vietnam: Documentation held / Comments on Status	Cambodia: Documentation held / Comments on Status
KG1 (63) 1934 Laws apply	Parents born in Cambodia and have lived there all their lives.	Born in Cambodia with resident parents.	Grandparents came from Vietnam. Believes her parents had Vietnamese documents, but unclear which.	1975 – 1982 forcibly deported to Vietnam by KR. Believes he was identified as Cambodian refugee by Vietnamese authorities.	Believes he was issued a temporary residency book while in Vietnam.	<ul style="list-style-type: none"> Issued a “blue ID document” upon return to Cambodia; has been renewing it every five years at a cost (document does not state her nationality) Immigration Card (2002)
KG2 (68) (born 1954) 1934 Laws apply	Parents born in Cambodia. (Father’s parents from China; fled to Cambodia during Mao regime). Mother’s family (ethnic Vietnamese) born in Cambodia.	Born in Cambodia. Obtained Cambodian ID card in 1957/58, when he was registered at a Khmer school.	Parents had Vietnamese documents (Lan Thai).	1975-1981 forcibly deported to Vietnam.	Believes he had received Vietnamese ID documents during the time in Vietnam (not clear which)	<ul style="list-style-type: none"> ID card issued by PRK authorities around 1987/1988 Various other docs from PRK period Residence card (1999) Three of his grandchildren possess birth certificates issued by Cambodian authorities; each states they are Vietnamese
KG3 (48) 1954 Laws apply	Mother is half Khmer/half Chinese. Mother appears to have had Khmer nationality.	Born in Cambodia. (Parents and grandparents born in Cambodia). Lived mostly in Cambodia.	Father is Vietnamese, although it is believed he had no official documents.	1975-1982 forcibly deported to Vietnam.	Believes he was identified as a Cambodian refugee by Vietnamese authorities during the deportation.	<ul style="list-style-type: none"> (Incorrectly) believed that laws at the time provided that nationality could only be acquired from father Pre-KR, had family book, other cards Immigration card (2002), Residence Card (1999)
KG4 (66) 1934 Laws apply		Born in Cambodia. Lived mostly in Cambodia.	Believes parents were Vietnamese (no document proof). Wife Vietnamese but unclear whether Vietnamese citizen.	1975-1988 forcibly deported to Vietnam.	Believes he was treated as a foreigner in Vietnam and could not exercise any rights in Vietnam.	<ul style="list-style-type: none"> Unclear what documents held pre-KR regime. Currently has “Receipt of Foreigner Documentation” (receipt) and residence card (1999)
KG5 (80)	Parents and grandparents born in	Born in Cambodia and lived. Family lived in	Believes parents had Vietnamese nationality	1975 – 1982 forcibly deported to Vietnam.	Believes he was treated as a foreigner	<ul style="list-style-type: none"> Says was given no rights by the Vietnamese when he was there

Name	Access to Cambodian Nationality <i>Jus Sanguinis</i>	Access to Cambodian Nationality <i>Jus Soli</i>	Access to Vietnamese Nationality <i>Jus Sanguinis</i>	Access to Vietnamese Nationality <i>Jus Soli</i>	Cambodia: Documentation held / Comments on Status
<i>Unknown what law applies pre-French Protectorate Laws of 1934</i>	Cambodia	Cambodia at all times except during period of forcible deportation under KR.	and wife has Vietnamese nationality – but it is unclear if that was official or what documentation supports this assertion.		<ul style="list-style-type: none"> Had a “Lan Tai” (fingerprint) immigration book before KR regime Claims he had Cambodian citizenship during Sihanouk era, but then says he had “temporary resident” docs Immigration Card (2002) & Family Book.
KG6 (54) <i>1954 Laws apply</i>	Believes parents had neither nationality	Parents and grandparents born in Cambodia. Lived in Cambodia all times, except during deportation by KR.	Believes parents had neither nationality. Knew parents had Vietnamese documents but not sure what they were.	1975-1980 forcibly deported to Vietnam.	<ul style="list-style-type: none"> Pre-KR regime, had migrant status ID Believed he had a birth certificate pre-KR period and a temporary residency status Currently possesses an immigration card (2002) and Family Book.
KG7 (72) <i>1934 Laws apply</i>	Parents born in Cambodia but did not have any documentation	Born in Cambodia, parents born in Cambodia. Believes he had ID card pre-KR (because enrolled in Khmer school).	Grandparents were born in Vietnam. His wife was Vietnamese. Believes his parents were both Vietnamese.	1975-1980 forcibly deported to Vietnam.	<ul style="list-style-type: none"> Currently possesses a Family Book and Immigration Card. Temporary documents from the time of the State of Cambodia
KG8 (60) <i>1934 Laws apply</i>	it is unclear what nationality father or mother had.	Born in Cambodia. Lived in Cambodia at all times, apart from period of deportation by KR.	Unclear what nationality father or mother had.	Was resident in Vietnam during period of forcible deportation by KR.	<ul style="list-style-type: none"> Currently holds an immigration card Has “temporary resident” documentation Person’s son, by attaching himself to a Khmer Family Book, adopting “Khmer identity” and paying a fee, was able to obtain Cambodian citizenship.

3.2.2 Documentation Held by Members of the Focal Group

In order to establish a person's nationality status, it is essential to analyse the documentation that represents the status. However, because there were several significant problems concerning documentation, hindering both the verification of information given, as well as a proper understanding of the official status of a person across different time periods and different political regimes, the task was met with challenges. The following provides a brief overview of the most pertinent **problems and limitations**:

- (i) It is evident from the interviews that documentation was not seen to be important in the periods prior to 1975, both concerning the interviewees' own situation as well as the era of their parents and grandparents. This finding appears to correspond with the general state of documentation among people living in rural areas under the Sihanouk regime and the Khmer Republic. Even where interviewees declared that they or the previous generation did have documentation, it was unclear what documentation they specifically held.
- (ii) Most if not all documentation possessed was either destroyed or lost during the community's forced deportation to Vietnam under the early months of the Khmer Rouge regime. Similarly to the deportations occurring in urban and other areas in Cambodia, the interviewees were told by the Khmer Rouge to immediately evacuate their homes because of the threat of 'American aerial attacks' and to move to a temporary relocation site. Everyone was instructed to leave their belongings, including documentation, behind. Most interviewees never saw their homes and possessions again.
- (iii) There is an obvious lack of awareness among the interviewees of what documentation they possessed previously, what they currently possess and which documentation they require to be able to access certain rights. This is most obviously indicated by the interviewees' frequent use of different words to describe documentation and statuses interchangeably.

While considering these limitations, the following **preliminary observations** can be drawn in relation to the interviewees' status of documentation:

Firstly, all interviewees stated that they had some sort of documentation during the period **before the Khmer Rouge regime in 1975**. Three of the eight interviewees claimed to have possessed Cambodian citizenship documents prior to their forced relocation in 1975, although none were able to show any documentary proof of this. However, KG2 was able to describe in detail the process of acquisition, based on the fact that he was registered in a Khmer school. The others were not able to substantiate their claims. In any case, the loss of pre-1975 documentation presents a key challenge for these individuals when required to formally prove their presence in the country prior to 1975.

Of all persons interviewed, none claimed to have Vietnamese nationality, except one member, who had, in an earlier interview, claimed that she did *not* have Vietnamese nationality. When she later said that she had Vietnamese nationality, she could not provide

any documentation to substantiate that claim. A conclusion about the nationality status of the individuals within the focal group under Vietnamese nationality laws applicable at the time they were born could not be made, as the applicable nationality law could not be located or accessed.

Secondly, it is unclear what status the interviewees held **in Vietnam** during the 4-7 years they spent in that country, following their forced transfer out of Cambodia. Despite all respondents residing in Vietnam for similar time periods, there were significant discrepancies in responses as to what documentation they had acquired during their exile in Vietnam. For example, KG3 claims he was given a refugee card by the Vietnamese authorities when he was there, whereas KG6 believed he was given a Vietnamese ID card. Again, the limited knowledge among the focal group about these types of documents limits any inferences about their status that could be drawn from these statements. However, it appears that most of the interviewees were treated as refugees during their time in Vietnam as most stated that they lived in collective groups in communities on the Vietnam/Cambodia border provinces in Vietnam.

Thirdly, upon **return to Cambodia during the early 1980s**, most interviewees were only given immigration documents. Three of the participants mention a 'blue card' they had received upon their return from Vietnam. They said they were given this with a five-year expiry date, on the understanding that they would require this card to obtain Cambodian ID in the future. Since then, they have been regularly renewing several versions of documents, none of which allude to any nationality. It appears from these statements that no efforts were made by the PRK authorities to distinguish 'returnees' from newly arriving immigrants. One person, KG2, was able to show a Cambodian ID card issued in 1987 by the PRK authorities. This card was verified as an original by the interviewers. Claims from other people in village to have possessed similar cards could not be verified, except in one case where an individual also possessed a Cambodian ID card from the same time period.

Fourthly, **currently**, there are three documents that most interviewees stated they had: the family book, the immigration card, and the residence card. Most family books issued in the 1980s were replaced by newer versions of the family book under the administration of the Kingdom of Cambodia. When the documents were renewed, older versions had to be returned to the authorities, and since it is unclear whether local authorities archive these documents, it is likely that there is little remaining proof of the earlier documentation. Because current versions of the family book do not give indications the presence of family members of earlier generations in Cambodia, it is difficult to clarify from this where the earlier generations were born.

A number of people were able to show the residence card, entitled 'Carnet de Residence', often issued at the end of the 1990s (mostly dated 1999). Most interviewees also possess immigration cards, which were all issued around 2002. Interestingly, both documents appear to have been issued in a systematic manner covering entire communities. None of these documents appear to indicate any expiration dates. However, it is not clear whether the residence cards represent "permanent residency permits", as provided for in Proclamation

No. 555 (see Part II of this Report). No renewal of these residence cards has occurred since they were first issued at the end of the 1990s. In addition, a number of interviewees possessed various documents from national and local police agencies, which interviewees claimed they had to renew at regular intervals. These patterns seem to indicate that although the Cambodian immigration and nationality framework was put into place in 1994/1996, the actual documents needed to comply with this framework were only available or accessible 6-8 years afterwards.

Fifthly, the focal group, as a whole, nowadays, has no effective access to **civil registration**, particularly to birth registration. Access to marriage and death registration and certificates is also lacking. Interviewees cited, as a key reason: (i) a lack of knowledge about these documents and the processes required to obtain them, including where/which authorities to seek them from; (ii) the applicable fees (formal or informal), and (iii) the attitudes of local authorities, who in a number of cases refused to issue these certificates. Thus, it is clear that the responses given depend on the respondent's awareness of these procedures and whether they are willing, or able, to pay the charges – KG7 for example, stated that neither her children nor grandchildren have birth registration certificates as they do not know how to obtain the documents and it would be too expensive. The focus groups had estimated that 90 percent of the villages do not have birth certificates as they are too expensive, and the villagers cannot afford them. Many respondents simply did not know the process for acquisition of documents.

Sixth, an issue that was repeatedly stressed through all the interviews is that the group's lack of access to documents and rights derives from the **high costs involved in obtaining the documentation**. Most respondents believe they incur higher costs than what persons with national ID cards or mainstream Cambodians would have to pay. In addition, the authorities' procedures and decisions in administration related to documentation are arbitrary. The interviewees themselves were often unaware of possible mechanisms they could take in order to obtain certain documents. For both of the above reasons, there is also confusion as to what rights are assigned to the documents they do currently possess.

Overall, what these documents do establish is that each of the interviewees, and the focal group communities as a whole, do possess some legal and documentary verification of their presence in Cambodia, at least from the early 1980s onwards. This is important for three main reasons:

- 1) It facilitates the establishment of evidence needed to distinguish between the newly arrived Vietnamese immigrants and the long-term residents who have been present in Cambodia for generations (or are able, at least, to prove this following their return to Cambodia during the early 1980s).
- 2) It strengthens the potential claim for Cambodian nationality of children born among the focal group through Article 4(2)(a) of the current 1996 *Law on Nationality*.
- 3) The multitude of documents demonstrates that the interviewees have not been residing in the country illegally. This avoids any perception of these persons as irregular migrants and prevents them from being subjected to detention.

