

# Minority Rights Organisation (MIRO), Khmer Kampuchea Krom for Human Rights and Development Association (KKKHRDA), Institute on Statelessness and Inclusion (ISI), Statelessness Network Asia Pacific (SNAP) and Minority Rights Group International (MRG)

## Joint Submission to the Human Rights Council of the Universal Periodic Review

### Cambodia

#### Introduction

1. Minority Rights Organisation (MIRO),<sup>1</sup> Khmer Kampuchea Krom for Human Rights and Development Association (KKKHRDA),<sup>2</sup> Institute on Statelessness and Inclusion (ISI),<sup>3</sup> Statelessness Network Asia Pacific (SNAP)<sup>4</sup> and Minority Rights Group International (MRG)<sup>5</sup> make this joint submission to the Universal Periodic Review (UPR) in relation to discrimination, statelessness and related human rights challenges in Cambodia.
2. This submission considers the discrimination faced by the ethnic Vietnamese and Khmer Krom communities in Cambodia and how such discrimination is linked to these communities experiences of statelessness in Cambodia. More specifically, the submission includes:

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<sup>1</sup> Minority Rights Organisation (MIRO) launched its operations in 2014, after its founding in 2012 and legal registration with the Ministry of Interior on 28 January 2013. MIRO's mission is to promote and protect minority rights. Since its launch, MIRO has contributed greatly to improving human rights/minority rights and to ensuring minority communities are protected in Cambodia, especially among the Khmer Krom and long-term ethnic Vietnamese community. MIRO commits to achieving its Vision and Mission through the following action: 1). promoting understanding and respect for rights (minority rights), and empowering political participation and gender equality of minority women; 2). monitoring, investigating and providing legal services on human rights/minority rights violations and discrimination; 3). Influence and advocacy for human rights. 4). education program for statelessness children. <http://mirocambodia.org/>

<sup>2</sup> Khmer Kampuchea Krom for Human Rights and Development Association (KKKHRDA) was established in 1995 and officially recognized by the Council of Ministers and the Ministry of Interior dated 27 February 1996. KKKHRDA is an independent, unexploited, non-profitable, and non-governmental agency. It was initially created by the groups of people with genuine willingness and national spirit who support human rights, democracy, and rule of law with a vision, Khmer Kampuchea Krom people legal living with the respects of basic rights and freedom, decent livelihoods, dignity, progress, and harmony.

<sup>3</sup> The Institute ([www.institutesi.org](http://www.institutesi.org)) is an independent non-profit organisation committed to an integrated, human rights based response to the injustice of statelessness and exclusion through a combination of research, education, partnerships and advocacy. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made over 30 country specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23<sup>rd</sup> to the 30<sup>th</sup> UPR Sessions. For more information on the Institute's UPR advocacy, see <http://www.statelessnessandhumanrights.org/upr-universal-periodic-review/resources-database>.

<sup>4</sup> SNAP (<https://www.statelessnessnetworkasiapacific.org/>) is a civil society network with the goal of promoting collaboration and information sharing on addressing statelessness in Asia and the Pacific. SNAP is driven by a diverse membership and through direct engagement and contribution from its members and stakeholders, particularly formerly stateless persons, stateless persons and persons at risk of statelessness.

<sup>5</sup> Minority Rights Group International works to secure the rights of ethnic, religious and linguistic minorities worldwide, and to promote cooperation and understanding between communities. MRG works with over 150 organizations in over 50 countries.

- I. An overview of the human rights issues and protection challenges regarding birth registration and documentation faced by ethnic Vietnamese in Cambodia;
  - II. An overview of the discrimination and other human rights violations experienced by the ethnic Khmer Krom;
  - III. An analysis of the nationality law and birth registration policies in Cambodia; and
  - IV. Joint recommendations by co-submitting organisations.
3. This submission draws on extensive national and international experience of the co-submitting organisations in research, direct assistance, advocacy and awareness raising on the issues raised.

