



RIGA  
GRADUATE  
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LAW

# **The Problem of Statelessness in Cambodia**

## ***Master Thesis***

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### DECLARATION OF HONOUR:

I declare that this thesis is my own work and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed).....

Riga, 2018

## Summary

Statelessness has become an issue of concern to the international community since after the World War I. An estimated 15 million people are refused citizenship around the world. Statelessness occurs due to many reasons, such as gaps in nationality laws, the moving of people from their own birth country, a child born in a foreign country, the emergence of new states and changes in borders or statelessness because a person's nationality is lost or removed. Stateless people are unable to enjoy several of their fundamental rights including access to education, access to healthcare services, to acquire a job, the freedom of movement (traveling) and other civil and political rights such as a right to vote or right to political participation. Statelessness is a primary factor in human rights violations, civil conflict, and the national security of the state in parts of the world.

Statelessness occurs in many regions around the world, including Africa, Europe, Latin America & the Caribbean, and Middle East. Statelessness appears in the Southeast Asia region, including Cambodia. This paper will cover the problem of Statelessness in Cambodia through the following structure:

Chapter 1: The first chapter will provide the aim of research, scope and limitations of research, the methodology, and the significance of the research.

Chapter 2: The second chapter will illustrate the problem of statelessness in Cambodia including the cause of stateless among the ethnic Vietnamese, and the ethnic Khmer Krom. The chapter will outline the actual situation, facts and challenges including issues of legal, economic and social status among these two minority groups.

Chapter 3: The third chapter will cover the applicable legal framework as well as state practice on the issue of statelessness. This chapter will illustrate the International Legal Standards and definitions on statelessness, the domestic law and issues of implementation, and state practice on the statelessness issue including case studies from other countries including Japan, Malaysia, and Thailand.

Chapter 4: The fourth chapter will cover statelessness in Cambodia, including the requirements to be legalized, the process/ procedures and time taken to provide the legal status to the stateless person. Moreover, the chapter will illustrate the importance of avoiding statelessness for the Cambodian government, and how it could do so.

Chapter 5: Chapter five concludes the topic by going back to the research questions and the research objective, and will provide recommendations to the Cambodian Government to avoid and prevent statelessness as well as encourage the state to cooperate with the international community, in particular through the UNHCR, to end statelessness in Cambodia.

## Abbreviations

CCHR	Cambodian Center for Human Rights
CERD	The International Convention on the Elimination of All Forms of Racial Discrimination
CRC	The Convention On the Rights of the Child
CEDAW	The Convention on the Elimination of Discrimination against Women
CDC	Cambodian Development Council
ECCC	The Extraordinary Chambers in the Courts of Cambodia
INGO	International Non-governmental Organization
ICRMW	The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
ICCPR	International Covenant on Civil and Political Rights
KHURDA	Khmer Kampuchea Krom for Human Rights and Development Association
MIRO	Minority Rights Organization
NGO	Non-governmental Organization
OSF	Open Society Foundation
PRK	People Republic of Kampuchea
RGC	Royal Government of Cambodia
The 1961 Convention	The Convention on Reduction of Statelessness
The 1954 Convention	The Convention Relating to the Status of the Stateless Person
UDHR	Universal Declaration of Human Rights
UN	The United Nations
UNTAC	The United Nations Transitional Authority in Cambodia
UNHCR	The UN High Commissioner for Refugees

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## 1. Introduction

Without a nationality, people lose several of their fundamental rights, including access to education, access to healthcare service, the freedom to acquire a job<sup>1</sup>, the freedom of movement (traveling) and other civil and political rights such as the right to vote or right to political participation<sup>2</sup>. Statelessness is a key contributor to human rights violations, civil conflict, and is a threat to the national security of states in many parts of the world<sup>3</sup>.

An estimated 15 million people are refused citizenship all around the world<sup>4</sup>. Some are born stateless (de jure); however some become stateless (de facto)<sup>5</sup>. Statelessness occurs due to many reasons, such as gaps in nationality laws, the moving of people from their own birth country, a child born in a foreign country, the emergence of new states and changes in borders, or statelessness because a person's nationality was removed or they were purposefully deprived of it<sup>6</sup>.