3.2.3 Legal Status under Cambodian Nationality Law

Taking into account the age of the interviewees, it is the 1934 Nationality Law³¹⁰ and the 1954 Law on Nationality³¹¹ that were in force when most interviewees of the focal group were born. In accordance with the periods of time during which these laws were applicable and in effect, the interviewees fall into two separate groups:

- (1) For those born between 1934 and before 13 November 1954, the nationality law established by Royal Ordinance No. 66 of 5 June 1934 (1934 Nationality Law) applies (hereinafter referred to as “**first group**”).
- (2) For those born between 13 November 1954 and before 9 October 1996 when the 1996 law was promulgated, the 1954 laws apply (hereinafter referred to as “**second group**”).

Even though Article 23 of the current 1996 *Law on Nationality* provides that any provision contrary to that law shall be repealed, **immigration and nationality laws under earlier administrations should remain relevant to the determination of citizenship today and any acquisition or conferral of citizenship under the 1954 laws should be recognised in current assessments of an individual’s nationality status.**³¹²

Further, even if Article 23 of the 1996 law, repealing “any provisions which is contrary to this law”, is interpreted to repeal or undo the effect of an application of a previous nationality law, this should not affect the status of individuals who acquired citizenship under the *jus soli* principle enunciated under Article 22 of the 1954 Nationality Laws. Any “repeal” of previous provisions must be interpreted as affecting only procedural provisions (for example, provisions setting out the criteria for naturalisation applications) and *not* provisions conferring substantive rights to individuals. **For those who have already acquired nationality under a previous law, the important issue is one of proving the person’s previous acquisition for any current claims.**

All interviewees claim that they were born in Cambodia. A majority claim that their parents, and in some cases, their grandparents were also born in Cambodia. From among the eight interviewees, six were born prior to the 1954 Nationality Law came into effect, and two were born after the law came into force.

³¹⁰ Royal Ordinance No. 66 of 1934 (1934 Nationality Law), from revised version of the 1920 Cambodian Civil Code, available in French language at Annex.

³¹¹ Kram No. 913-NS of 30 November 1954 Regulating Nationality, as found in Marcel Clairon, *Droit Civil Khmer* (1960), at Annex.

³¹² UNHCR, “Statelessness in Cambodia” (Handout on UN Inter-Agency Project on Human Trafficking website at www.no-trafficking.org/content/pdf/statelessness_in_cambodia_unhcr.pdf , date unknown, accessed 16 April 2011).

1934 Nationality Law

From among the group of interviewees, five people (aged between 60 and 72 years) were born during the period of the 1934 French Protectorate laws (1934 - 1954), and one interviewee, aged 80 was born *before* the French Protectorate laws came into force. None of the interviewees possessed any documentation of their nationality status from these periods of time.

As mentioned in Part II, the 1934 Law does not appear to have any provision dealing with the *jus soli* principle, which would have allowed for acquisition of nationality through birth on the territory of Cambodia. That is, the mere fact that these individuals were born in Cambodia, from parents who were also born in Cambodia, would not be sufficient to acquire Cambodian nationality under the 1934 Nationality Law – *if* their parents were regarded as Vietnamese by the authorities at the time.

According to Article 22, the 1934 law is based on the *jus sanguinis* principle, which requires that, in order to have Cambodian nationality conferred, an individual must be born from a Cambodian father or mother. The word “Cambodgien” in the French-drafted law leaves open an interpretation as to whether ethnic Vietnamese descendants living in Cambodia were regarded by the authorities at the time as Vietnamese or as “Cambodian” (nationals). Even KG5, the 80 year-old interviewee, claimed that his parents and grandparents were born in Cambodia, indicating immigration some timethroughout the 19th century. There is a possibility that the French authorities considered that some of the long-term Vietnamese residents in Cambodia to have become naturalised “Cambodians”. Although these issues would need to be clarified through further research, it may, in fact, be impossible today, to reconstruct the approach taken by the colonial authorities at the time. In addition, much of the administration of the protectorate was limited to a few urban areas, and it is not clear to what extent laws and regulations were enforced in rural areas such as along the Tonle Sap River and Lake.

On the whole, it seems that **the focal group of interviewees would not have very strong claims to Cambodian nationality, if the claim were solely based on the 1934 Nationality Law**, which did not include any *jus soli* provisions. This does not consider any potential naturalisation under subsequent laws. Further, it is uncertain whether any nationality acquired under the 1934 Nationality Law would be recognised by the Cambodian authorities of today, unless an individual who obtained citizenship during that period has retained the original documentary proof.

Cambodian 1954 Law on Nationality

In the second group, two individuals, aged 48 and 54, were born after 13 November 1954 and the law applicable to them would be the 1954 Nationality Law (this is also the case with many of their children and many first-generation children of the first group, above). Both individuals claim that their parents and grandparents were born in Cambodia. As such, both fulfill the *jus soli* criteria under Article 22(2) of the 1954 Law, in that they and at least one of

their parents were born in Cambodia. Thus, they should have been *automatically* conferred Cambodian citizenship by operation of law, without needing to go through a naturalisation process.³¹³

However, none of the two individuals ever possessed a Cambodian ID card or a similar document from the Sihanouk or Lon Nol periods. Hence, for the purpose of making a claim to contemporary authorities, for **recognition of their existing Cambodian nationality**, they would need to prove that they were born in Cambodia after 13 November 1954 and that they had at least one parent who was also born in Cambodia. Given the lack of documentary proof they hold, this would be a difficult undertaking. Nevertheless, apart from the evidentiary problems, **this group appears to have the strongest claim to Cambodian nationality on the basis of *jus soli* provisions under the 1954 Nationality Law.**

Within the group of interviewees, there are **two special cases** which may relate to the legal framework in place during the Sihanouk era: (1) one person (KG3) claimed that his mother was a Khmer national, and (2) one person (KG2) claimed that he acquired a Cambodian ID card at the end of the 1950s and should therefore be regarded as a naturalised Cambodian.

Firstly, KG3 claims that his father was Vietnamese and his mother was of half of Khmer and half Chinese origin. He also claims that his mother possessed a Cambodian ID card. Nevertheless, the interviewee was convinced that he had no right to Cambodian nationality, as he believed that the laws at the time provided that nationality could only be acquired from the father. This may or may not reflect a certain prevailing attitude among the authorities at the time. In any case, KG3's belief is not based on the actual law. To the contrary, both previous nationality laws – the 1934 Nationality Law (Article 22(3)) and the 1954 Nationality Law (Article 22(1)(b)) – provide that any child born from a Cambodian mother is a Cambodian national. KG3 never brought these facts before the local authorities.

Secondly, only one of the eight persons interviewed in April 2012, KG2, is convinced that he had obtained a Cambodian ID card. Two other interviewees claimed the same, but they had difficulties substantiating their claims. KG2 instead claimed that he was able to receive a Cambodian ID card in 1957/58 because he had been registered in a Khmer school at the time. Going to a Khmer school would certainly have made it easier to establish a legal existence in Cambodia and to fulfill the language and other requirements for naturalisation under the naturalisation provisions within the 1954 Nationality Law. In future research activities, it would be worthwhile to analyse this claim, and similar claims from other individuals from the focal group communities, further. After all, the majority of interviewees claimed that they *did* possess some documentation prior to 1975, which implies they were in the country legally. However, for most people there is no or very little documentary evidence.

Overall, this group of two interviewees has a **strong claim for recognition of an existing Cambodian nationality, which they automatically acquired when they were born**, on the basis of the *jus soli* provisions under the 1954 Nationality Law. Again, the issue is one of

³¹³ Nationality Law 1954, Article 22.

evidentiary evidence, namely documentary proof that they and at least one of their parents were born in Cambodia. Given that this research examines a focal group of individuals who are now elderly, this small group is representative of many more people, in particular the first-generation children of the focal group, who would be covered under the provisions of the 1954 Nationality Law, and specifically because they were born in Cambodia between 1954 and 1975/1996.

Cambodian 1996 Law on Nationality

The 1996 Nationality Law is the law currently governing all matters relating to nationality. As mentioned before, the position taken in this report is that determinations of nationality and citizenship need to take into account laws applicable at the time of a person's birth, and other life-changing events (marriage, etc). However, the 1996 Nationality Law is of relevance to the focal group, insofar as it regulates (1) access to citizenship for any children born in the focal group communities after 1996; and (2) naturalisation provisions and processes that flow from those.

Firstly, under Article 4(2), Cambodian nationality shall be granted at birth to any child born from foreign parents, if *both* of the parents *were born and living legally* in Cambodia at the time of birth (*jus soli*). This provision is relevant to the focal group insofar as it concerns the generation of their grandchildren born after 1996 in the Kingdom of Cambodia. However, none of the children born after 1996 in the focal group communities have acquired Cambodian nationality based on these legal provisions. This matter will be discussed in more detail in section 3.3.3.

Secondly, the 1996 Nationality Law provides the current framework for acquiring Cambodian nationality by naturalisation. These provisions would form an alternative to accessing Cambodian nationality for those who do not already possess Cambodian nationality under previous nationality laws. However, it has to be made clear that decision-making in the naturalisation process is an entirely *discretionary* matter. Even if an applicant were to fulfill all the requirements stipulated under the law, it is not certain that he or she would be granted Cambodian nationality. In addition, as there is no clear procedure (as no sub-decree on naturalisation procedures has yet been passed), the application process for naturalisation remains vague and nontransparent.

3.2.4 Approach taken by Cambodian Authorities

Having described in Part II, the contents of Cambodia's laws and regulations governing nationality, including automatic mechanisms of conferring nationality (*jus soli*) under previous and current nationality laws, it is critical to assess whether the Cambodian authorities consider members of the focal group to be nationals under the operation of Cambodia's laws.

There is a considerable gap in information about the former Cambodian authorities' approach to the focal group during the time of the operation of the 1954 Nationality Law (1954 to 1996), including the years of the **Sihanouk regime (up to 1970)**. It is also difficult to infer with any accuracy, from the interviews, how the Cambodian authorities at that time viewed the ethnic Vietnamese minority, but it appears that there were mixed experiences within the focal group, with some individuals being able to join Khmer schools and possibly even obtain citizenship documents. However, accurately reconstructing the authorities' approach and practice at the relevant times, would require further research.

It is clear from the actions taken by regimes of the **Khmer Republic (1970 – 1975)** and **Democratic Kampuchea (1975 – 1979)**, including mass deportations to Vietnam and racial persecution escalating to a level of genocide, that authorities did not consider the focal group to be a part of Cambodian society.

A more nuanced picture exists from the time of the **People's Republic of Kampuchea (PRK, 1979-1989) and the State of Cambodia**, where authorities allowed the focal group to return to their previous areas of residence and provided a number of individuals with documentation, including family books, other documentation cards, and possibly even Cambodian ID cards. Upon their own return to Cambodia, all eight were initially treated as immigrants by the PRK authorities. Due to the circumstances of the forced deportation from Cambodia under the Khmer Rouge regime, little documentary evidence is left from the period before 1975. However, all interviewees were able to display multiple documents from the time of the PRK or the State of Cambodia, including 'temporary residence permits'. Most of these documents identified the holder as an "immigrant", "foreign national", "Vietnamese national", or "ethnic Vietnamese". It appears that numerous families were issued family books at the end of the 1980s. No assessments were made of the returnees from the focal group in order to examine whether or not they were Cambodian citizens. Further, any assertions on Cambodian-issued immigration or residence documents that the holder of the document is "Vietnamese" or a "Vietnamese national" cannot be taken as a fact of the individual's status, as it is *not* up to the Cambodian authorities to determine whether or not someone is a Vietnamese national (the competent authorities for such a determination would be the Vietnamese authorities). However, these statements do tend to suggest that the PRK authorities do *not* regard a majority of the ethnic Vietnamese members of the focal group to be Cambodian nationals.

Nevertheless, there seem to have been exceptions. Among the group of interviewees, KG2 was the only one who was able to show a Cambodian ID card issued by the authorities in 1987 – although he appears not to be the only one in the focal group communities with such a card. This indicates that there may have been an ambivalent or inconsistent policy under the PRK period: on the one hand, with authorities treating returnees (who may have been Cambodian citizens) as "immigrants", but on the other hand, providing a number of people from among the focal group communities with Cambodian ID cards, and in doing so, essentially acknowledging their status as Cambodian nationals. It is not clear whether the fact that Cambodian ID cards were issued to some members of the focal group *means* that the PRK authorities at the time viewed some segments of the ethnic Vietnamese minority as

Cambodian nationals. In any case, it appears that the current Cambodian authorities do not recognise this status. This attitude demonstrates how fragile a “nationality status” can be, and how little value is often attached to older documents. However, if laws were properly implemented in future, these documents from the PRK and other previous periods would act as valuable proof, either of an individual’s citizenship status, or as proof of their length of residence in Cambodia.