## The Universal Periodic Review of Cambodia under the Second Cycle

4. Cambodia was previously under review in February 2014 during the Eighteenth Session of the Second Cycle.<sup>6</sup> In its State report before the 2014 review, Cambodia did not comment on the issue of stateless communities in its territory, neither did it address the human rights challenges faced by the ethnic Vietnamese community in Cambodia.<sup>7</sup>
5. During the 2014 Review, **Argentina** recommended that Cambodia “*continue with measures to guarantee the birth registration of children, with no discrimination against migrant children, and continue strengthening the legal framework for the procedures of acquisition of nationality*”. Cambodia supported this recommendation but has, to date, not strengthened children’s right to a nationality, as set out in international law.
6. **Portugal** recommended that Cambodia “*ensure the realization of the right to education to all children in Cambodia, including to the children of Vietnamese origin*”. However, as elaborated in this Submission, issues of statelessness and challenges related to legal identity faced by the ethnic Vietnamese community in Cambodia continue to impede their enjoyment of fundamental human rights, including the right to education.
7. **Switzerland** recommended that Cambodia create conditions favorable to inter-ethnic tolerance in Cambodia, for the democratic future of the country. While Cambodia supported this recommendation, as detailed below, many ethnic Vietnamese in Cambodia continue to face barriers in their enjoyment of fundamental human rights, including the rights to a nationality, despite intergenerational residence in Cambodia.

## Cambodia’s International Obligations

8. Cambodia as a Member of the United Nations is obligated by the Charter of the United Nations to promote “*universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion*”. Further, Article 15 of the Universal Declaration of Human Rights states that “*everyone has the right to a nationality*” and “*no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality*”.

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<sup>6</sup> A/HRC/WG.6/18/L.4

<sup>7</sup> A/HRC/WG.6/18/KHM/1

9. Cambodia has acceded to 7 of the 8 core human rights treaties and has signed the eighth – the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW). Of the seven core treaties ratified, many guarantee the right to a nationality for all on a non-discriminatory basis. These include the International Covenant on Civil and Political Rights (“ICCPR”) (Article 24), the Convention on the Rights of the Child (“CRC”) (Articles 7 and 8), the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”) (Article 9), and the International Convention on the Elimination of All Forms of Racial Discrimination (“CERD”) (Article 5). Of particular significance is Article 7 of the CRC, which provides that every child’s right to be registered immediately after a birth and to acquire a nationality - protecting all children from statelessness. Similarly, in relation to the right to a nationality the CERD provides that “*States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law*”. Cambodia is also obligated to guarantee all rights enshrined in ICESCR without discrimination of any kind, including on the basis of “*race, colour... national or social origin...birth or other status*.”<sup>8</sup>
  
10. Many UN Treaty bodies have commented and made recommendations on the right to a nationality, statelessness risks and general human rights protection of minority groups in Cambodia, including ethnic Vietnamese and the Khmer Krom. For example, in 2010 the Committee on the Elimination of Racial Discrimination (CERD Committee) requested that Cambodia show how it was ensuring ‘*equal protection and access to basic human rights (education, standard of living, health care) to all persons under the jurisdiction of the State, including minority groups such as the Khmer Krom and ethnic Vietnamese (CERD/C/KHM/13, paras. 44, 51). As some members of the Khmer Krom and ethnic Vietnamese groups do not have a Khmer ID card, how can their basic rights be guaranteed?*’.<sup>9</sup> However, the CERD Committee did not go on to question whether this community should have access to an identity card. Cambodia responded with information as to initiatives aimed at ensuring universal access to education, but did not address citizenship and statelessness issues.
  
11. Furthermore, the Committee on the Elimination of all Forms of Discrimination Against Women has highlighted that “*women of Vietnamese origin undergo considerable difficulties in the registration of births and the acquisition of Cambodian citizenship, which places them at risk of statelessness*’ and recommended that Cambodia ‘*intensify efforts to facilitate the birth registration of children born to Vietnamese mothers and their acquisition of citizenship*’.<sup>10</sup>
  
12. Lastly, the Human Rights Committee has recommended that Cambodia ‘*facilitate access to identification documentation*’ and ‘*guarantee the right of children who were born on the territory of Cambodia to stateless parents to acquire a nationality*’.<sup>11</sup>
  
13. As a member State of the Association of South East Asian Nations (ASEAN), Cambodia is a signatory to the 2012 ASEAN Human Rights Declaration. Although this declaration is a non-binding document, it nonetheless reflects consensus as to the importance of human rights in the region and the right to a nationality (article 18 of the 2012 ASEAN Human Rights Declaration).
  
14. In addition to Human Rights Treaties, Cambodia is also party to the 1951 Refugee Convention and its Protocol. However, the state is not a party to the 1954 and 1961 UN Statelessness Conventions.

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<sup>8</sup> Article 2.3. Acceded to 4 January 1978.

