

COMMENTARY

LEGAL IDENTITY AND MINORITY STATELESSNESS IN CAMBODIA: RECENT DEVELOPMENTS

CHRISTOPH SPERFELDT*

TABLE OF CONTENTS

I	Introduction.....	347
II	Birth Registration and Education.....	349
III	'Foreigner' Census and Deportations	349
IV	A Numbers Game	351
V	Relocations and Emigration.....	352
VI	Pathways to Citizenship.....	353

I INTRODUCTION

This piece summarises recent developments concerning stateless Vietnamese populations in Cambodia, with a specific focus on communities residing for generations around the Tonle Sap Lake in central Cambodia.

The Vietnamese are Cambodia's largest minority. Whilst some ethnic Vietnamese have Cambodian identification documents and have integrated into society, many others continue to live at the margins of society and face difficulties substantiating their legal status.¹

Due to lack of knowledge, as well as widespread negative attitudes towards the Vietnamese among the Khmer majority population, the Royal Government of Cambodia, international development partners and local NGOs have ignored the group for years.² Among the notable exceptions are Minority Rights Organization ('MIRO') and Women Peace Makers.³ The Government of the Socialist Republic of Vietnam has trod carefully, relying mostly on its close government-to-government ties. Requests to naturalise long-term Vietnamese residents have been

* Honorary Fellow, Peter McMullin Centre on Statelessness, Melbourne Law School. The author thanks Lisa Tamiakis for comments on this paper.

¹ See generally Stefan Ehrentraut, 'Perpetually Temporary: Citizenship and Ethnic Vietnamese in Cambodia' (2011) 34(5) *Ethnic and Racial Studies* 779; Christoph Sperfeldt, 'Minorities and Statelessness: Social Exclusion and Citizenship in Cambodia' (2020) 27(1) *International Journal on Minority and Group Rights* 94.

² See Ramses Amer, 'Cambodia's Ethnic Vietnamese: Minority Rights and Domestic Politics' (2006) 34(3) *Asian Journal of Social Science* 388; Tim Frewer, 'Cambodia's Anti-Vietnam Obsession', *The Diplomat* (online, 6 September 2016) <<https://thediplomat.com/2016/09/cambodias-anti-vietnam-obsession/>>.

³ See, eg, Chanrith Ang, Noémie Weill and Jamie Chan, *Limbo on Earth: An Investigative Report on the Current Living Conditions and Legal Status of Ethnic Vietnamese in Cambodia* (Investigative Research Report No 2, Minority Rights Organisation, 2014); Suyheang Kry and Raymond Hyma, *Who's Listening? Tackling Hard Issues with Empathy*, ed Melissa Martin and Karen Simbulan (Women Peace Makers 2017).

rebuked by the Government of Cambodia.⁴ Considering a history of past persecutions, especially under the Khmer Rouge regime during the 1970s, affected Vietnamese populations refrain from public engagement because of fear and safety concerns. In 2018, the remaining senior leaders of the Khmer Rouge still alive were convicted of committing genocide against the ethnic Vietnamese in *Case 002/02* before the Extraordinary Chambers in the Courts of Cambodia. Vietnamese civil parties in that case had also requested that their lack of Cambodian nationality be considered under the court's collective reparations mandate.⁵

In 2012, the report *A Boat Without Anchors* broke new ground in exploring the legal status of long-term resident populations of Vietnamese origin living on floating villages on the Tonle Sap in Kampong Chhnang province.⁶ The report found respondents were living legally in Cambodia and possessed various forms of documentation identifying them as 'foreign residents' — but none held proof of nationality of any state.⁷ Without nationality or another more robust legal identity, these Vietnamese do not have access to basic economic, political and social rights and face an array of disadvantages, including limited freedom of movement, being unable to own land and difficulty accessing employment, education, health care and legal protection.⁸

Renewed attention from the media⁹ and scholars¹⁰ has contributed to raising the issue among national and international audiences. The issue has also re-emerged on the radar of international human rights mechanisms. The Human Rights Committee has recommended that Cambodia 'facilitate access to identification documentation' and 'guarantee the right of stateless children who were born in the territory of Cambodia to stateless parents to acquire a nationality'.¹¹ In 2019, the Committee on the Elimination of Racial Discrimination also called on the Government to take measures against hate

⁴ Khuon Narim, 'Kingdom Rejects Vietnam's Request to Provide Citizenship to its Nationals', *Khmer Times* (online, 21 August 2019) <www.khmertimeskh.com/635604/kingdom-rejects-vietnams-request-to-provide-citizenship-to-its-nationals/>.