It is important to press that, for members of the focal group in Kampong Chhnang who re-entered into Cambodia after the collapse of the Khmer Rouge regime (post-1980), there was no functioning immigration framework at the time they re-entered the country, since proper immigration legislation was only passed post-UNTAC period. The application of Cambodia’s Immigration Law has presented a huge problem for members of this group who are unable to provide documentary proof of having been born in Cambodia, or a conferral of Cambodian citizenship under previous laws or administrations.

Contemporary authorities of the **Kingdom of Cambodia** have also taken a distant approach to the focal group. The earliest signs appeared during the 1993 UNTAC-organised elections, where none of the interviewees was registered as eligible voters, despite more favourable provisions in the 1992 Electoral Law.³¹⁴ Furthermore, it appears from the interviews that no serious efforts were undertaken at the time to assess whether or not members of the focal group would be eligible to vote, in accordance with the law. This is important as the registration for the UNTAC-sponsored elections represented the first country-wide registration process since decades. People who were later able to show UNTAC voter cards often found it easier to access other forms of documentation later on. After the passage of the 1994 Immigration Law and the 1996 Nationality Law, no efforts were made by the authorities to reassess that status of the focal group under previous and current legal frameworks. Instead, the current authorities treat all members as ‘foreign residents’ and ‘immigrants’, most visibly expressed by the fact that they were provided with immigration cards and residence permits.

The confusion and misperception of these ethnic Vietnamese as recent migrants has exacerbated unfavourable treatment of the minority group. Inconsistent interpretations by officials about the status of the focal group has meant that those who are unable to prove a conferral of Cambodian citizenship under previous administrations, or lack official documentation, risk being subjected to these regulations and requirements to pay fees by immigration and other police, or by fishing police when they are working on the river.³¹⁵

Similarly, many children born into the focal group’s communities appear to be excluded from accessing **civil registration**. Although some of this may have to do with the focal group’s lack of knowledge of their rights and any available procedures, much is also due to prevailing negative attitudes among local authorities. Inquiries with the local commune and district offices showed that enforcement officials believed that ethnic Vietnamese could not

³¹⁴ United Nations Electoral Law for Cambodia (UNTAC, 1992) (as amended up to and including 10 May 1993), accessible at http://web.cas.suffolk.edu/faculty/druke/UN/Elections/main/english/em/emx_l003.htm (accessed 16 December 2012).

³¹⁵ Lyma Nguyen, Jessica Pham, and Christoph Sperfeldt, Interview with Ethnic Vietnamese Persons (names of interviewees suppressed), 19 – 22 July 2010, Transcripts 1 – 16.

apply for birth certificates. This practice seems to be contrary to Article 27 of Sub-Decree 103 on Civil Registration, which allows newborn children, of foreign parents who have legal residence in the country, to receive a birth certificate and to further “be naturalised under the Law on Nationality”.³¹⁶

There appears to be no effective access for members of the focal group to formal administrative mechanisms and procedures that could receive their claims for nationality and/or provide them with other forms of necessary documentation, including civil registration, to assist future generations to prove their status. The interviews confirm a predominantly **informal system of acquisition of Cambodian ID cards** through informal payments to local authorities or individual enforcement officials. The payments are high, and applicants are in most cases requested to change their names to Khmer-sounding names. In addition, these processes seem to be inconsistent and mostly characterised by local officials applying their own understanding of the law – which is not always in line with the actual applicable laws and procedures.

However, the status acquired through this informal process is uncertain and open to question, as there is a possibility that any “Cambodian” status arising out of the issuance of these ID cards may revert to an “immigration” status once the ID cards officially expired, as has occurred in one case within the focal group community. One of the interviewees, KG2, claims that no ID cards have been seen to pass on successfully to other generations. In addition, many interviewees reported about the practice of local authorities of confiscating documents, often without cause or reason. Finally, it is unclear whether the local authorities are, *in fact*, the “competent authorities” to make a nationality determination under Cambodian law. No accessible guidelines or sub-decrees exist that publically prescribe the official processes for claiming nationality or making an application to naturalise.

The lack of knowledge among the focal group about their rights and any available procedures for exercising these rights, combined with the refusal of local authorities to acknowledge these rights and the high costs involved in accessing the procedures, have been cited by interviewees as the main reason they have not been able to formally bring forward their nationality claims. Informal inquiries with local authorities by village leaders or others, have been met with silence or refusal. The lack of critical public services further reinforces this isolation.

Following these explanations, the assessment must be made as to whether or not, despite the fulfillment of legislative requirements, the state regards members of the focal group as nationals in the implementation of its laws. From their treatment by Cambodia and its authorities as foreign nationals – both through adverse treatment of this group generally, and the issue of immigration documents such as Immigration Cards and Residence Permits – it can be concluded from the interviews, that **Cambodian authorities do not consider the ethnic Vietnamese in the focal group of Kampong Chhnang province as nationals under the operation of its law.**

³¹⁶ See Sub-decree 103 of 2000, Article 27. Full text at Annex.

3.2.5 Legal Status under Vietnamese Nationality Laws

The provisions of Vietnam's current Nationality Laws of 2008, and the previous laws of 1998 and 1988 have been discussed in Part II of this Report. As mentioned before, none of the interviewees in the focal group were born at the time any of these laws first came into force. The authors were unable to identify or obtain the applicable laws that were in force at the time. This is an important limitation, which can only be rectified through further legal research.

During the interviews of the various research phases, most of the interviewees claimed that they do not have documents establishing Vietnamese nationality. In addition, it is clear from across all the interviews that members of the focal group feel a greater tie and connection to Cambodia. Access to Cambodian nationality documentation (also to prove previous acquisitions of nationality) was therefore considered by the vast majority of interviewees as a preferred option. Nevertheless, in order to answer the question whether the interviewees hold any nationality at all, this section explores the status of the interviewees under Vietnamese nationality legislation.

Generally, since all members of the focal group claim they were born in Cambodia, Vietnamese nationality law provisions concerning birth in Vietnam (*jus soli* provisions) do not apply to them.³¹⁷ Theoretically, any legal claim to Vietnamese nationality would derive from *jus sanguinis* provisions under the applicable nationality laws. Under current Vietnamese nationality legislation it would be difficult to lose nationality through residence abroad, if any such nationality were to be established.

A number of the interviewed persons in the Phase III Research, believed that one or more of their parents had Vietnamese documents. However, it was unclear what these documents were, as they were unspecified. One interviewee claimed during later interviews, to have possessed a Vietnamese ID card, issued during the 1980s, while the person was in Cambodia. However, this claim could not be substantiated by any documentary proof. Further, none of the interviewees had ever tried to access Vietnamese nationality documentation during any period in time.

The only meaningful analysis on the current Vietnamese nationality laws, as applicable to the member of the focal group, are the provisions on naturalisation, as it is these provisions that contain current conditions and criteria required for a successful grant of naturalisation, as well as current procedural practices for applicants and the competent authorities. However, a process of naturalisation can only be undertaken, if the applicant resides in Vietnam. Since all members of the focal group reside in Cambodia, naturalisation under current Vietnamese legislation becomes a moot issue.

³¹⁷ The laws state that if both of a person's parents possess Vietnamese nationality (under the 1988 law) or if one parent holds Vietnamese nationality (under the 1998 or 2008 laws), they will themselves have automatic acquisition of Vietnamese nationality, regardless of where they were born. However, as discussed, for any substantive *jus soli* provisions, it is not the 1988, 1998 or 2008 laws that apply to members of the focal group.

Some of the men in the focal group's communities claim to have married wives from Vietnam. Article 19(2) of the current Vietnamese Nationality Law does allow significantly facilitated naturalisation for spouses of Vietnamese persons. However, it seems that none of these men have attempted to obtain Vietnamese citizenship under this provision. If these provisions do apply, it is unclear as to whether they would be successful, since the marriages are not usually officially registered.

Approach taken by Vietnamese Authorities

Although what the participants say does *not* suggest they are Vietnamese citizens, in addition to analysing the letter of the law, it is important to assess whether former and current Vietnamese authorities consider members of the focal group as their nationals under the operation of Vietnam's laws.

Similar to the case of Cambodian authorities, there is considerable gap in information about how the **Republic of Vietnam** (ROV, 1955 – 1975) viewed members of the focal group. Given that most parts of the ethnic Vietnamese minority originated from Southern provinces of Vietnam, it is assumed that any ties they have to Vietnam are closest to those geographical areas. It appears from the interviews that members of the focal group had limited, if any, contact with ROV authorities. No information is available about possible consular assistance under the ROV authorities to the Vietnamese minority in Cambodia. Although South Vietnam hosted large refugee populations resulting from the deportations and expulsions undertaken under the Lon Nol regime in 1970, none of the interviewees fled the country at that time. Nevertheless, it appears from secondary sources that ROV authorities kept detailed records and seem to have initially treated many or most of the ethnic Vietnamese from Cambodia as refugees.³¹⁸

After the fall of Saigon on 30 April 1975, a united state emerged as the **Socialist Republic of Vietnam** ('Vietnam', from 1976 onwards). It is this new regime that received the focal group during the second half of 1975, when the group was forcibly transferred from Cambodia to Vietnam by the Khmer Rouge regime. In the process of being deported, interviewees recount being "exchanged" between the Khmer Rouge and the Vietnamese government for rice and salt. A selection process took place for these ethnic Vietnamese at the border.³¹⁹ In light of the genocide against the ethnic Vietnamese in Cambodia, this could possibly be interpreted as a humanitarian effort by the Vietnamese authorities to accommodate victims following their deportation from Cambodia.

³¹⁸ Ramses Amer (1994), 217.

³¹⁹ Refer also to ECCC Co-Prosecutors, "Rule 66 Final Submission", 16 August 2010 (D390) (Public redacted version), paras 787 – 789.

The Case of Chrey Thom

To enhance discussion about how the Vietnamese authorities view the ethnic Vietnamese populations in Cambodia beyond the focal group, the approach taken by authorities toward other ethnic Vietnamese, many from Kampong Chhnang province, at around time of the UNTAC-organised elections in 1993, is considered.

As a result of increasing violence during UNTAC times, allegedly from Khmer Rouge attacks on floating villages and other Vietnamese communities, an estimated 20,000 ethnic Vietnamese travelled downstream the Bassac river to seek refuge in Vietnam.³²⁰ UNTAC personnel escorted these Vietnamese down the river to the border, as they could no longer guarantee the safety of these people in their home regions.³²¹

However, Vietnam refused to accept many of these people or to offer them protection. Berman (1996) reported, “the Vietnamese government considers the boat people to be Cambodian nationals, for whom the Cambodian government should be responsible”. In addition, the Vietnamese authorities may have been concerned that allowing the Vietnamese to cross the border would exacerbate unemployment and overpopulation in Vietnam.³²² As a consequence, approximately 4,000 to 5,000 ethnic Vietnamese remained trapped at the border near Chrey Thom for over two years, unable to return to their homes in Cambodia or move forward onto Vietnam.³²³

The first UN Special Representative of the Secretary-General (SRSG) for Human Rights in Cambodia described the situation at the time as follows:

“This problem [of a lack of documentation to prove legal residence and/or citizenship in Cambodia] is most vividly exemplified by at least 5,000 ethnic Vietnamese who are presently massed at Trey Thom on the Bassac river, at the Cambodia-Viet Nam border. They are being denied entry into Cambodia. [...] Most claim to be first or second-generation Cambodians who fled to Viet Nam during the pre-election violence. Virtually all have documentation which appears to have been issued either prior to 1975 or post-1979 during the SoC regime.”³²⁴

As a result of further bilateral talks in 1995/1996, the Cambodian government finally committed to solve the issue of the Vietnamese refugees in Chrey Thom and to send them back to ‘their’ provinces.³²⁵

The Chrey Thom case highlights that these displaced persons were refused diplomatic or other forms of protection by the Vietnamese authorities. From the approach taken by the Vietnamese authorities at the time, it can be inferred that the *Vietnamese authorities did not consider these ethnic Vietnamese from Cambodia, trapped at the border, to be its nationals under the operations of its laws.*

Although it is unclear what documents the interviewees held during their **exile in Vietnam**, some individuals suggested that they had received assistance from the Vietnamese

³²⁰ With the intervention of Vietnamese troops in Cambodia and the collapse of the Khmer Rouge on 6 January 1979, Khmer Rouge cadres survived in enclaves along the Thai-Cambodian border, conducting guerrilla attacks against isolated communities. Minorities Rights Group International (1995), 27 – 28.