<sup>9</sup> Article 5, CERD/C/KHM/Q/8–13

<sup>10</sup> Paras 30-31 CEDAW/C/KHM/CO/4-5.

<sup>11</sup> Para 27, CCPR/C/KHM/CO/2

15. Many of the challenges and gaps highlighted in this submission reflect Cambodia's failure to respect, promote, protect and fulfil fundamental human rights, as enshrined in the various treaties to which it is a party to, as well as the persistent failure to implement the recommendations made to Cambodia under the previous UPR and by various UN Treaty Bodies.

## The Ethnic-Vietnamese in Cambodia

12. The category of "ethnic Vietnamese in Cambodia" comprises of many different profiles, including, amongst others: ethnic Vietnamese married to Cambodians, Cambodians of Vietnamese origin, recent immigrants from Vietnam to Cambodia and descendants of ethnic Vietnamese with intergenerational links to Cambodia.<sup>12</sup>
13. The following primarily considers the situation of descendants of ethnic Vietnamese with intergenerational links to Cambodia - the largest minority in Cambodia and who have faced some of the most significant challenges in accessing human rights. There are no official government statistics or data publicly available as to the size of or profiles within this population. While many members of this community possess Cambodian identity documentation and therefore a claim to Cambodian citizenship, many do not enjoy recognition as citizens Cambodia and have faced decades-long challenges in substantiating their legal status in Cambodia.<sup>13</sup>
14. Stateless individuals in Cambodia often face significant barriers in accessing fundamental human rights, such as access to formal employment, education, health care, adequate housing and freedom of movement.<sup>14</sup>

### **Historical background**

15. Last century numbers of this population were deported *en mass* to Viet Nam (first under Lon Nol and then later during the Khmer Rouge). Many who have since returned to Cambodia face challenges in establishing their long-term residence in Cambodia and eligibility for Cambodian nationality. Cambodian officials routinely treat ethnic Vietnamese as "foreign nationals" or "immigrants", despite their strong claims for citizenship. Often their documentation (including proof of citizenship) was lost during their displacement, confiscated by the authorities, or viewed with suspicion.<sup>15</sup> Additionally, during Khmer Rouge rule civil registration records were systematically destroyed.<sup>16</sup>

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<sup>12</sup> The section of this submission titled "Ethnic Vietnamese in Cambodia" is drawn heavily from a submission by MIRO and the Peter McMullin Centre on Statelessness to the Special Rapporteur on Minority Issues, dated May 2018 and titled "Statelessness and legal identity issues among ethnic Vietnamese minority populations in Cambodia."

<sup>13</sup> See Berman, J. (1996), 'No Place Like Home: Anti-Vietnamese Discrimination and Nationality in Cambodia', *California Law Review* 84: 817-874; and Ehrentraut, S. (2011), 'Perpetually Temporary: Citizenship and Ethnic Vietnamese in Cambodia', *Ethnic and Racial Studies* 34(5): 779-798.

<sup>14</sup> See Ang C. et al. (2014), 'Limbo on Earth: An Investigative Report on the Current Living Conditions and Legal Status of Ethnic Vietnamese in Cambodia', Phnom Penh: Minority Rights Organisation, March 2014; and Minority Rights Organization (MIRO) (2016), 'Research Finding Statelessness Minority Groups in Cambodia Takeo, Kampong Chhnang, and Pursat', Phnom Penh: MIRO. All reports available at [http://mirocambodia.org/?page\\_id=96](http://mirocambodia.org/?page_id=96)

<sup>15</sup> Nguyen, L. and C. Sperfeldt (2012), *Boat Without Anchors: A Report on the Legal Status of Ethnic Vietnamese Minority Populations in Cambodia under Domestic and International Laws Governing Nationality and Statelessness*. Phnom Penh: Jesuit Refugee Service. Available at [http://jrscambodia.org/aboard\\_without\\_anchors.html](http://jrscambodia.org/aboard_without_anchors.html)

<sup>16</sup> [https://www.unicef.org/protection/birth\\_registration\\_and\\_armed\\_conflict\)1-\(pdf](https://www.unicef.org/protection/birth_registration_and_armed_conflict)1-(pdf)

16. Vietnam does not recognise individuals from this population as citizens, although there are avenues available for naturalisation for those who chose to relocate to Viet Nam.<sup>17</sup>