⁵ See *Case 002 (Summary of Judgment)* (Extraordinary Chambers in the Courts of Cambodia, Trial Chamber, Case No. 002/19-09-2007/ECCC/T, 16 November 2018). See also Lyma Nguyen and Christoph Sperfeldt (2014) 'Victim Participation and Minorities in Internationalised Criminal Trials: Ethnic Vietnamese Civil Parties at the Extraordinary Chambers in the Courts of Cambodia' 14 *Macquarie Law Journal* 97.

⁶ Lyma Nguyen and Christoph Sperfeldt, *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* (Report, 2012).

⁷ *ibid* 95–96.

⁸ *ibid* 72–76.

⁹ See, eg, Ben Mauk, 'A People in Limbo, Many Living Entirely on the Water', *New York Times Magazine* (online, 28 March 2018) <<https://nyti.ms/2usiXnn>>.

¹⁰ See, eg, Laurie Parsons and Sabina Lawreniuk, 'Seeing Like the Stateless: Documentation and the Mobilities of Liminal Citizenship in Cambodia' (2018) 62 *Political Geography* 1; Lucrezia Canzutti, '(Co-)Producing Liminality: Cambodia and Vietnam's 'Shared Custody' of the Vietnamese Diaspora in Cambodia' (2019) 71 *Political Geography* 26; Charlie Rumsby, 'The God School: Informal Christian Education and Emerging Aspirations among De Facto Stateless Children Living in Cambodia' (2021) 33 *European Journal of Development Research* 89.

¹¹ Human Rights Committee, *Concluding Observations on the Second Periodic Report of Cambodia*, UN Doc CCPR/C/KHM/CO/2 (27 April 2015, adopted 31 March 2015) [27].

speech and improve the legal status of people of Vietnamese origin.¹² Moreover, the UN Special Rapporteur on Cambodia has monitored and publicly reported on the situation of affected communities.¹³

II BIRTH REGISTRATION AND EDUCATION

A Boat Without Anchors and MIRO found that many Vietnamese communities do not have effective access to birth registration. In 2016, MIRO found that only 5% of 414 Vietnamese surveyed in Takeo, Kampong Chhnang and Pursat provinces had birth certificates.¹⁴ Cambodian law allows children of non-citizens living legally in the country to be issued a birth certificate, but local officials seem to conflate issuing birth certificates with conferring citizenship.¹⁵ The absence of birth registration for children creates barriers for obtaining other documents relevant to exercising future rights and entitlements. Many children are unable to attend public schools due to a lack of birth certificates, which schools require for enrolment.¹⁶ The Committee on the Elimination of Discrimination against Women called upon Cambodia to ‘intensify efforts to facilitate the birth registration of children born to Vietnamese mothers and their acquisition of citizenship’.¹⁷ In 2019, the Ministry of Interior eventually issued a directive instructing local administrations to provide birth certificates to ‘foreigners’ who have permanent resident cards — basically reminding local authorities that they should implement the law.¹⁸

Cambodian authorities need to provide these communities with effective access to birth registration to achieve universal birth registration in line with Sustainable Development Goal 16.9, which aims to ‘provide legal identity for all including birth registration’, by 2030.¹⁹ Universal access to public primary schooling is a key requirement for social inclusion, improving Khmer language skills among children, and accessing better employment opportunities.

III ‘FOREIGNER’ CENSUS AND DEPORTATIONS

After the 2013 national elections, Cambodian authorities adopted new policies regarding the legal status of ethnic Vietnamese populations. First, in late 2014,

¹² Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Fourteenth to Seventeenth Reports of Cambodia*, UN Doc CERD/C/KHM/CO/14-17 (12 December 2019, adopted 9 December 2019) [23]–[24].

¹³ Human Rights Council, *Assessing Protection of Those at Risk of Being Left Behind: Report of the Special Rapporteur on the Situation of Human Rights in Cambodia*, UN Doc A/HRC/42/60/Add.1 (2 September 2019) [47]–[51].

¹⁴ *Research Finding Statelessness Minority Groups in Cambodia Takeo, Kampong Chhnang, and Pursat Provinces* (Research Report, Minority Rights Organization, 2016) 19.

¹⁵ Melanie Hyde, *Report on Access to Birth Registration for Marginalised or Vulnerable Populations: A Case Study on Ethnic Vietnamese Minority Communities in Cambodia* (Report, 2016) 10–11.

¹⁶ Ang, Weill and Chan (n 3) 11.