³²¹ Jennifer Berman (1996), 819.

³²² Jennifer Berman (1996) 84 *California Law Review*, 820.

³²³ Minorities Rights Group International (1995), 26.

³²⁴ ‘Report of the Special Representative of the Secretary-General, Mr. Michael Kirby, on the situation of human rights in Cambodia, submitted in accordance with Commission resolution 1993/6’ (24 February 1994), para 212.

³²⁵ Ramses Amer (2006), 395-396.

authorities – for example, through being offered land and accommodation. KG5 differs, saying he had no rights in Vietnam and was treated like a Cambodian foreigner. However, without speaking to authorities from that time, it is difficult to establish how the authorities viewed the focal group during this period in exile. However, most interviewees indicate that they were treated as refugees. Further, respondents who claimed to have received some form of documentation either lost this documentation or believe it to be no longer valid.

There is insufficient information about the interviewees' status in Vietnam during the late 1970 and early 1980s, from which any conclusions could be drawn about their status in Vietnam at that time. Further, without seeing what documentation some of the interviewees claimed they and their family held in Vietnam, it appears, from their treatment as refugees in Vietnam during the Khmer Rouge period, that they were not considered by the Vietnamese state to be nationals under the operation of its laws.

Apart from these migration movements caused by past violence, interviews with the focal group reveal frequent border traffic between Cambodia and Vietnam. Some of the interviewees stated that they travel once or twice a year to Vietnam. Others indicate that they do not have the financial resources for any travelling. Although many of these crossings are conducted in an informal manner, it seems that the Vietnamese authorities permit these people across the border, despite the fact that they have no valid travel documents or passports.

Likewise, a number of ethnic Vietnamese families from the villages of focal group members seem to permanently **emigrate to Vietnam** every year. Interviews with the focal group reveal that the main reason for their emigration are difficult living conditions in Cambodia, including harassment by local authorities, or better economic opportunities in Vietnam. A number of elderly people without dependents also left their village to live in Vietnam. In past years, this migration seemed to have been relatively stable, averaging less than a dozen families per village, per year. However, it appears from the 2012 interviews that migration to Vietnam from these communities increased between 2009 and 2012, with a few hundred families from the three communities migrating to Vietnam, altogether.

When asked how these migrants would be received in Vietnam, some of the interviewees, such as KG3, believed that in order to obtain Vietnamese citizenship they would be required to fulfill a three to five-year residency period in Vietnam. This is a belief also highlighted by KG8, who believes that if an original returnee resides in Vietnam for three years, they may apply for a Vietnamese ID card. It is noted that, according to the naturalisation provisions in the 2008 Nationality Law, a condition for naturalisation is residence in Vietnam for 5 or more years at the time of the application. However, this condition is not required to be “fully” met, if the applicant is a spouse, natural parent or offspring of Vietnamese citizens, or have made meritorious contributions to the nation.³²⁶ If this is the case, then it would appear that **Vietnam does not currently view the focal group as its own citizens,³²⁷ but the state leaves open to the man avenue for naturalisation.**

³²⁶ 2008 Nationality Law (Vietnam), Articles 19(1)(d) and 19(2).

³²⁷ This is a view also shared by Didier Bertrand who wrote: “... les vietnamiens nés au Cambodge ne sont pas reconnus comme étant de nationalité vietnamienne, et d’ailleurs, un bon nombre ne le souhaite pas car le pays

The Role of Vietnamese Associations

During the research process, it was evident that Vietnamese Associations play an important role in the organisation of social life in communities along the Tonle Sap River and Lake, which are predominantly inhabited by ethnic Vietnamese. Most of the associations in Kampong Chhnang province were established during the 1980s. The heads of these associations have an important authority in the communities, often equal to that of the Village Chief. In some cases, the association head may fill both functions at the same time. In most cases, the association heads can speak and write both the Khmer and Vietnamese languages, and act as a focal point in communications with Khmer authorities.

These associations play an important role in the social life of the communities. The main functions include facilitating and providing humanitarian assistance to individuals in need, and in some cases organising informal education. These duties can also involve collecting funds from members, for instance for a funeral, or to support someone who is sick or requires medical assistance.³²⁸ This self-organised assistance is critical, given the absence of most public services from these Vietnamese communities.

In addition, local Cambodian authorities appear to use the Vietnamese associations to disseminate information among the communities, including seeking assistance with the administration of immigration formalities. During times when official documentation was lacking, many associations issued membership cards to its members, which individuals used to identify themselves. Most members of the focal group were in possession of such a membership card.

The Vietnamese associations are structured in a hierarchy, organising the network of associations from the village over the district to the provincial level. A number of these associations also maintain close relations with the Vietnamese Embassy in Phnom Penh, for instance for channeling assistance to villages, such as building schools. It appears from interviews with the focal group as well as with representatives from Vietnamese associations, that the Vietnamese Embassy would be supportive for these Vietnamese communities to integrate into Cambodian society. It is not known whether any diplomatic activities are undertaken to support their claim for Cambodian nationality.

de leurs ancêtres est le Cambodge.” See Bertrand, Didier, ‘Les Vietnamiens au Cambodge: Relations avec les Khmers et Elaborations d’une Identité – Étude des mode d’Interculturation’, in: Centre for Advanced Studies, *Ethnic Groups in Cambodia* (2009), 505.

³²⁸ See also Lim Sidedine and Ith Sothea, ‘Vietnamese in Contemporary Cambodia’, in: Center for Advanced Studies, *Ethnic Groups in Cambodia* (2009), 590.

PART IV: CONCLUSION AND FUTURE STEPS

This report has provided an overview of the applicable nationality laws in Cambodia and Vietnam and has assessed the status of the focal group – whose members are all long-term residents of Cambodia – under the written laws and the practical operation of these laws in both countries. More specifically, the focus was on an assessment of claims to Cambodian nationality. A **summary of this legal assessment** follows:

- (1) With regards to **documentation**, none of the interviewees was able to show identification documents establishing, or proving, any current nationality status. One person possessed a Cambodian ID card issued at the end of the 1980s, three interviewees claimed to have possessed Cambodian nationality prior to 1975, and one person claimed to possess a Vietnamese ID card issued during the 1980s. Most or all interviewees appear to have sufficient documentary proof to prove legal residence in Cambodia since the early 1980s.
- (2) Even though Cambodia's current 1996 Nationality Law governs access to Cambodian nationality, **nationality laws applicable under earlier administrations remain relevant to the determination of citizenship today.**
- (3) Applying the applicable laws to the focal group, the following conclusions can be made: (a) members of the focal group born after 13 November 1954 have strong claim for **recognition of previous acquisitions of Cambodian nationality**, which they automatically acquired when they were born, on the basis of the *jus soli* provisions under the 1954 Nationality Law. However, the **pertinent issue for these persons is one of acquiring the documentary evidence to proof that they and at least one of their parents were born in Cambodia**, and (b) members of the focal group born before 13 November 1954 have a weaker claim to Cambodian nationality, as the 1934 Nationality Law in force at the time did not provide any *jus soli* provisions. However, a reservation must be made that nothing is known about the relevant authorities' view of the group at the time.
- (4) Individual special cases within the focal group exist, including a case where one interviewee had a Khmer mother, and another case where the interviewee holds a Cambodian ID card from the 1980s. The individuals in both these cases appear to hold strong claims for **recognition of Cambodian nationality**, either because of *jus sanguinis* legal provisions or because of previous recognition of Cambodian citizenship or naturalisation.
- (5) No definitive assessment can be made about the status of the focal group members under the applicable Vietnamese nationality laws at the time, as no Vietnamese nationality legislation pre-1988 could be identified or located.
- (6) Cambodian authorities do not regard members of the focal group as Cambodian nationals under the operation of Cambodia's laws. Since their return from Vietnam during the early 1980s – after being forcibly deported from Cambodia during the

Khmer Rouge regime – members of the focal group have been treated as “immigrants” or “foreign residents” by the Cambodian authorities. A more heterogeneous picture exists from the PRK period, where a few individuals from the communities of the focal group were issued Cambodian ID cards.

- (7) From the Vietnamese authorities’ treatment of the focal group during their exile in Vietnam, and of others who migrated permanently to Vietnam in more recent times, it appears that Vietnamese authorities do *not* currently view the focal group as its own citizens, but the state leaves open an avenue for naturalisation.
- (8) The focal group has no effective access to civil registration in Cambodia, including birth registration, largely due a lack of knowledge among the focal group about their rights and the available procedures, combined with the refusal of local authorities to acknowledge these rights and the expenses involved in accessing the procedures.

From these findings emerge a mixed picture about their nationality claims and statuses. With regards to the claim to Cambodian nationality, only a certain set of members of the focal group, namely those falling within the jurisdiction of the 1954 Nationality Law, seem to have automatically acquired Cambodian nationality by virtue of birth in Cambodia. However, not all members of the focal group have equally strong claims, particularly those born before the 1954 Nationality Law came into force. Nevertheless, even for those with strong claims, making a claim for *recognition* of Cambodian nationality previously (automatically) is not an easy undertaking, particularly because of the clear evidentiary obstacles. In addition, Cambodian authorities regard all members of the focal group as “foreign residents”, and it appears that they do not even recognise as Cambodian nationals, those members of the focal group who were issued Cambodian ID cards during the 1980s. Considering that the Vietnamese authorities likewise appear not to treat the focal group as their nationals, the question has to be raised whether or not members of the focal group are to be considered **stateless**.

To conclude that a person is stateless is to draw a conclusion that the person is not considered to be a national of any state, under the operation of its laws. A determination must be made as to the person’s nationality status under all states to which they may have ties. In this report, the nationality laws of both Cambodia and Vietnam – and the operation of these laws in practice – have been considered, to the extent possible, for the focal group of ethnic Vietnamese in Cambodia.

From the findings in this assessment as summarised above, a conclusion *could* be drawn that **the focal group appears to be stateless** – *despite* the fact that many members of the group claim to possess Cambodian nationality under previous nationality laws. However, the authors agree with the comments of the UNHCR that “[A]s a general rule, possession of a nationality is preferable to recognition and protection as a stateless person”³²⁹ and care is must be taken with identifying groups or persons as being stateless. Therefore, where there are gaps in information relevant to an assessment of a person’s nationality or stateless

³²⁹ UNHCR (February 2012) ‘Guidelines on Statelessness No. 1, para 6.

status, it may be more meaningful to **identify the gaps in information**, than to make an erroneous conclusion.

Since this research was conducted with very limited resources, there were limitations in the information that could be gathered. Other limitations have been highlighted in different sections of this report. It is hoped that this report can lay a foundation for future research or activities to assist the focal group, or broader communities similarly affected, to obtain access to nationality recognition or naturalisation procedures in Cambodia, in accordance with Cambodian laws.

Before a positive, well-founded and conclusive determination can be made that the focal group are *de jure* stateless, **further research** to address the following gaps, identified throughout the report, should be made. It is recommended that future research cover:

- Identifying the *applicable Vietnamese nationality laws* in effect at the time when members of the focal group were born – in particular those from the French colonial period (as applied in Cochinchine, where most members of the focal group trace their roots) and nationality laws under the Republic of Vietnam (if any exist).
- Researching the *approach of previous authorities* to the focal group, including the colonial authorities in the Cambodian protectorate and the colony of Cochinchine, as well as the authorities under the Sihanouk regime in Cambodia (1953-1970).
- Identifying and conducting further research about the approach of the “competent authority” responsible for considering and deciding claims for recognition of nationality and/or applications for naturalisation. In Cambodia, the 1996 Nationality Law leaves the establishment of the relevant mechanisms and procedures to be defined by future sub-decrees. However, in the absence of such sub-decrees, it is difficult to identify with certainty, the “competent authority”, and the approach it takes to the focal group. Given the limited time and resources available, this report was only able to use limited inquiries with local authorities (who may or may not be the “competent authorities”). Likewise, no inquiries were able to be made with the “competent authorities” in Vietnam.

Once the “competent authorities” in Cambodia are identified – and if or when the findings made in this report about the approach taken by the Cambodian and Vietnamese authorities under their respective national laws is substantiated, a finding that the focal group are stateless, could then be confirmed.