Statelessness has become an issue of concern to the international community since World War I.<sup>7</sup> Statelessness occurred in many regions around the world including Africa, Europe, Latin America & the Caribbean, and Middle East<sup>8</sup>. Located in South East Asia region, Cambodia, with a population of over 16.25 million people, the statelessness include ethnic Vietnamese and 'Khmer Krom', the Khmer ethnic group. Despite the existence of these populations, there is no exact or officially agreed on number of the stateless population in Cambodia<sup>9</sup>, however, according to the report of UNHCR on the state of the world's refugees, had mentioned that the

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<sup>1</sup> Open Society Foundation, "What does Stateless Mean?", available on: <https://www.opensocietyfoundations.org/projects/stateless/what-does-statelessness-mean>. Accessed February 21, 2018.

<sup>2</sup> UNHCR, "Ending Statelessness", available on <http://www.unhcr.org/stateless-people.html?query=Ending%20Statelessness>. Accessed February 21, 2018.

<sup>3</sup> Open Society Foundation, What does Stateless Mean?.

<sup>4</sup> Ibid.

<sup>5</sup> Eric Fripp, and Konrad Schiemann, *Nationality and Stateless in the International Law of Refugee Status*, (Oxford and Portland, Oregon, 2016), 95-96.

<sup>6</sup> UNHCR, "Ending Statelessness".

<sup>7</sup> Fripp, and Schiemann, *Nationality and Stateless in the International Law of Refugee*, 95.

<sup>8</sup> Open Society Foundation, Where does Stateless happen?, available on: <https://www.opensocietyfoundations.org/projects/stateless/where-does-statelessness-happen>. Accessed February 21, 2018.

<sup>9</sup> Minority Rights Organization. *Research Finding, Statelessness Minority Group in Cambodia, Takeo, Kampong Chhnang, and Pursat province*, p.3. available on: <https://drive.google.com/file/d/0BxqUHdi76KQ-UXVuakQ0bU1yem8/view>. Accessed February 02, 2018.

Ethnic Vietnamese around five percent of the Cambodia's 10 million population were living with unclear citizenship under the national legislation<sup>10</sup>.

Under Article 15 of the 1948 Universal Declaration of Human Rights, "(1) everyone has the right to a nationality;" and "(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality"<sup>11</sup>. The UNHCR has determined to end statelessness by 2024, marked by its "#IBelong" campaign<sup>12</sup>. Thus, to participate and contribute to ending statelessness, and to increase its respect of human rights as a state party to the Universal Declaration of Human Rights, and a state party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol ratified on 15 Oct 1992<sup>13</sup>, this paper asks what Cambodia can do to address the issue of Statelessness in its territory when the Statelessness occurred among its population.

## 1.1 Aim of research (Research Objective)

The aim of this paper is to study the two nationalities that are living in two different circumstances of statelessness: the Khmer Krom, the Khmer Krom who have been settle in Cambodia as refugees, and the ethnic Vietnamese who are living in Cambodia, and to study the applicable legal frameworks surrounding statelessness and nationality, as well as to provide recommendations of a legal solution to Cambodia Government in addressing the issue of Statelessness in the territory.

### Research questions:

#### To focus and guide this research, the following questions will be addressed:

- A. What are the challenges facing of the stateless people in Cambodia?
- B. What is the international legal framework on statelessness?
- C. How is domestic law covering the issue of nationality implemented and enforced in Cambodia?
- D. What should the Cambodian government do to address and avoid statelessness in Cambodia?

## 1.2 Scope and limitations of research

This study focuses on the actual situation and problems of statelessness among the ethnic Vietnamese and Khmer Krom people who have been residence in Cambodia including their the legal status and violations of their human rights, and we will address the applicable legal

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<sup>10</sup> UNHCR. *The State of The World's Refugees: A Humanitarian Agenda: 6. Statelessness and Citizenship*. Available on: <http://www.unhcr.org/3eb7ba7d4.pdf>. Accessed February 21, 2018.

<sup>11</sup> UN General Assembly. Universal Declaration of Human Rights, 10 December 1948, 217 A (III). Available at: <http://www.refworld.org/docid/3ae6b3712c.html>. Accessed February 21, 2018.

<sup>12</sup> UNHCR, "Ending Statelessness".

<sup>13</sup> UNHCR, *Bureau for Asia and The Pacific Fact Sheet: List of State Parties to the Convention in Asia/ Pacific*. Available on: <http://www.unhcr.org/531dd2159.pdf>. Accessed February 21, 2018.

framework both international and domestic framework on the statelessness and nationality to find out the gap of Cambodian domestic law and its issue of implementation which possibly lead to the problem to Statelessness in Cambodia.