¹⁷ Committee on the Elimination of Discrimination against Women, *Concluding Observations on the Fourth and Fifth Periodic Reports of Cambodia*, UN Doc CEDAW/C/KHM/CO/4-5 (29 October 2013, adopted 18 October 2013) [30]–[31].

¹⁸ *Directive on Issuance of Administrative Letters and Birth Certificates for Cambodian Spouses, Children and Foreign Immigrants* (Circular No 015, Ministry of Interior, 2019).

¹⁹ *Transforming our World: the 2030 Agenda for Sustainable Development*, UN Doc A/RES/70/1 (21 October 2015, adopted 25 September 2015) 25, [16.9].

Cambodian authorities implemented a ‘foreigner’ census, one aim of which was to identify and deport ‘illegal immigrants’.²⁰ Subsequent deportations disproportionately targeted Vietnamese, with more than 10,000 (mostly recent immigrants) deported to Vietnam.²¹ Shortly thereafter, Cambodian authorities implemented a nation-wide registration process under the auspices of the Ministry of Interior — again focusing mainly on Vietnamese populations — that involved the issuance of new permanent resident cards. The new cards were issued for a fee of 250,000 riel per person (more than USD60), requiring renewal after two years for the same price.²² These documents identify their holders as ‘immigrant aliens’ having ‘Vietnamese nationality’²³ — confirming the Cambodian Government’s position that these people are not stateless, but are in fact Vietnamese nationals, without any verification of such a status. Almost 90,000 Vietnamese were eligible to apply for the new permanent resident cards.²⁴ Many people reported that officials told them they could apply for naturalisation after seven years residing legally in Cambodia with these new documents.²⁵ The rights and entitlements under the new resident cards remain unclear.

For a period beginning in 2017, this registration process was accompanied by systematic confiscation of all prior documentation that authorities deemed to be ‘irregular’.²⁶ The Ministry of Interior identified around 70,000 mostly Vietnamese ‘foreigners’ who held these irregular documents.²⁷ In the provinces monitored by MIRO and visited by the author, authorities have confiscated legal documents previously held by Vietnamese residents, including old immigration or resident cards, family books and even Cambodian ID cards — effectively revoking citizenship from potentially thousands of individuals.²⁸ In fact, the Ministry deemed irregular most documentation previously issued by mainly local

²⁰ Sperfeldt (n 1) 113.

²¹ Khy Sovuthy, ‘Deportations of Vietnamese Dropped Last Year’, *Cambodia Daily* (online, 23 January 2017) <<https://english.cambodiadaily.com/news/deportations-vietnamese-dropped-last-year-123878/>>; Chhun Sunly, ‘Deportees total more than 18,000 since 2014’, *Khmer Times* (online, 18 June 2021) <<https://www.khmertimeskh.com/50876526/deportees-total-more-than-18000-since-2014/>>.

²² Sperfeldt (n 1) 114 n 73.

²³ *ibid*; Mech Dara and Daphne Chen, ‘Government Pledges Documentation for Ethnic Vietnamese’, *The Phnom Penh Post* (online, 28 February 2018) <<https://www.phnompenhpost.com/national/government-pledges-documentation-ethnic-vietnamese>>.

²⁴ *Management of Foreign Immigrants in Cambodia* (Notification No 1990, Ministry of Interior, 2020).

²⁵ Author’s and MIRO’s observations from field visits conducted between 2015–19. This is seemingly in line with the naturalisation requirements set out in art 19 of Cambodia’s 2018 *Law on Nationality*, but disregards the previous legal residence status of many Vietnamese: *Law on Nationality No NS/RKT/0618/008 2018*, art 19 (Kingdom of Cambodia) (*‘Law on Nationality’*). See also Dara and Chen (n 23).

²⁶ *Cancellation and Withdrawal Of Irregular Cambodian Administrative Documents Possessed and Used By Foreigner* (Sub-Decree No 129, 15 August 2017).

²⁷ Ben Sokhean, ‘Interior Ministry Sees a Danger to Kingdom: Illegal Immigrants “are a Security Risk”’, *Khmer Times* (online, 14 July 2020) <<https://www.khmertimeskh.com/744331/interior-ministry-sees-a-danger-to-kingdom-illegal-migrants-are-a-security-risk/>>.

²⁸ Sperfeldt (n 1) 114–5; See also Voun Dara, ‘Ethnic Vietnamese Protest Against Residency Blunder’, *Phnom Penh Post* (online, 17 January 2019) <<https://www.phnompenhpost.com/national/ethnic-vietnamese-protest-against-residency-blunder>>.