4.1 REDUCING AND PREVENTING STATELESSNESS

This research has highlighted a significant problem for members of the focal group, which has similar impact upon a broader number of ethnic Vietnamese populations in the focal group communities and in Cambodia generally. Given that this report has found that the focal group appears to be stateless, there is an urgent need to examine options for reducing and preventing statelessness among this minority group, including facilitating access to nationality and other documentation, such as birth certificates.

All interviewees from the focal group indicated that their preferred scenario would be to access Cambodian nationality, which can be easily understood by the fact that this would best contribute to improving their current living conditions and quality of life, in allowing them access to basic human rights. In addition, interviewees described Cambodia to be their “homeland” and consider themselves as “part of the Cambodian society, and not as “immigrants”. Most importantly, they claim to feel stronger ancestral and territorial ties with Cambodia than with Vietnam. For a group that has resided in Cambodia for many generations, access to Vietnamese nationality would hold less significance than access to Cambodian nationality.

In considering this preference among the members of the focal group, this section looks at possible options to reduce the risk of statelessness among the focal group through access to Cambodian nationality and civic documents in accordance with Cambodian law. In particular, two options seem to be open to the focal group: (1) recognition of any existing Cambodian nationality obtained under previous laws (the preferred option); or failing that, (2) naturalisation under the current legislation. In addition, this section discusses how statelessness or risk of statelessness could be reduced for future generations.

4.1.1 Recognition of Existing Nationality Acquired under Past Laws

From the assessment, it was concluded that two interviewees to whom the 1954 Law applies (KG3 and KG6), hold Cambodian nationality by automatic acquisition, under the operation of the 1954 law, by virtue of their birth in Cambodia to parents who were born in Cambodia. The question is now what avenues would be available for this sub-group to have their nationality claims recognised by the Cambodian authorities.

It is unclear what **procedures** the interviewees would need to follow under Cambodian law in order to have their Cambodian nationality status recognised by the authorities and to subsequently access Cambodian identification documents. No sub-decrees exist which provide clarity about the necessary mechanisms and procedures. The 1996 Law does not contain a provision for “claiming” nationality, as did the 1954 Law, for those born prior to the enactment of the law, and who are entitled to nationality, or who now require recognition of their earlier acquisition of citizenship. Such a provision would have provided a legislative basis for members of the focal group who claim that they had possessed Cambodian nationality before being deported out of Cambodia.

The main problem for all individuals – whether they were born before or after the 1954 Law entered into force – would be to produce documentation establishing that they were born in Cambodia. Although all interviewees claim that they were born in Cambodia, no official or independent documentation can be produced to prove this fact. No universal **birth registration** existed at that time, and in the absence such official birth certification, most interviewees indicated that the only proof they would be able to provide would be a statutory declaration from Khmer neighbours who lived nearby, and witnessed their birth in Cambodia, their growing up in Cambodia and / or their residence in Cambodia during the relevant periods of time. However, it is unclear what standard of proof would be acceptable to the Cambodian authorities to be satisfied of a person’s claim to having been born in Cambodia, and/or having parents who were born in Cambodia. Therefore, it is not clear whether statutory declarations from witnesses, such as from neighbouring Khmer nationals, would suffice as adequate proof of these matters, for the Cambodian authorities.

As this is a challenge that many people from the older Khmer generation who lack documentation have also faced, it is worth exploring the avenues available for receiving official **birth attestation letters**. As mentioned before, Article 43 of Sub-Decree No. 103 on Civil Registration dealing with birth attestation letters sets out that “any Cambodian citizen [who] was born prior to the entry into force of this Sub-decree on Civil Status and has no birth certificate may apply for registration [...] with two witnesses who are of majority age and reliable person who knows about the background of the applicant... (sic).”³³⁰ As this avenue is only open to “Cambodian citizens”, these provisions appear to lead to circular requirements in that an individual needs documentary proof of birth to prove their status as a Cambodian national under the law, but also needs to be a Cambodian national to retroactively apply for birth certificates. However, since members of the focal group appear to be Cambodian nationals (through acquisition under previous laws), they should be entitled to access this process. Previous legislations also left open an avenue to seek recognition of birth in Cambodia from a local court, via an official letter from the court, following witness testimony. Overall, an official birth attestation would certainly strengthen the claim for recognition of nationality.

At the moment, it is unclear as to which authorities the interviewees would need to address their claims for recognition of nationality, in the event that they are able to receive official birth attestation. Further, proof of birth in Cambodia alone may not suffice to have previously automatic acquisition of nationality recognised by current authorities. It may be that a civil legal process needs to be invoked, for a judicial officer to make a finding and a declaration, that an individual has held, and therefore currently holds, Cambodian citizenship. Again, the process is not clear from currently available legislation and sub-decrees. In the absence of clear procedures, one way forward could be to “test” the authorities’ approach to such requests, by bringing forward well-documented claims. However, there would be no certainty that the approach one local authority takes would be consistently applied throughout Cambodia.

³³⁰ Article 43, Sub-decree 103 of 2000.

Finally, one of the interviewees (KG3) claimed that his mother was ethnically Khmer, though it is unclear from the interview whether she possesses Cambodian nationality documentation that could assist her children to obtain Cambodian nationality. This person should have a strong claim for recognition of an existing nationality in accordance with past and current nationality laws. More generally, it may be worthwhile to look more closely into the situation of **mixed marriage couples** and the approach taken by Cambodian authorities to these persons and their children. However, since none of the interviewees themselves had lived in a mixed Khmer-Vietnamese marriage, it would go beyond the scope of this paper to address the circumstances of this specific sub-group. Nevertheless, future research should shed more light on the situation of mixed marriage couples.

4.1.2 Naturalisation under Current Laws

For members of the focal group who have weaker claims for recognition of nationality (for instance because they were born before the entry into force of the 1954 Nationality Law), there may still theoretically be an opportunity to apply for naturalisation, as provided under the 1996 Nationality Law. Likewise, should the Cambodian authorities ultimately fail to recognise any Cambodian nationality previously acquired by members of the focal group and/or the group eventually confirmed to be stateless, then naturalisation could be an option of last resort.

As described in Part II, Article 8 of the 1996 Nationality Law outlines the **conditions and requirements for naturalisation**. Again, however, detailed provisions have never been laid out in a separate sub-decree, as required by the 1996 law.

Firstly, individuals viewed as ‘foreign nationals’ by the authorities could apply for naturalisation, if they meet a minimum of seven years residency in Cambodia from the date of reception of a residence card. Article 9 of the 1996 Law on Nationality further stipulates that for any foreigner who is born in Cambodia, the seven years continuous residential requirement is decreased to three years. This would apply to the focal group and most of their children, however, there is still the need for them to prove that they were born in Cambodia.

One additional and potential problem for applicants having to establish supporting documentation relates to the requirement of residence in Cambodia for three or seven years “from the date of the receipt of a residence card issued under the framework of the Law on Immigration”. The problem is that this provision fails to consider the years of residence in Cambodia of those who were *not* issued a residence card – often simply because there were or are no effective residence card schemes in place. Most members of the focal group received their residence cards (“Carnet de Residence”) only at the end of the 1990s. Nevertheless, they thereby appear to fulfill the minimum requirements to apply for naturalisation.

Secondly, the language and cultural requirements may be onerous for members of the focal group to satisfy. Whereas most of the interviewees would be in a position to prove their 'ability to speak Khmer', a majority would not be able to show that they 'know Khmer script', since most of them never enjoyed a formal primary education. It is noted that some individuals, in particular those with official functions at the village level or in the pagoda, have some knowledge in reading and writing in the Khmer and/or Vietnamese languages.

Further, it is unclear what proof would be expected from members of the focal group to demonstrate that they 'can live in harmony in Khmer society as well as can get used to good Khmer custom and tradition', apart from the fact that these communities have co-existed peacefully with their Khmer neighbours for decades and that numerous members of these villages have inter-married with Khmer persons. Arguably, any exclusion of ethnic Vietnamese applicants on cultural grounds would appear to be in contrast with the inclusion of Cambodian's Cham population, who enjoy full citizenship rights despite having their own culture, distinct from Cambodian mainstream culture.³³¹

Thirdly, it is unclear what type of documentation the focal group would need to obtain to establish 'good behaviour and moral conduct' and a 'mentality and physical attitude, which will cause neither danger nor burden to the nation'. It is assumed that any such certification would be issued by the commune chief of the Khmer commune to which the Vietnamese villagers are administratively assigned, and that a health report by a local doctor would be required.

Although none of the interviewed persons had tried to apply for naturalisation, they *do* fulfil many of the requirements for such an application. However, and as mentioned before, these procedures and mechanisms for naturalisation have not been further clarified by a more specific Sub-decree on Naturalisation, as stipulated under Article 16 of the 1996 Nationality Law. It is therefore unclear how such a process would be implemented in practice, including which administrative forms are to be completed and to which authorities a formal request for naturalisation should be submitted. Should the naturalisation avenue be chosen by an individual, it would ultimately be in the individual's interest to have this process be completed by a Royal Decree, as stipulated by law. This would formalise their new status as citizens and would reduce the danger of simply providing Cambodian ID cards, which authorities could decide not to renew when they expire, as has previously occurred with a number of reported cases in the focal group's communities.

The main difference between acquisition of Cambodian nationality through recognition avenues and acquisition through naturalisation processes, is that the former mode of conferral is *automatic* (acquisition of nationality based on *jus soli* or *jus sanguinis* provisions) and the latter is of an entirely discretionary nature (upon satisfaction of the criteria and conditions for a grant of nationality, as decided upon by government officials). Thus, a naturalisation process requires onerous standards and conditions to be met, some of which are not specific and may arbitrarily be interpreted by the "competent authorities". For

³³¹ Stefan Ehrentaut (2011), 16.

instance, members of the focal group may not meet criteria such as ‘knowledge of Khmer writing’, or may have difficulty accessing required documentation, for reason of not knowing how to access certified documentation, or not being able to afford such documentation (for instance, if a health check or access to other services is required to obtain the documentation).

Finally, it is important to underline that naturalisation is viewed to be a ‘favour of the Kingdom of Cambodia’. In a social and political context where both mainstream society and authorities alike do not necessarily regard the ethnic Vietnamese minority as being part of Cambodian society, the procedure may ultimately prove unreliable. That is, even if applicants from the focal group meet the requirements, it is not certain that they would be granted Cambodian nationality, as much lies ultimately in the discretion of the decision-maker, and historical ethnic relations in Cambodia render the ethnic Vietnamese minority as a group not looked upon in a positive light. As a result, **the authors recommend that all possible and available avenues for the recognition of Cambodian nationality acquired by ethnic Vietnamese persons, in accordance with previous Cambodian nationality laws, be exhausted before any naturalisation procedures are considered.**

4.1.3. Preventing Statelessness for Future Generations

Most interviewees highlighted that their main concerns were for the future of their children and grandchildren. Given the interviewees’ elderly age, their expectations towards the acquisition or recognition of their own Cambodian nationality are modest, and quite realistic. However, they all indicated a strong interest in improving the situation for the future generations in their communities. In this regard, two matters require further consideration: (1) **whether or not the children or grandchildren of the interviewee generation have a right to Cambodian nationality under the current laws**, and (2) how the situation in terms of documentation and civil registration could be improved so as to prevent the perpetuation of statelessness among future generations.

The interviewees themselves are of a generation where it is difficult to establish documents and historical statuses. Although it is often not possible to provide evidentiary proof of the place of birth and residency of the parents for the generation interviewed, for the younger generations, it is absolutely possible to do so, from the documentation presented in the interviews. For instance, many of the interviewees had children during the 1980s, after the end of the violent Khmer Rouge regime. These children now have their own children (grandchildren of the interviewee generation). **Article 4(2)(a) of the 1996 Cambodian Nationality Law** states that children whose ‘foreign’ parents were “born in the Kingdom of Cambodia and living legally in the Kingdom Cambodia” are to be considered Cambodian citizens. The issue then would be for the children to prove that they were born in Cambodia and that their parents were “living legally” in Cambodia.

Although it was highlighted previously that it would be difficult to provide the necessary documentary proof that the interviewees’ parents were born in Cambodia and have been

residing in the country legally, the case appears to be much stronger for the interviewees' children and grandchildren. Although no effective immigration framework existed when the interviewees re-entered into Cambodia during the early 1980s – as the new immigration legislation was only passed post-UNTAC period – most or all of the interviewees were able to produce various documents issued by PRK authorities and authorities of the Kingdom of Cambodia, which provide proof of continuous and legal residence in Cambodia, at least since the early 1980s.