### **1.3 Methodology**

This academic research has been conducted based on data from several reports from domestic NGOs as well as international NGOs which have been working on the problem of statelessness in Cambodia, plus the experience of the author, a Cambodian national who has been working with this subject matter for more than two years. Furthermore, the study will raise examples addressing the issue of statelessness among Southeast Asian countries to find out which country should become the best example in dealing with the actual situation of statelessness in Cambodia today. Moreover, official documents and reports regarding statelessness from the UNHCR, the International Human Rights instruments which link to the right to nationality and statelessness, and Cambodia's domestic laws and regulations which cover the issue of nationality and rights to nationality will be analyzed in order to identify the gaps which may contribute to the issue of statelessness in Cambodia.

### **1.4 Significance of research**

The finding of this research will be significant and helpful in various manners, such as: it will illustrate the actual situation of key ethnic minority groups the Khmer Krom and the Vietnamese minority who have been residing in Cambodia for generations, including the frequent human rights violations they face, the rights which those who are stateless possess, as well as the problems of economic hardship and social challenges which are caused by an uncertain of legal status and lack of nationality. It is, therefore, the Royal Government of Cambodia and NGOs/INGOs who are operating with this subject matter that it is hoped will be able to capture the information, increase their understanding about the situation of statelessness in Cambodia, and be able to address the issue of statelessness in Cambodia more effectively by providing assistance or support or raise awareness of and for these minority groups. Moreover, this research will analyses the applicable frameworks both international and domestic, and find gaps in the domestic legal framework, as well as giving policy recommendations to the government to address the issue of statelessness. It also will benefit other scholars or researchers, to use as a baseline for further study. We believe this research will become a valuable tool for the government as well as NGOs to protect those affected by, reduce, and prevent statelessness in Cambodia in the future. In the short term, it is hoped that the research is used to bring a better life to those currently living with statelessness in the country.

## 2. Cambodia's problem of statelessness

Located in Southeast Asia with a population of over 16.25 million,<sup>14</sup> Cambodia is an independent sovereign state<sup>15</sup> which has been a United Nations permanent member since 14 December 1955<sup>16</sup>. Cambodia has ratified many international conventions, including the international human rights instrument the International Covenant on Civil and Political Rights (ICCPR)<sup>17</sup>, and the 1951 Convention related to the Status of Refugees and its 1967 protocol in 1992<sup>18</sup>. However, Cambodia has not ratified the 1954 Convention Relating to the Status of Stateless Persons,<sup>19</sup> or the 1961 Convention on the Reduction of Statelessness<sup>20</sup>, the primary international human rights instruments dealing with the issue of statelessness. Nonetheless, as a member of the United Nations, the Cambodian government has for its part played a role - through various mechanisms both international and domestic - to address and avoid statelessness in its territory. However, the issue of statelessness has persisted in the last decade and is in dire need of a solution<sup>21</sup>.

A widespread international issue, stateless is also finding its way into the mainstream political agenda of political parties in Cambodia.<sup>22</sup> The ethnic minority groups, the Khmer Krom people and the Vietnamese minorities residing in Cambodia, are considered concerning groups in Cambodia's society, either stateless or at high risk of becoming stateless<sup>23</sup>.

It is estimated that the number of stateless people in the world is over 15 million<sup>24</sup>; however there is no global exact figure. In Asia, the number of persons at high risk of statelessness or already stateless falls at around 1.4 million, spread across Myanmar, Malaysia, the Philippines, Thailand, Sri Lanka, and in Vietnam (11,500)<sup>25</sup>. There is no exact number of stateless persons residing in Cambodia mentioned in any reports; even though there are many NGOs and INGOs

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<sup>14</sup> Statista, "Cambodia: Total population from 2012 to 2022 (in a million inhabitants)", available on: <https://www.statista.com/statistics/438581/total-population-of-cambodia/>. Accessed April 23, 2018.

<sup>15</sup> The Kingdom of Cambodia. The Constitution of the Kingdom of Cambodia ( 21 September 1993), Art 1. Available on: <http://www.wipo.int/edocs/lexdocs/laws/en/kh/kh009en.pdf>. Accessed April 15, 2018.

<sup>16</sup> United Nation, Member State, available on:<http://www.un.org/en/member-states/#gotoC>. Accessed April 23, 2018.

<sup>17</sup> United Nation Treaty Collection. *International Covenant on Civil and Political Rights*. Available on: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg\\_no=IV-4&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-4&chapter=4&clang=en). Accessed April 23, 2018.

<sup>18</sup> UNHCR. *States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol*. Available on: <http://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>. Accessed April 23, 2018.