***Lack of data as a barrier for addressing statelessness***

17. It is important to note that one of the most significant challenges in understanding and responding to the situation faced by ethnic Vietnamese in Cambodia is the lack of data available on the size and profile of this population, include the individuals in this population who are stateless or at risk of statelessness. In terms of the ethnic Vietnamese population in Cambodia generally, the Government of Cambodia has not published any statistics apart from a reference to 72,775 individuals whose “mother tongue” is Vietnamese in its 2010 report to the CERD Committee.<sup>18</sup> In contradiction, the Cambodian National Institute of Statistics’ *Cambodia Socio-Economic Survey 2013*<sup>19</sup> estimates ethnic Vietnamese at 0.1 per cent of the population in 2013 (14,678). Independent researchers estimate the population at between 400,000<sup>20</sup> and 700,000.<sup>21</sup> MIRO estimates the population to be greater than 700,000.
18. In terms of the number of ethnic Vietnamese in Cambodia that are stateless there have been estimates that this community consists of tens and maybe hundreds of thousands of individuals who are affected.<sup>22</sup>
19. In two separate studies that considered statelessness among ethnic Vietnamese in Kampong-Chhnang province, researchers estimated that 90 per cent did not have birth certificates and/or identity cards.<sup>23</sup> Although not all undocumented persons are stateless, the risk of statelessness is far greater amongst undocumented persons particularly when they belong to contested minorities that face significant discrimination.
20. Lack of data with respect to this population significantly impedes much needed debate and advocacy by national, regional and international actors and efforts to address the issue.

***Recent confiscation of documentation held by Ethnic-Vietnamese***

21. In 2013, the Cambodian Government established an immigrant census, predominately targeted at ethnic Vietnamese populations. After this census, thousands of individuals who were deemed to be ‘illegal immigrants’ were deported from the country to Vietnam. The Ministry of Interior reported the following numbers of Vietnamese deported from Cambodia to Vietnam: 1,059 in 2014, 6,265 in 2015, 2,453 in 2016, and 1,880 in 2017.<sup>24</sup>
22. Parallel to the 2013 immigrant census, another registration process was carried out, again targeting ethnic Vietnamese populations, and which provided immigration documents – specifically permanent

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<sup>17</sup> [https://jrscambodia.org/publication/boat\\_without\\_anchors\\_jrs.pdf](https://jrscambodia.org/publication/boat_without_anchors_jrs.pdf)

<sup>18</sup> CERD/C/KHM/Q/8-13

<sup>19</sup> [https://www.google.co.th/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKewiS1cOUqcvTAhVGQI8KHUf-AQMqFggIMAA&url=https%3A%2F%2Fwww.nis.gov.kh%2Fnis%2FCSES%2FFinal%2520Report%2520CSES%25202013.pdf&usg=AFQjCN-GX26YMQGeCxBQ\\_m3lnJTgG5CSIfw&sig2=gcpU0KXbzI5dF2WD0D30Vw](https://www.google.co.th/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKewiS1cOUqcvTAhVGQI8KHUf-AQMqFggIMAA&url=https%3A%2F%2Fwww.nis.gov.kh%2Fnis%2FCSES%2FFinal%2520Report%2520CSES%25202013.pdf&usg=AFQjCN-GX26YMQGeCxBQ_m3lnJTgG5CSIfw&sig2=gcpU0KXbzI5dF2WD0D30Vw)

<sup>20</sup> [http://webcache.googleusercontent.com/search?q=cache:0q4qhj9Qg-8J:www.institutesi.org/WP2015\\_04.pdf+&cd=56&hl=en&ct=clnk&gl=th](http://webcache.googleusercontent.com/search?q=cache:0q4qhj9Qg-8J:www.institutesi.org/WP2015_04.pdf+&cd=56&hl=en&ct=clnk&gl=th)

<sup>21</sup> <http://www.reuters.com/article/us-cambodia-racism-idUSBREA3R1CN20140429>

<sup>22</sup> The NGO MIRO puts the estimated number at around 700,000 individuals. See also Minority Rights Group (MRG) profile of the group at <http://minorityrights.org/minorities/ethnic-vietnamese>

<sup>23</sup> [https://jrscambodia.org/publication/boat\\_without\\_anchors\\_jrs.pdf](https://jrscambodia.org/publication/boat_without_anchors_jrs.pdf);  
<http://mirocambodia.org/download/MIRO's%20Stateless%20Vietnamese%20Report%202014.pdf>

<sup>24</sup> Khy S. (2017), ‘Deportations of Vietnamese Dropped Last Year’, *Cambodia Daily*, 23, available at <https://www.cambodiadaily.com/news/deportations-vietnamese-dropped-last-year-123878/>

resident cards - to ethnic Vietnamese residing in Cambodia. These cards cost each individual 250,000 Riel (more than US\$60 each) and require renewal every two years. These documents claim that the holder is an “immigrant alien” who has “Vietnamese nationality”, without any verification of such a status from the Vietnamese authorities and which is likely not be accurate for many long-term residents of Cambodia.