Despite this fact, it is clear from the interviews that the interviewees' children and grandchildren have not benefited from the provisions of Article 4(2)(a) of the 1996 Nationality Law. This appears to be contrary to Cambodia's own laws and contrary to the country's obligations under the Convention on the Rights for Children (CRC). Whether a policy of discrimination or a process of oversight, the inability of these children to access Cambodian nationality documents must be addressed. An initial and important step towards this would be to expand universal birth registration for newborn children, to cover the communities of the focal group. This is because birth registration is a principal step towards establishing a child's identity, citizenship and a foundation for establishing future rights. Without this important documentation, the children of ethnic minorities such as the ethnic Vietnamese in the focal group, and future generations, risk becoming entrenched in a perpetual circle of statelessness.

PART V: RECOMMENDATIONS

RECOMMENDATIONS TO GOVERNMENT, DEVELOPMENT PARTNERS AND CIVIL SOCIETY

The Cambodian government, development partners, civil society and UNHCR should collaborate in efforts to identify, prevent, and reduce statelessness, by taking steps pursuant to the recommendations below, as any significant effort toward identification, prevention and reduction of statelessness in populations at risk would require the political will and cooperation of the Cambodian government as well as assistance from the UNHCR and/or a major international donor.

(1) Conduct further research to address gaps in information about the ethnic Vietnamese minority and other populations at risk of statelessness

This report has highlighted the many gaps in information about the situation of the focal group – a sub-group among the ethnic Vietnamese minority in Cambodia. It has provided analysis of Cambodia’s legal framework and administrative procedures for accessing Cambodian nationality. However, there is a need for further research to address the gaps highlighted in the report and thereby contribute to reducing or preventing statelessness among other affected populations in the country.

Possible further research areas identified in this report, to be addressed by governmental and non-governmental actors include:

- i) An in-depth mapping of the demographic profile of the ethnic Vietnamese minority and other populations at risk of statelessness in Cambodia, in order to understand the scope of the problem and different needs of affected populations
- ii) An assessment of the current local and national administrative regulations, procedures and mechanisms in place to accept and determine claims for nationality and/or applications for naturalisation
- iii) Further research into other ethnic Vietnamese minority populations in Cambodia in order gain a better understanding of the various individual and collective circumstances of affected populations, and
- iv) Further research into identifying the approach of the “competent” Vietnamese and Cambodian authorities towards the ethnic Vietnamese in Cambodia. Clarifying this aspect would aide in substantiating a conclusive finding that members of the focal group are stateless.

(2) Expand universal birth registration and other forms of civil registration to cover the communities of the focal group and other populations at risk of statelessness

In order to avoid new cases of statelessness within the Vietnamese minority populations, identification documents need to be issued to persons who are without documentation to provide them with the means to prove their existing ties to a

state. Birth registration provides an official record of vital facts (date of birth, place of birth and parentage), enabling determination of the status of children under domestic nationality laws, to ensure that statelessness does not perpetuate through generations. Therefore, the government should ensure that social and community programs for birth registration are conducted in minority areas.

An important initial step is to expand birth registration to the communities of the focal group as well as to all other long-term 'foreign resident' communities in Cambodia that may be at risk of statelessness. According to Cambodian law, birth registration is not linked to nationality and is open to all children born on Cambodian territory. Given the importance assigned to birth registration under all nationality laws, there is an urgent need to make this avenue accessible for affected populations, so that the vicious cycle of perpetuated statelessness can be broken, at least for future generations. The commendable efforts undertaken during the past years by the responsible entities under the Ministry of Interior, often with support from UNICEF, should therefore be continued and expanded. This should include awareness raising among affected population and local authorities.

(3) Build the capacities of local authorities and provide accessible guidelines on matters of concern

The lack of awareness and knowledge among local authorities has been identified in this report as one major aspect that hinders the focal group's access to rights and documentation and thus prevents the enjoyment of the rights derived from the acquisition of certain documentation. Thus, there is a need to build the capacities of local authorities so as to understand and implement the Cambodian legal framework, in particular in relation to civil registration, documentation and nationality.

(4) Raise awareness among the focal group about their rights and avenues available under Cambodian law to access citizenship documentation

The interviews with the focal group have clearly shown the lack of knowledge among the group about their rights and available avenues under Cambodian law to access documentation and/or nationality. Further awareness raising activities need to be undertaken in order to build the necessary knowledge among the focal group to access available rights and services with Cambodian authorities.

(5) Explore the recognition of Cambodian citizenship to minority populations who might have acquired nationality under previous or current nationality laws

The Cambodian government may consider proactively conducting an assessment of the focal group and other affected populations with a view to exploring whether some or most of these groups are actually Cambodian citizens under previous or current laws. This would assist reduce statelessness in populations affected by or at risk of statelessness, and send a strong message that authorities are taking responsibility for all members of Cambodian society. In addition, such action would

pay tribute to the fact that the focal group has lived for many generations on Cambodian territory and contributed to the richness and diversity of its society. Importantly, there is a need to undertake more efforts to implement Article 4(2)(a) of the 1996 Nationality Law and provide Cambodian citizenship to all newborn children whose parents are born in, and have legal residence, in Cambodia.

(6) Expand development activities for communities at risk of statelessness

This report has shown that few development activities have taken place in the communities of the focal group, whether they be from the government or other national or international development partners. Much of this appears to be connected to the focal group's existence at the margins of Cambodian society. There is a need to expand development activities, in particular in the education and health sectors, to cover these and other communities at risk of statelessness. This would assist in extending much needed services to these communities, which would in turn contribute to integrating these communities into Cambodian society and assist in achieving Cambodia's millennium development goals and upholding the basic rights of these communities.

(7) As mid-term goals, amend the national legal framework where necessary, to provide effective safeguards against statelessness

Discriminatory aspects of the immigration and nationality laws need to be revised to enable a just application of criteria to all applicants without favour or discrimination on the basis of ethnicity. The nationality legislation needs to be amended to set out clearer criteria, include a definition of "stateless person" and put in place a judicial review mechanism to ensure that decision-making is subject to scrutiny, and not based on an unfettered discretion. In addition, a sub-decree on naturalisation procedures (currently *not* in existence), would assist to ensure that the current *ad hoc* and informal processes relating to nationality grants actually conform with the law and due process, and also provide additional safeguards against statelessness for populations at risk.

Clear guidelines and regulations for the administration of citizenship applications and procedures are lacking within the current domestic legal framework. The recent example of the Philippines, which created a new mechanism to protect refugees and stateless people, could serve as an inspirational example for Cambodia.³³² In this regard, Cambodia's recent attempt to draft a 'Law on Identity' could be seen as a window of opportunity to address certain gaps in the current sub-decree on civil registration and to include further considerations of the needs of stateless populations or those at risk of statelessness.

³³² Philippine Information Agency, 'UNHCR lauds the Philippines for new mechanism to protect refugees and stateless people', 7 November 2012, accessible at <http://www.pia.gov.ph/news/index.php?article=1781352274224> (accessed 16 December 2012).

(8) Interpret national legislation in accordance with Cambodia’s international human rights obligations and, for the long-term, accede to the Statelessness Conventions

Theoretically, substantive compliance with the ICCPR, ICSCER, CERD, CEDAW, CRC and other human rights instruments to which Cambodia is a state party, should also ensure that stateless persons have access to the labour market, education, public assistance and basic health, without the need for recourse to provisions of the Statelessness Conventions. In particular, access to primary education for children could also assist by providing an official record of a child’s years of residency in Cambodia, as initial steps toward meeting the requirements for a grant of citizenship. Legal aid assistance should also be provided to disadvantaged persons who are stateless, to assist their applications for naturalisation or claims for citizenship.

Cambodia has neither signed nor ratified the Statelessness Conventions and Cambodian nationality law does not define statelessness. Although the 1954 Convention *definition* of stateless has been recognised as customary international law,³³³ as a non-party to the Statelessness Conventions, Cambodia is not obliged to provide Convention protections to stateless persons in its territory. In the long-term, the Royal Government of Cambodia should accede to the 1954 and 1961 Statelessness Conventions to further enhance the rights of stateless persons.

³³³ UNHCR, ‘The Concept of Stateless Persons under International Law: Summary Conclusions’, (UNHCR Expert Meeting, Prato, Italy, 27 – 28 May 2010), 2 (para 2).

BIBLIOGRAPHY

PRIMARY SOURCES

Field Research

Christoph Sperfeldt (ed) with Ang Chanrith and Mychelle Bathazard, 'Survey among the ethnic Vietnamese minority in Cambodia' (conducted by the KKKHRA), December 2009 (unpublished paper).

Lyma Nguyen, Jessica Pham, and Christoph Sperfeldt, Interview with Ethnic Vietnamese Persons (names of interviewees suppressed; Kampong Chhnang Province and Pursat Province, Cambodia, 19 – 22 July 2010), Transcripts No. 1 – 25.

Lyma Nguyen (2011), 'The Civil Claim for Cambodian Nationality by Statelessness Vietnamese at the Extraordinary Chambers in the Courts of Cambodia', Graduate Research Unit, Masters in International Law, Australian National University (not published).

Jessica Pham, 'The Ethnic Vietnamese Minority in Cambodia: The Fight for Citizenship', (unpublished paper submitted as part of coursework for 'Comparative Studies in Race and Ethnicity', Stanford University, August 2010).

SECONDARY SOURCES

Books

Nayan Chanda, *Brother Enemy: The War after the War* (1986).

David Chandler, *A History of Cambodia* (1993, 2nd ed).

Annuska Derks, 'Diversity in Ethnicity: A Picture of the Vietnamese in Cambodia', in: Center for Advanced Studies, *Ethnic Groups in Cambodia* (2009), 535-558.

Bertrand, Didier, 'Les Vietnamiens au Cambodge: Relations avec les Khmers et Elaborations d'une Identité – Étude des mode d'Interculturation', in: Centre for Advanced Studies, *Ethnic Groups in Cambodia* (2009), 462 -532.

Evan Gottesman, *After the Khmer Rouge: Inside the Politics of National Building* (2003).

Ben Kiernan, *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975 – 1979* (1996).

Jacques Migozzi *Cambodge Faits et Problemes de Populations*, (1973) Paris: Editions du Centre National de la Recherche Scientifique.

Lim Sidedine and Ith Sothea, 'Vietnamese in Contemporary Cambodia', in: Center for Advanced Studies, *Ethnic Groups in Cambodia* (2009), 585 – 614.

Meas Sokeo and Tania Miletic, *Understanding Inter-Ethnic Relations and National Identity in Cambodia*, Phnom Penh: Alliance for Conflict Transformation (2007).

William E. Willmott, *The Chinese in Cambodia* (1967).

Journal Articles

Ramses Amer, 'Cambodia's Ethnic Vietnamese: Minority Rights and Domestic Politics' (2006) 34(3) *AJSS* 388 – 409.

Ramses Amer, 'The Ethnic Vietnamese in Cambodia: A Minority at Risk?' *Contemporary Southeast Asia* (1994) 16(2), 210 – 238.

Jennifer Berman, 'No Place Like Home: Anti-Vietnamese Discrimination and Nationality in Cambodia' (1996) 84 *California Law Review* 817 – 874.

Stefan Ehrentraut, 'Perpetually temporary: citizenship and ethnic Vietnamese in Cambodia' (2011) 28(4) *Ethnic and Racial Studies* 1 – 20.

Patrick Heuveline, 'Between one and three million: Towards the Demographic Reconstruction of a Decade of Cambodian History, 1970-79', *Population Studies* (1998) 52, 49-65.

Ben Kiernen, 'The Survival of Cambodia's Ethnic Minorities' (1990) 14(3) *Cultural Survival Quarterly*.

Chou Meng Tarr, 'The Vietnamese minority in Cambodia', (1992) 34(2) *Race and Class* 33 – 47.

Peter A. Poole, 'The Vietnamese in Cambodia and Thailand: Their Role in Interstate Relations', *Asian Survey* (1974), 14(4), 325-337.

Joseph Pouvatthy, 'L'Exode des Vietnamiens du Cambodge en 1970', *Mondes Asiatiques*, (1976), 7, 339-340.

David Weissbrodt and Clay Collins, 'The Human Rights of Stateless Persons' (2006) 28 *Human Rights Quarterly*, 245 – 276.