<sup>19</sup> UNHCR Treaty Collection, available on: [https://treaties.un.org/pages/ViewDetailsII.aspx?src=treaty&mtmsg\\_no=v-3 chapter=5 Temp=mtmsg2&clang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=treaty&mtmsg_no=v-3 chapter=5 Temp=mtmsg2&clang=en). Accessed April 23, 2018.

<sup>20</sup> Ibid.

<sup>21</sup> Minority Rights Organization. *Research Finding Statelessness Minority Groups in Cambodia, Takeo, Kampong Chhnang, and Pursat Province*, 2016, p.3.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Open Society Foundation, "What does Stateless Mean?".

<sup>25</sup> UNHCR, Regional Fact Sheet - Bureau for Asia and the Pacific - September 2014, P.2 available at: <http://www.unhcr.org/531dd2159.pdf>. Accessed April 23, 2018.



who have been working directly and indirectly on statelessness in Cambodia, including for example the Cambodian Center for Human Rights (CCHR), Minority Rights Organization (MIRO), and Khmer Kampuchea Krom for Human Rights and Development Association (KHURDA), among others.

## **2.1 The situation and problems faced by the Khmer Krom population**

### **2.1.1 Brief Historical Overview**

The Kampuchea Krom, or the Cambodians of the South, refers to “Southern Cambodia” or “Cambodia Below”, and it was the former territory of the southernmost part of Khmer Empire, once known by the French as Cochin China<sup>26</sup>. Kampuchea Krom covered an area of 67,700 square kilometers and is today located in the South-Western part of Vietnam, bordering with the South China Sea, Gulf of Thailand, and Cambodia<sup>27</sup>. Kampuchea Krom, or ‘Cambodia Below’ today, is part of the Southwestern part of Vietnam, controlled by the Vietnamese government<sup>28</sup>. The central city of Kampuchea Krom was called Prey Nokor, which later became Saigon, and then Ho Chi Minh city, and currently is one of the major cities of Vietnam<sup>29</sup>. Khmer Krom people have been residing in this territory in the South Western part of Indochina since 4,290 years before Christ<sup>30</sup>. Until the 17th century, the area of Kampuchea Krom was ruled over by the Khmer Empire, and then later on was corroded by Vietnamese power and colonization. Then, in the 1880s, the French officially controlled this region, and then after the Vietnamese Government gained independence in 1949, Kampuchea Krom became part of the territory of the Vietnamese government<sup>31</sup>.

Since the Vietnamese government had full power to control Kampuchea Krom given to them by the French on 4 June 1949<sup>32</sup>, the Khmer Krom people have faced the imposition of many restrictions on their traditional religious and cultural practices; have and have generally not been treated the same as Vietnamese citizens, instead being assigned second-class residence status<sup>33</sup>. Various human rights of the Khmer Krom people have been violated by the Vietnamese the government, including fundamental freedoms such as the freedom of expression, association, and assembly, freedom of religion, education, tradition, language, and land rights. In 1975, after nationalization of the land, the Khmer Krom people were forced to rebuy their land at a price which the majority could not afford. Then, when the Khmer Krom people had protested for the

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<sup>26</sup> UNPO, “Khmer Krom”, available on: <http://unpo.org/downloads/2372.pdf>. Accessed April 23, 2015

<sup>27</sup> Ibid..

<sup>28</sup> Laura Marcia Kirchner, *Living on the margins: On the Status and Standing of Minorities and Indigenous Peoples in Cambodia*, 2015, p.19, available on: [https://kh.boell.org/sites/default/files/hbs\\_living-on-the-margins\\_a5\\_3\\_rz-online-with-publishing-date.pdf](https://kh.boell.org/sites/default/files/hbs_living-on-the-margins_a5_3_rz-online-with-publishing-date.pdf). Accessed on April, 2018.

<sup>29</sup> UNPO. “Khmer Krom”.

<sup>30</sup> Ibid..

<sup>31</sup> Kirchner, *Living on the margins*, p.21

<sup>32</sup> UNPO. “Khmer Krom”.

<sup>33</sup> Ibid.

returning of their land, the Vietnamese armed forces took action to arrest the demonstrators using violence and put them in jail without any warrants<sup>34</sup>.