Cambodian authorities. A ministerial official summarised the widely held view: ‘We don’t remove their citizenship, they are Vietnamese. We just take the Cambodian documents.’²⁹ Confiscated documents are kept with the Ministry of Interior, and it is uncertain whether the authorities intend to return them.

These policies seem to have treated all Vietnamese residents the same, regardless of whether they have resided in Cambodia for generations or are more recent immigrants. The census and registration did not provide an individual assessment that would have considered the specific circumstances and legal status of each individual. The underlying assumption seems to be that people of Vietnamese origin or with Vietnamese names are ‘immigrants’, irrespective of any legal entitlements they may hold under Cambodian law. Numerous Vietnamese long-term residents and/or their children may in fact be entitled to Cambodian nationality under past and current nationality laws, but struggle to provide or obtain documentary proof.³⁰ The confiscation of legal documentation will make such proof more difficult to provide, and in effect eradicate the limited documentary proof of residence or previous migration held by affected populations.

IV A NUMBERS GAME

A lack of data about the size of the Vietnamese minority in Cambodia and the scope of the legal identity problem has been a key impediment to greater domestic and international recognition of the challenges faced by this population. Due to the sensitivity of the topic and the politicisation of population figures, the Cambodian Government long refrained from publishing statistics about Vietnamese populations on its territory. The most recent population census, conducted in 2019, listed 78,090 individuals whose ‘mother tongue’ is Vietnamese.³¹ MIRO estimates the total number as being somewhere between 400,000 and 700,000,³² while the political opposition has frequently made much higher but unsubstantiated claims.³³ The Ministry of Interior’s ‘foreigner’ census identified 180,000 Vietnamese ‘nationals’ residing in Cambodia, of which almost

²⁹ Kong Meta, ‘Interior Ministry Identifies 70,000 “Improper” Citizens, Mostly Ethnic Vietnamese’, *Phnom Penh Post* (online, 5 October 2017) <<https://www.phnompenhpost.com/national/interior-ministry-identifies-70000-improper-citizens-mostly-ethnic-vietnamese>>.

³⁰ The 2018 *Law on Nationality* provides under art 9(2) that ‘any child who is born from a foreign mother and father (parents) who were born and living legally in the Kingdom of Cambodia’ shall obtain ‘Khmer’ nationality: *Law on Nationality* (n 30) art 9(2). See also Christoph Sperfeldt, *Report on Citizenship Law: Cambodia* (Country Report No RSCAS/GLOBALCIT-CR 2017/2, Global Citizenship Observatory, January 2017) 12.

³¹ Figures exclude migrants working abroad: National Institute of Statistics Cambodia, *General Population Census of the Kingdom of Cambodia 2019: National Report on Final Census Results* (Report, October 2020) 25.

³² ‘Cambodia: Ethnic Vietnamese’, *Minority Rights Group International* (Web Page, November 2017) <<http://minorityrights.org/minorities/ethnic-vietnamese/>>.

³³ Kok-Thay Eng ‘Both the CPP and CNRP Need to Rethink Some of Their Policies’ (2014) 3 *The Cambodia Law and Policy Journal* <<http://cambodialpj.org/both-the-cpp-and-cnrp-need-to-rethink-some-of-their-policies/>>; See generally Kevin Ponniah, ‘Cambodia’s Vietnamese Community Finds Voting is Not Necessarily a Right’, *The Guardian* (online, 4 September 2013) <<https://www.theguardian.com/global-development/poverty-matters/2013/sep/04/cambodia-elections-vietnamese-voting>>; Paul Millar ‘Race to the Bottom’, *Globe* (online, 21 October 2016) <<https://southeastasiaglobe.com/cambodia-opposition-cnrp-vietnamese/>>.

70,000 were classified as ‘old settlers’.³⁴ While these numbers may not capture all ethnic Vietnamese living in Cambodia, they provide an estimate of the numbers of those not recognised as Cambodian nationals, including among long-term resident populations. Subsequently, and for the first time, in 2019 Cambodia reported to the United Nations High Commissioner for Refugees a figure of 57,444 individuals that fall under the organisation’s statelessness mandate.³⁵ Nevertheless, while numbers have become less controversial in recent years, questions remain about the quality of data and the appropriateness of categorisations.