Reports

Cambodian Centre for Human Rights, "False Promises: Exploring the Citizenship Rights of the Khmer Krom in Cambodia" (July 2011).

Committee on the Elimination of Racial Discrimination, 'Written replies by the Kingdom of Cambodia concerning the list of issues (CERD/C/KHM/Q/8-13) formulated by the Committee on the Elimination of Racial Discrimination relating to Cambodia's eight to thirteenth periodic reports (CERD/C/KHM/8-13)', 15 February to 12 March 2010.

Michael Kirby, 'Report of the Special Representative of the Secretary-General for Human Rights in Cambodia', UN Economic and Social Council (E/CN.4/1996/93), 26 February 1996.

Minorities Rights Group International, 'Ethnic Policies under the new Cambodian government', *Minorities in Cambodia* (1995), 26 – 32.

Report of the Special Representative of the Secretary-General, Mr. Michael Kirby, on the situation of human rights in Cambodia, submitted in accordance with Commission resolution 1993/6', UN doc. [E/CN.4/1994/73 of 24 February 1994].

Report of the Special Representative of the Secretary-General for human rights in Cambodia, Mr. Thomas Hammarberg, submitted in accordance with resolution 1999/76', UN doc. [E/CN.4/2000/109 of 13 January 2000], para. 92.

United Nations, 'Seventh periodic reports of States parties due in 1996', Addendum Cambodia, UN doc. [CERD/C/292/Add.2 of 5 May 1997].

United Nations, 'Situation of human rights in Cambodia: Recommendations of the Special Representative for human rights in Cambodia and the role of the United Nations Centre for Human Rights in assisting the Government and people of Cambodia in the promotion and protection of human rights', Report by the Secretary-General, UN doc. [A/49/635 of 3 November 1994].

United Nations, 'Situation of human rights in Cambodia', Report of the Secretary-General, UN doc [A/53/400 of 17 September 1998].

United Nations Transitional Authority in Cambodia, *Human Rights Component: Final Report* (September 1993).

Laura Van Waas, 'Nationality Matters: Statelessness under International Law', Doctoral thesis (2008), available at <http://arno.uvt.nl/show.cgi?fid=113179>.

Conference Papers, Working Papers and Handbooks

UNHCR, 'Good Practices: Addressing Statelessness in South East Asia' (Report of the *Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons in South East Asia*, Bangkok, 28 and 29 October 2010).

United Nations High Commissioner for Refugees, 'The Concept of Stateless Persons under International Law: Summary Conclusions' (UNHCR Expert Meeting, Prato, Italy, 27 – 28 May 2010).

United Nations High Commissioner for Refugees, '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 HCR/GS/12/01, 20 February 2012).

United Nations High Commissioner for Refugees, 'Guidelines on Statelessness No 3: The Status of Stateless Persons at the National Level' (UNHCR HCR/GS/12/03, 17 July 2012).

United Nations High Commissioner for Refugees, 'Information and Accession Package: The 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness' (UNHCR, Geneva, first published June 1996; revised January 1999).

News and Media

Intellasia.net, 'UN praises Vietnam for plan to give citizenship to 2357 Cambodian refugees', 22 July 2010, at <http://www.intellasia.net/un-praises-vietnam-for-plan-to-give-citizenship-to-2357-cambodian-refugees-132684> (accessed 6 October 2012).

Philippine Information Agency, 'UNHCR lauds the Philippines for new mechanism to protect refugees and stateless people', 7 November 2012, accessible at <http://www.pia.gov.ph/news/index.php?article=1781352274224> (accessed 16 December 2012).

UNHCR, 'Viet Nam ends stateless limbo for 2,300 former Cambodians', 19 July 2010 at <http://www.unhcr.org/4c447a796.html> (accessed 6 October 2012).

Internet Sources

UNHCR, "Statelessness in Cambodia" (Handout on UN Inter-Agency Project on Human Trafficking website at www.no-trafficking.org/content/pdf/statelessness_in_cambodia_unhcr.pdf, date unknown, accessed 3 November 2012).

Central Intelligence Agency (USA), "The World Fact Book. Cambodia", at <https://www.cia.gov/library/publications/the-world-factbook/geos/cb.html> (accessed 23 September 2012).

LEGAL INSTRUMENTS

International Treaty Law

Agreements on a Comprehensive Political Settlement of the Cambodia Conflict, Paris, United Nations, 23 October 1991.

Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969).

Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

Convention on the Nationality of Married Women, opened for signature 29 January 1957, 309 UNTS 65 (entered into force 11 August 1958).

Convention on the Reduction of Statelessness, opened for signature 30 August 1961, 989 UNTS 175 (entered into force 13 December 1975).

Convention on the Rights of the Child, opened for signature on 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, 993 UNTS 3 (entered into force 3 May 2008).

Convention relating to the Status of Stateless Persons opened for signature on 28 September 1954, 360 UNTS 117 (entered into force 6 June 1960).

Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by UN General Assembly resolution 40/34, 29 November 1985.

International Convention on Civil and Political Rights, opened for signature on 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976).

International Convention for the Protection of All Persons from Enforced Disappearance, opened for signature 6 February 2007 (entered into force 23 December 2010).

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, opened for signature 18 December 1990, UNTS 2220 (entered into force 1 July 2003).

Universal Declaration of Human Rights, adopted 10 December 1948, General Assembly Resolution 217A(III), UN Doc. A/810 (1948).

Regional Treaty Law

African Charter on the Rights and Welfare of the Child (11 July 1980).

American Declaration of the Rights and Duties of Man (2 May 1948).

American Convention on Human Rights (22 November 1969).

Arab Charter on Human Rights (22 May 2004).

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (11 July 2003).

Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (26 May 1995).

Covenant on the Rights of the Child in Islam (June 2005).

Cambodian National Law

Constitution of the Kingdom of Cambodia 1993

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).

Kram No. 913-NS of 30 November 1954 Regulating Nationality, as found in Marcel Clairon, *Droit Civil Khmer*, Enterprise Khmère de Librairie, d'imprimerie et de papeterie, Phnom Penh (1960).

Law on Immigration 1994

Kram on Labour Law (promulgated 13 March 1997)

United Nations Electoral Law for Cambodia (UNTAC, 1992) (as amended up to and including 10 May 1993), accessible at http://web.cas.suffolk.edu/faculty/druke/UN/Elections/main/english/em/emx_1003.htm (accessed 16 December 2012).

Sub-decree No. 30 on the Formalities of Application for the Authorization of Immigrant Aliens to Enter, Exit and Reside in the Kingdom of Cambodia (1996)

Sub-decree No. 36 on Khmer Nationality Identity Cards (1996)

Sub-decree No. 60 on Cambodian Nationality Identity Cards (2007)

Sub-decree No. 75 on the Formalities of Application for Authorization of Non-Immigrant Aliens to Enter, Exit and Reside in the Kingdom of Cambodia (1999)

Sub-decree No. 103 on Civil Registration (2000)

Sub-decree No. 62 on Fee of Civil Registration Paper and Stamp (2002)

Sub-decree 60 on Amendment to Article 8 and 59 of the Sub-Decree on Civil Registration (2002)

Sub-decree No. 17 on Amendment to Sub-Decree on Civil Registration (2004)

Proclamation No. 2473 on Procedures and Terms of Application for Issuance and Usage of Khmer ID dated 14 July 2007

Proclamation No. 555 on the Management of the Issuance of Residence Cards to Aliens (10 November 1995), available at: <http://www.unhcr.org/refworld/docid/3ae6b5272b.html> (accessed 9 December 2012).

Declaration No. 555 on the Management of Foreigners Work Permits (10 November 1995), available at: <http://www.unhcr.org/refworld/docid/3ae6b5272b.html> (accessed 9 December 2012).

Vietnamese National Law

Law on Vietnamese Nationality (Vietnam), Order No. 22/2008/L-CTN. 2008 (13 November 2008)

Law on Vietnamese Nationality, No. 07/1998/QH10 (20 May 1998)

Nationality Law (Vietnam) (17 July 1988)

Decree No. 78/2009/ND-CP Detailing and Guiding a number of articles on the Law on Vietnamese Nationality (22 September 2009)

Joint Circular No. 05/2010/TTLT-BTP-BNG-BCA on the Implementation of Decree No. 78/2009/ND-CP (1 March 2010)

ECCC Legal Instruments

ECCC Internal Rules (Revision 8), 3 August 2011.

Practice Direction on Victim Participation 02/2007/Revision 1.

ECCC Legal / Case File Documents

ECCC, Co-Prosecutors, 'Rule 66 Final Submission', 16 August 2010 (D390), Case File No. 002/19-09-2007-ECCC-OCIJ (Public redacted version) at http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D390_ENreadacted.pdf (accessed 15 December 2012).

ECCC, Office of Co-Investigating Judges, 'Closing Order', 15 September 2010 (D427), Case File No. 002/19-09-2007-ECCC-OCIJ at <http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D427Eng.pdf>

Civil Party Co-Lawyers, "Appeal against Order on the Admissibility of Civil Party Applicants from Currents Residents of Kampong Chhnang Province (D417)", 27 September 2010 (D417/2/3). Public version available at: http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D417_2_3_EN.PDF

Civil Party Co-Lawyers, 'Civil Parties' Request for Supplementary Investigations Regarding Genocide of the Khmer Krom and the Vietnamese', 3 December 2009 (Document D250/3). Public version available at: http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/D250_3_EN.PDF

Civil Parties Co-Lawyers, 'Appeal Against Order on the Admissibility of Civil Party Applications Related to Request D250/3', 12 February 2010 (D250/3/2/1/1).

Civil Party Co-Lawyers, 'Appeal against Combined Order on Co-Prosecutors' Two Requests for Investigative Action regarding Khmer Krom and the Civil Parties Request for Supplementary Investigations Regarding Genocide of the Khmer Krom and Vietnamese', 12 February 2010 (D274/4/1).

Civil Party Lawyers, 'Premieres Indications sur la Nature des Reparations que les Co-Avocats Principaux pour les Parties Civiles entendent Solliciter – Audience du 19 October 2011', Document E125/2 filed 12 March 2011, paras 88 – 93.

ECCC, Pre-Trial Chamber, 'Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications ' (Public) Document No. D404/2/4, 24 June 2011.

ECCC, Pre-trial Chamber, 'Corrigendum to Decision on Appeals against Orders of the Co-Investigating Judges on the Admissibility of Civil Party Applications" (Public) Document D404/2/4 Corr-1', 8 July 2011.

ECCC Trial Chamber, Case No. 002/19-09-2007-ECCC/TC, 'Transcript of Hearing on Specification of Civil Party Reparations Awards and Accused Ieng Thirith's Fitness to Stand Trial (classified Public), 19 October 2011.

ECCC, Office of the Co-Investigating Judges, 'Combined Order on Co-Prosecutors' Two Requests for Investigative Action Regarding Khmer Krom and Mass Executions in Bakan District (Pursat) and the Civil Parties' Request for Supplementary Investigations Regarding Genocide of the Khmer Krom and the Vietnamese', 13 January 2010 (D250/3/3) (classified "Confidential").

Ewa Tableau, 'Khmer Rouge Victims in Cambodia, April 1975-Junary 1979. A Critical Assessment of Major Estimates', Democratic Expert Report for the Extraordinary Chambers in the Courts of Cambodia [D140/1/1 Public Redacted Version], 30 September 2009, 47-48.

ANNEX OF LAWS³³⁴

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

- *Royal Ordinance No. 66 of 5 June 1934 (French version from revised 1920 Cambodian Civil Code, French Protectorate)*
- *1954 Nationality Law, Kram No 913-NS (French) (Flow Chart included)*
- *1954 Law on Naturalisation, Royal Ordinance No 904 NS (French)*
- *1996 Law on Nationality (English) (Flow Chart included)*
- *Sub-decree No 103 on Civil Status (2000)*
- *Sub-decree No. 60 on Cambodian Nationality Identity Cards (2007)*
- *Law on Vietnamese Nationality (13 November 2008) (Flow Chart included)*

³³⁴ For full Annex of relevant Laws, Guidelines and Conventions, refer to separate Annex comprising a compilation of the Statelessness Conventions, UNHCR Guidelines, Cambodian Laws, Sub-decrees, Proclamations and Declarations and Vietnamese Laws, available as an online PDF compilation.

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

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 royal 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 royal 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 1954, 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^o — 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^o — 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^o — 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^o — 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^o — 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 de plano 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 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-Khèt 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.*

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.