23. Particularly worrying is that this process is discretionary, does not involve an individual assessment process and disregards any previous status these individuals may have held, especially for long-term residents. Additionally, through this process the authorities have confiscated prior documentation that are deemed to be ‘irregular administrative documents’. The Minister of Interior in October 2017 estimated that authorities had “revoke official documents from 70,000 individuals living in Cambodia, claiming they were “improperly” issued and mistakenly confer citizenship on “immigrants” – many of whom are ethnic Vietnamese born in Cambodia”.<sup>25</sup>
24. These documents include, for instance, birth certificates, immigration cards, Cambodian identity cards, family books and other identification documents. It is unclear – and perhaps unlikely – that the authorities will return these documents to their owners. The result is that many in these communities will be no longer be able to assert their historical links to Cambodia and all ethnic- Vietnamese, whether they arrived in the country 100 years ago or last month, are being treated alike, irrespective of their individual circumstances.<sup>26</sup> As a result, these processes
25. The registration initiative had the potential to reduce statelessness amongst ethnic-Vietnamese in Cambodia. However, the result has been that the initiative is likely to have entrenched these populations’ vulnerabilities to statelessness.
26. It is understood that the registration of ethnic-Vietnamese was discontinued before June 2018 and no new guidelines as to how this population with acquire citizenship have been issued to date.

## Ethnic Khmer Krom

27. Ethnic Khmer Krom face experience significant discrimination in Cambodia. This has wide ranging implications of Ethnic Khmer Krom’s enjoyment of human rights. There have been reported incidents of restrictions by local authorities on the rights of freedom of expression and association. A 2017 survey showed that 92.8% of ethnic Khmer Krom respondents suffered difficulties living in Cambodia, with 76.6% suffering from land rights violations, 60.6% who are discriminated as they are considered as Vietnamese, and 41.9% who lacked recognition from local authorities.<sup>27</sup> Additionally, authorities are reported to delay the citizenship application process for Khmer Krom applicants and refused to renew expired identity documentation. Bribery is often one mechanism that Khmer Krom must resort to in order to obtain documentation or register under a different name and place of birth.

## Law and Policy Challenges

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<sup>25</sup> <https://www.phnompenhpost.com/national/interior-ministry-identifies-70000-improper-citizens-mostly-ethnic-vietnamese>

<sup>26</sup> Based on Sub-Decree No. 129 on the cancellation and withdrawal of irregular Cambodian administrative documents possessed and used by foreigners.

<sup>27</sup> “Citizenship Rights for Khmer Krom in Cambodia,” (January 2017), [https://cchrcambodia.org/admin/media/report/report/english/2017\\_01\\_27\\_CCHR\\_Report\\_on\\_Legal\\_Status\\_of\\_Khmer\\_Krom\\_English.pdf](https://cchrcambodia.org/admin/media/report/report/english/2017_01_27_CCHR_Report_on_Legal_Status_of_Khmer_Krom_English.pdf)