V RELOCATIONS AND EMIGRATION

Around the Tonle Sap Lake, authorities have been taking measures to relocate floating villages onto the land, citing environmental and other regulatory reasons.³⁶ Kampong Chhnang province was the first to implement relocations for more than 10,000 people, affecting Vietnamese and other communities alike.³⁷ However, the conditions of the relocation sites differ markedly between Vietnamese and non-Vietnamese groups. In 2019, the UN Special Rapporteur visited some of these sites and expressed great concern about housing and sanitation conditions for Vietnamese families.³⁸ In June 2021, Phnom Penh authorities similarly ordered with little notice the removal of all floating houses on rivers surrounding the capital, affecting some 1,300 mostly Vietnamese households.³⁹ Apart from disrupting the livelihood of traditional fishing communities, these relocations have highlighted the precarious legal status of relocated Vietnamese residents, as they cannot own the land at relocation sites.⁴⁰

The combined effects of Government registration, document revocation, decreasing fish stocks in the Tonle Sap and forced relocations have increased a feeling of insecurity among affected communities. Thousands of Vietnamese in Kampong Chhnang and other provinces have left for Vietnam in search of better living conditions.⁴¹ Many will see Vietnam for the first time. Information about

³⁴ Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia: Comments by the State*, UN Doc A/HRC/39/73/Add.2 (11 September 2018) 23.

³⁵ *Global Trends: Forced Displacement in 2019* (UNHCR Report, 2020) 72.

³⁶ Rhona Smith, ‘Relocating Floating Communities in Cambodia: Kampong Chhnang’ (2021) 43(2) *Human Rights Quarterly* 290.

³⁷ *ibid* 295.

³⁸ Human Rights Council, *Report of the Special Rapporteur on the Situation of Human Rights in Cambodia*, UN Doc A/HRC/42/60 (27 August 2019) [40]–[43].

³⁹ Samoeun Nicseybon and Danielle Keeton-Olsen, ‘Floating Communities, Many Vietnamese, Uprooted by Phnom Penh Evictions’, *VOD* (online, 11 June 2021) <<https://vodenglish.news/floating-communities-many-vietnamese-uprooted-by-phnom-penh-evictions/>>; ‘More than 1,300 Floating Houses on Tonle Sap River Dismantled’, *Khmer Times* (online, 16 June 2021) <<https://www.khmertimeskh.com/50875141/more-than-1300-floating-houses-on-tonle-sap-river-dismantled/>>.

⁴⁰ Rina Chandran ‘No Room on Water, No Home on Land For Cambodia’s Ethnic Vietnamese’, *Reuters* (online, 27 June 2019) <<https://www.reuters.com/article/us-cambodia-landrights-refugees/no-room-on-water-no-home-on-land-for-cambodias-ethnic-vietnamese-idUSKCN1TS03L>>.

⁴¹ Author’s and MIRO’s observations from field visits conducted between 2015–19.

these migrants is sparse, but those without family connections or other ties to Vietnam may struggle to gain a secure legal status.⁴²

VI PATHWAYS TO CITIZENSHIP

The ‘foreigner’ census, new resident cards and instructions to local authorities demonstrate that the Cambodian Government deemed necessary more centralised, regulatory action regarding Vietnamese populations on its territory. However, these actions focus on managing the problem, not improving the lives of affected communities. What is lacking is a clear pathway to Cambodian nationality, to which many are arguably entitled under Cambodian law. The 2018 amendment of Cambodia’s nationality law was a missed opportunity, as it did not address the legal identity challenges faced by these populations. Access to nationality alone will not overcome entrenched discrimination and social exclusion, but it is one step towards improving access to rights and opportunities.

Several pathways to citizenship exist and may be realised if underpinned by assistance efforts and met with political willingness on the government side. First, many ethnic Vietnamese individuals may already qualify for Cambodian nationality and should gain access to proof of their nationality. Prominent examples are children of mixed marriages with at least one Cambodian national parent, who often struggle to get their citizenship confirmed, as they have Vietnamese names or live in predominantly Vietnamese communities. Moreover, children born to parents who were born in Cambodia and hold the new resident cards are Cambodian nationals by birth, in accordance with art 9(2) of the nationality law, and should be recognised as such. Second, the first cohort of those who received the new resident cards will soon reach the seven-year mark, whereupon they will become eligible to apply for naturalisation. This will be the true litmus test of the Government’s approach, as it will show whether the authorities are willing to open pathways to citizenship for those who are legally eligible for it; or whether they will permanently lock out populations from citizenship, leaving their status precarious for the foreseeable future.

⁴² Duy Tran, ‘No Money, No Papers: Stateless Vietnamese Return Home from Cambodia’, *VNExpress* (online, 9 August 2016) <<https://e.vnexpress.net/news/life/no-money-no-papers-stateless-vietnamese-return-home-from-cambodia-3449463.html>>.