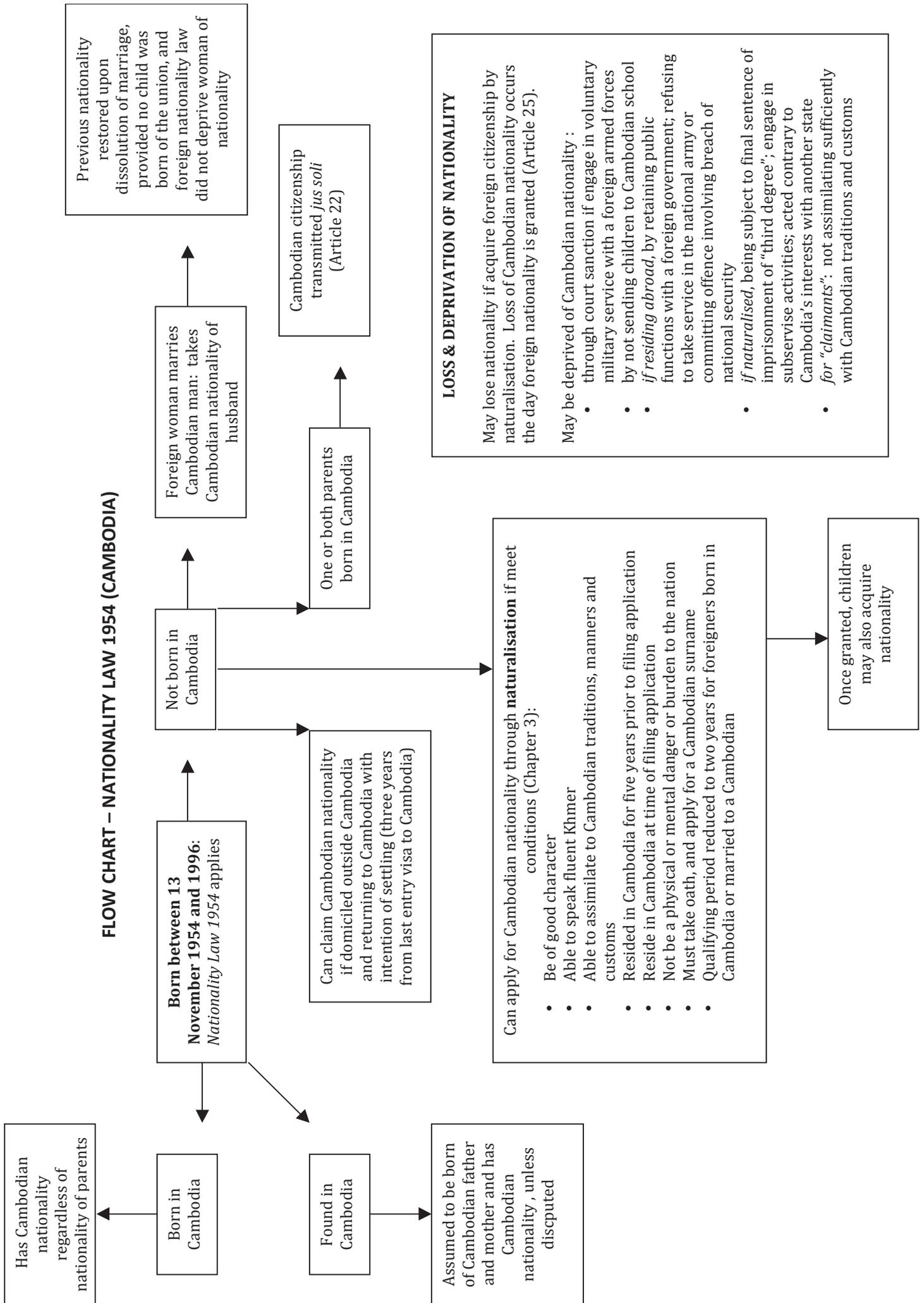
Fait en Notre Palais Royal à Phnom-Penh, le 27 Septembre 1954.

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)



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.

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.

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:

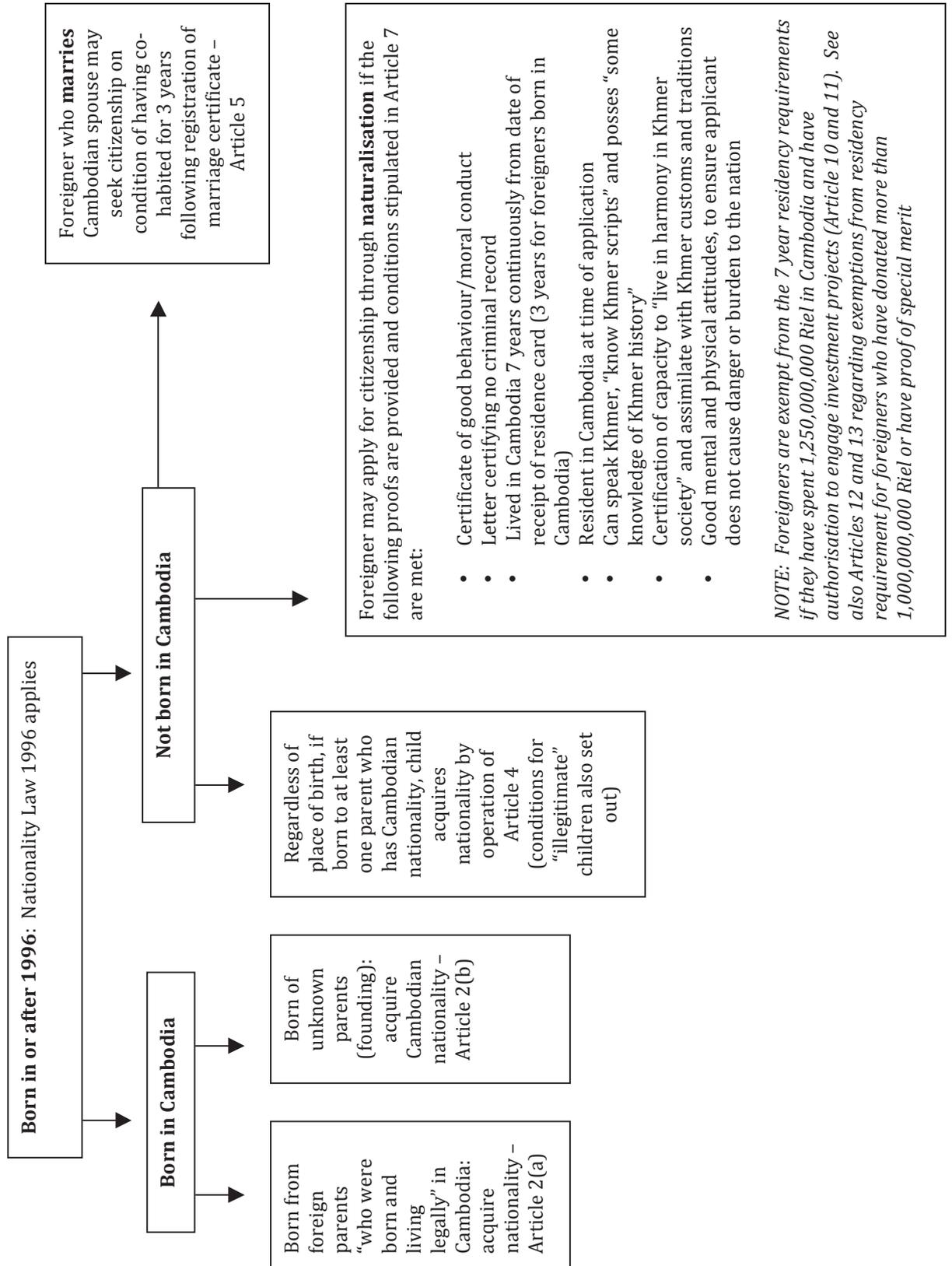
Any official or government agent or any person who conspires, helps dissimulating or provides identity card of khmer nationality or passport to any person who has no khmer nationality/ citizenship, shall be subject to the same punishment term as of the case of a person who is illegally holding the identity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

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 1st of January and such operation shall be closed on the 31st 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.

The Khmer version is the official version of this document.

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

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.

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.

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.

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.

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.

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.

The Khmer version is the official version of this document.

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.

The Khmer version is the official version of this document.

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**

**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 12th, 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

LAW

ON VIETNAMESE NATIONALITY

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 results 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.

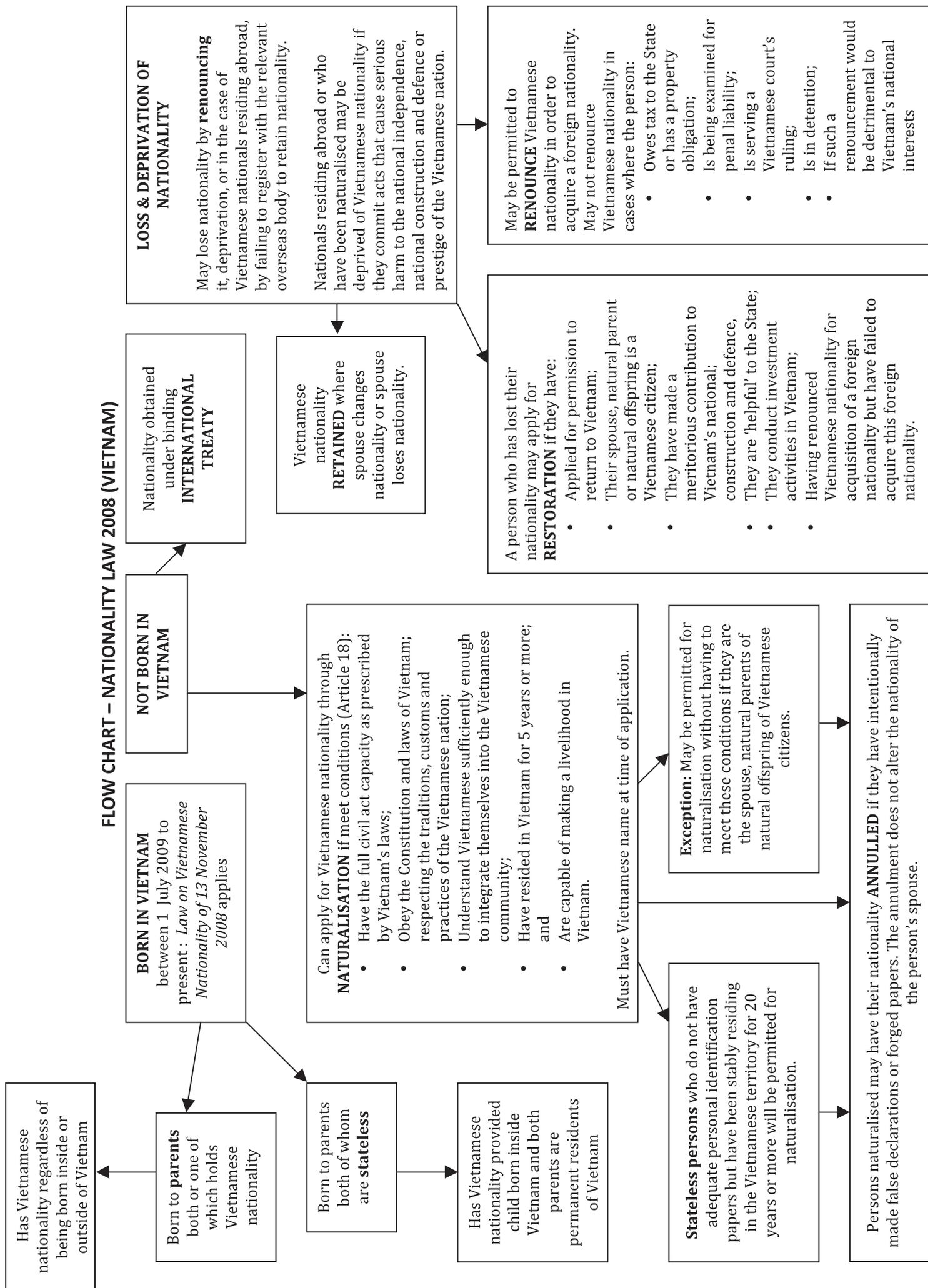
This Law replaces the May 20, 1998 Law on Vietnamese Nationality.

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 12th National Assembly of the Socialist Republic of Vietnam at its 4th session.

FLOW CHART – NATIONALITY LAW 2008 (VIETNAM)





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