12. Post conflict laws, which ideally should have provided further protection to this community, have in effect, contributed to their increased vulnerability.<sup>28</sup> For example, the 1993 Constitution guarantees rights and freedoms regardless of race, but it often uses the Khmer word for “Khmer citizen ” or “Khmer people”, perpetuating the notion of citizenship is based on Khmer ethnicity and entrenching the status of ethnic Vietnamese as non-citizens.<sup>29</sup>
13. The 1996 Law on Nationality (“1996 Nationality Law”) continued exclusionary language that bases citizenship on Khmer ethnicity. The 1996 Nationality Law allowed for four mechanisms by which to acquire citizenship: birth, marriage, naturalisation, or other special basis like investment.<sup>30</sup> For citizenship through birth in the Kingdom of Cambodia, both parents were required to have legal residence and be born in Cambodia. However, the law did not define what constitutes legal residence or which supporting documents would be necessary. As for naturalisation, the law required that the applicant be of ‘good behaviour’, be literate in written and spoken Khmer, and lived continuously in the country for seven years, among other requirements .The decision to confer citizenship under this provision rests on an administrative authority, but without a sub-decree that specifies the responsible authority or procedures, there are large gaps left in the application of the law.<sup>31</sup>
14. Previous nationality laws are also relevant, as they are legally applicable to those who were born at the time of their functioning, which includes the 1934 Nationality law under the French protectorate and the 1954 Law on Nationality under Sihanouk.<sup>32</sup> Those born under the latter law have a strong claim for citizenship, as it allowed for citizenship to be conferred if only one parent was born in Cambodia, without a legal residency requirement like the current law.<sup>33</sup>
15. In a potentially significant development, the Cambodian parliament passed a new Nationality Law in June 2018. As this law has been passed recently, the co-submitting organisations have not yet been able to review it fully. However, upon first review, it appears that changes to the law primarily focus on ‘citizenship by investment.’<sup>34</sup> This is a missed opportunity, given the clear need to reform the law to ensure equal access to citizenship for all persons who have a clear link to the country (including through birth on the territory and would otherwise be stateless. The new law also imposes stiff jail penalties on those who ‘illegally’ obtain citizenship as well as government agents who illegally issue citizenship documentation. While it is important to address fraud, there is a concern, that the penalisation of wrong decisions by government agents can lead to a fear to use their discretion to grant citizenship to the most vulnerable.
16. It is important to assess Cambodia’s nationality law framework against its international obligations. CRC Article 7 (right to nationality), particularly when read with Articles 2 (non-discrimination) and 3 (best interests of the child) entrenches a very clear obligation to ensure that no child is born stateless, and that the right to a nationality is enjoyed by all children, without discrimination. Consequently, a

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<sup>28</sup> The information detailed in the section of this submission titled “Law and policy challenges” is drawn largely from research completed by Minority Rights Group International – see <http://minorityrights.org/?s=cambodia>

<sup>29</sup> <http://minorityrights.org/publications/minorities-in-cambodia-june-1995/> ;

<sup>30</sup> [https://jrscambodia.org/publication/boat\\_without\\_anchors\\_jrs.pdf](https://jrscambodia.org/publication/boat_without_anchors_jrs.pdf)

<sup>31</sup> [https://jrscambodia.org/publication/boat\\_without\\_anchors\\_jrs.pdf](https://jrscambodia.org/publication/boat_without_anchors_jrs.pdf)

<sup>32</sup> [https://jrscambodia.org/publication/boat\\_without\\_anchors\\_jrs.pdf](https://jrscambodia.org/publication/boat_without_anchors_jrs.pdf)

<sup>33</sup> [https://jrscambodia.org/publication/boat\\_without\\_anchors\\_jrs.pdf](https://jrscambodia.org/publication/boat_without_anchors_jrs.pdf);

[https://www.google.co.th/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiviNLdnc7TAhVFtY8KHZZpAjMQFggxMAI&url=http%3A%2F%2Fcadmus.eui.eu%2Fbitstream%2Fhandle%2F1814%2F45084%2FGLOBALCIT\\_2017\\_02\\_Cambodia.pdf%3Fsequence%3D3&usq=AFQjCNH6Qzog5YHjGJcxt6eDAT1\\_qfK66A&sig2=fdA06Y8pmCgR26Xsc4mBVg](https://www.google.co.th/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiviNLdnc7TAhVFtY8KHZZpAjMQFggxMAI&url=http%3A%2F%2Fcadmus.eui.eu%2Fbitstream%2Fhandle%2F1814%2F45084%2FGLOBALCIT_2017_02_Cambodia.pdf%3Fsequence%3D3&usq=AFQjCNH6Qzog5YHjGJcxt6eDAT1_qfK66A&sig2=fdA06Y8pmCgR26Xsc4mBVg)

<sup>34</sup> See <https://www.phnompenhpost.com/national/draft-nationality-law-approved> and <https://www.phnompenhpost.com/national/senate-approves-law-citizenship> for further information.



citizenship law regime which allows generation after generation of children to be born without nationality, must be scrutinised, amended and implemented in a just manner, so as to end the intergenerational statelessness of this community.

## Birth Registration

17. Cambodia has obligations under CRC Article 7, to register all births *immediately*. Further, Target 16.9 of the Sustainable Development Goals, aims to ‘by 2030 provide legal identity for all including birth registration’.
18. However, Vietnamese minority populations have limited access to birth registration.<sup>35</sup> In 2016, MIRO found that only 5 per cent of 414 ethnic Vietnamese surveyed in Takeo, Kampong Chhnang and Pursat provinces had birth certificates.<sup>36</sup> Cambodian law allows children of non-citizens living “legally” in the country to be issued a birth certificate. However, local officials seem to conflate issuing birth certificates with conferring citizenship, and refuse non-citizens of birth registration. The absence of birth registration for children in these communities creates barriers for obtaining other documentation relevant to exercising future rights and entitlements such as admission to school and access to Cambodian citizenship.<sup>37</sup>
19. The Cambodian Government established a new Department of Identification in 2014 and announced a new National Plan of Identification (2017-2026). The latter aims to improve civil registration and vital statistic records, in order to have a single source of data on the population.<sup>38</sup> However, without capacity building of officials and safeguards to ensure such initiatives are inclusive and non-discriminatory for minority populations, such investments by the Cambodian Government will not meet its objectives.
20. It must be noted that a new identification law appears to be in preparation,<sup>39</sup> which could help clarify issues around birth registration and ensure that vulnerable communities are registered without discrimination. However, the co-submitting organisations remain concerned that unless drafted with full consideration for Cambodia’s obligations under the CRC as well as it’s SDG targets, that this too, could be a missed opportunity.

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<sup>35</sup> Sperfeldt, Report on Citizenship Law: Cambodia, country Report 2017/02, GLOBALCIT,

[http://cadmus.eui.eu/bitstream/handle/1814/45084/GLOBALCIT\\_2017\\_02\\_Cambodia.pdf?sequence=3&isAllowed=y](http://cadmus.eui.eu/bitstream/handle/1814/45084/GLOBALCIT_2017_02_Cambodia.pdf?sequence=3&isAllowed=y)

<sup>36</sup> Minority Rights Organization (MIRO) (2016), ‘Research Finding Statelessness Minority Groups in Cambodia Takeo, Kampong Chhnang, and Pursat’, Phnom Penh: MIRO

<sup>37</sup> Hyde, M. (2016), ‘Report on Access to Birth Registration for Marginalised or Vulnerable Populations: A Case Study on Ethnic Vietnamese Minority Communities in Cambodia’, report prepared for the Minority Rights Organization (MIRO), August 2016.

<sup>38</sup> [http://giz-cambodia.com/legal-identity-and-inclusive-development-in-cambodia/;](http://giz-cambodia.com/legal-identity-and-inclusive-development-in-cambodia/)

[https://www.google.co.th/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiviNLdnc7TAhVFtY8KHZZpAjMQFggxMAI&url=http%3A%2F%2Fcadmus.eui.eu%2Fbitstream%2Fhandle%2F1814%2F45084%2FGLOBALCIT\\_2017\\_02\\_Cambodia.pdf%3Fsequence%3D3&usq=AFQjCNH6Qz0g5YHjGJcxt6eDat1\\_qfK66A&sig2=fdA06Y8pmCgR26Xsc4mBVg](https://www.google.co.th/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=0ahUKEwiviNLdnc7TAhVFtY8KHZZpAjMQFggxMAI&url=http%3A%2F%2Fcadmus.eui.eu%2Fbitstream%2Fhandle%2F1814%2F45084%2FGLOBALCIT_2017_02_Cambodia.pdf%3Fsequence%3D3&usq=AFQjCNH6Qz0g5YHjGJcxt6eDat1_qfK66A&sig2=fdA06Y8pmCgR26Xsc4mBVg)

<sup>39</sup> See [https://www.phnompenhpost.com/national/ministry-drafting-law-identification.](https://www.phnompenhpost.com/national/ministry-drafting-law-identification)



## General Human Rights Challenges

21. Without proper identification, members of the community are denied access to the benefits of Cambodian citizenship, living in a legally precarious position, cut off from social security safety nets.<sup>40</sup> As set out above, without birth certificates, children are excluded from accessing the education system. A MIRO study found that only 9 per cent of ethnic Vietnamese go to state schools.<sup>41</sup> While more affluent, urban members of this community are likely to have better access to schools, this statistic points to a deeprooted problem of exclusion and denial of rights. Similarly, members of this community who lack birth certificates are barred from accessing healthcare and other social services. Foreigners cannot own land in Cambodia, thus many ethnic Vietnamese have no option but to reside in boats and floating houses on waterways. They cannot open bank accounts or have access to legal credit options. They cannot vote. They cannot travel. They are prevented from accessing the judicial system or make complaints to authorities.<sup>42</sup>
22. Without the security of citizenship or robust knowledge of the law, officials prey on them to extort bribes. For example, many ethnic Vietnamese have reported being harassed by police to 'pay taxes' for fishing and pay an annual immigration fee, despite having their valid immigration documentation. Others are arrested and jailed for a lack of identification.

## Recommendations

23. Based on the above information, the co-submitting organisations urge reviewing States to make the following Recommendations to Cambodia:
  - i. Comprehensively address the discriminatory law and policy framework and discriminatory treatment of the ethnic Vietnamese community in Cambodia, ensuring that the right to nationality of all members of the community is protected and that they are able to enjoy their other human rights without obstruction.
  - ii. Fully implement the constitution, and domestic legal framework which allows Khmer Krom to obtain citizenship in Cambodia.
  - iii. Amend and improve Cambodia's nationality law and related Constitutional provisions, to bring them in line with international standards, eradicate racial discrimination, comprehensively protect against statelessness, and to ensure that any efforts to address fraud do not create an environment for the further discrimination and exclusion of minority communities.
  - iv. Pursue Cambodia's targets under the Sustainable Development Agenda and strengthen collaboration with international partners, with the strongest possible emphasis on the principle of "no one left behind", thereby prioritising the ethnic Vietnamese community throughout development programming, and in particular, in the implementation of Target 16.9.

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<sup>40</sup> The information detailed in the section of this submission titled "General human rights challenges" is drawn largely from research completed by Minority Rights Group International – see <http://minorityrights.org/?s=cambodia>

<sup>41</sup> <http://mirocambodia.org/download/MIRO's%20Stateless%20Vietnamese%20Report%202014.pdf>

<sup>42</sup> <http://mirocambodia.org/download/MIRO's%20Stateless%20Vietnamese%20Report%202014.pdf>;  
<http://civilparties.org/wordpress/wp-content/uploads/2012/12/Lyma-statelessness-briefing-oct-2010.pdf>

- v. Ensure full implementation of Article 7 CRC, by immediately registering the births of all children born in Cambodia – without exception – and ensuring that all such children who would otherwise be stateless, are granted Cambodian citizenship. Take all necessary steps to address barriers to accessing birth registration – including through ensuring that the new identification law is fully compliant with international standards.
- vi. Ensure that the births of all ethnic Vietnamese children born in Cambodia are registered immediately, through the nondiscriminatory, comprehensive and consistent implementation of regulations relevant to birth registration, including by providing for free birth registration for those unable to pay the current costs and raising awareness about the importance of birth registration. Consider the strengthening of policies on birth registration in the drafting of the Law on Population Density, Identification and Population Density Statistics that would fulfill obligations under international law.
- vii. Provide detailed information on the deportation process and on the confiscation of documents and destruction of registries, and take all necessary steps to remedy rights violations in this regard, return confiscated documents and recognise the Cambodian citizenship of those whose documents were lost, confiscated, destroyed or viewed with suspicion, and provide an independent mechanism for the return of seized documents whenever possible.
- viii. Ensure that all necessary steps are taken to collect and publish data on Vietnamese community in Cambodia, including the long-term ethnic Vietnamese community in Cambodia.
- ix. Establish a fair and expeditious procedure, in line with UNHCR guidance, to assess the likelihood of Vietnamese nationality of any persons from the ethnic Vietnamese community whose Cambodian citizenship is under question, and to ensure that all such persons are not at risk of statelessness or left in limbo with inadequate rights protection, during the process or after a decision has been made.
- x. Take all necessary steps to accede to and fully implement the 1954 and 1961 Statelessness Conventions, including, but not limited to:
  - a. Building the capacities of local authorities to understand the legal framework and to bring practices in line with Cambodia's law, constitution and human rights obligations; and
  - b. Implementing proactive awareness-raising programs among affected communities about importance of civil registration and the procedures available for access to legal identity, including civil registration and, where possible, Cambodian citizenship in accordance with Cambodian laws.
- xi. Address discrimination against the Khmer Krom and ethnic minorities, including the eradication of discriminatory legislation, in line with the supported recommendation made by Switzerland in the UPR 2nd cycle on creating conditions favourable to inter-ethnic tolerance.