### **2.1.2. Khmer Krom people and their situation in Vietnam**

Between Khmer Krom and Cambodia, culturally there is a deep connection, with the majority speaking the same Khmer Language and following Theravada Buddhism, which acutely distinguishes their identity from Vietnamese culture<sup>35</sup>. Human rights violations against Khmer Krom people in Vietnam persist; including the restriction of and interference with their civil and political rights including religious freedom, culture, and education. For example, protest and the peaceful demonstrations by ethnic Khmer Krom and Khmer Krom monks against these restrictions and interference with their religious practices were dissolved by local authorities, some protester were arrested and imprisoned, while monks were arrested, defrocked and detained<sup>36</sup>.

The treatment of Khmer Krom people by the Vietnamese government is in opposition to its official position to promote and support the Khmer Krom and their cultural, religious and linguistic rights; in contrast, Khmer Krom people feel that they are not treated the same to other minority groups in Vietnam and are denied various rights and opportunities. As a result, many Khmer Krom people have sought refugee status in other countries, including Cambodia<sup>37</sup>.

### **2.1.3 Khmer Krom people and their situation in Cambodia**

According to findings by the Cambodian Center for Human Rights published in early 2017, there are several reasons which lead Khmer Krom people to leave Vietnam and to seek residence in Cambodia, including repression from the Vietnamese government and restrictions on access to rights, poverty, difficulty in accessing education, difficulty in doing business or finding jobs, and lack of land for farming and residence<sup>38</sup>. They choose Cambodia as a destination because they identify as having Khmer identity or nationality, speak the Khmer language, and find it easier to do business or get a job in Cambodia and some of them already has relatives or family members residing in Cambodia<sup>39</sup>. Most of the Khmer Krom who move to Cambodia have illegally crossed the border without a passport or any other legal documents<sup>40</sup>.

According to estimates by the Minority Rights Organization, 20 to 30 percent of Khmer Krom people in Cambodia are living without any legal documents, including the Khmer identity card<sup>41</sup>. These legal documents are crucial in gaining access to basic rights and services including

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<sup>34</sup> Kirchner, *Living on the margins*, p.22-23.

<sup>35</sup> Ibid. P.20.

<sup>36</sup> Cambodian Center for Human Rights. *Citizenship Rights for Khmer Krom in Cambodia*, (2017), p.4. Available on: [https://cchrcambodia.org/index\\_old.php?url=media/media.php&p=report\\_detail.php&reid=117&id=5](https://cchrcambodia.org/index_old.php?url=media/media.php&p=report_detail.php&reid=117&id=5). Accessed April 23, 2018.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid. p. 16.

<sup>39</sup> ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Minority Rights Organization "Khmer Krom Background," available on: [http://mirocambodia.org/?page\\_id=11](http://mirocambodia.org/?page_id=11). Accessed on April 25, 2018.

education, employment, housing, healthcare, passports, movement, and other civil and political rights. Moreover, without identity cards they are refused birth and marriage registration and certificates. As a result, generations of people born to unregistered Khmer Krom in Cambodia are stateless<sup>42</sup>.

The Royal Government of Cambodia (RGC) has publicly and repeatedly declared that Khmer Krom people who were born in Vietnam and move to Cambodia are considered to be Cambodian nationals and are subject to protection by the Cambodian Government with equal enjoyment of all rights, the same as Cambodian citizens, without discrimination including in entitlement to any official documents<sup>43</sup>. However, in actuality, Khmer Krom people who have moved to live in Cambodia are treated poorly often due to the inconsistency of implementation by local authorities and discrimination due to their being viewed as Vietnamese people, despite their Khmer ethnicity and linguistic ties<sup>44</sup>. Another issue has been peaceful demonstrations that Khmer Krom people have conducted in Cambodia, which have been cracked down on by authorities<sup>45</sup>.

In sum, Khmer Krom living in Cambodia face difficulties in obtaining the Khmer nationality, discrimination from authorities and local people, living with non-recognition as citizens by authorities, lack of housing, land, jobs, living in fear, their children being unable to attend school, and difficult living conditions as a result of all the above.<sup>46</sup>

Obtaining Khmer Nationality is perhaps the biggest challenge and for Khmer Krom people, who although the Royal Government of Cambodia has declared publicly that Khmer Krom who were born in Kampuchea Krom and move to reside in Cambodia should be considered as Khmer citizens, face difficulties in proving they fulfil requirements under the Cambodian Law on Nationality for Khmer Nationality (the finding of CCHR in 2017 was that 97.79% of 264 respondents were living in Cambodia without identity cards)<sup>47</sup>. Such problems stem from the inconsistency of implementation between the high-level declarations and statements of Government on the citizenship requirements of Khmer Krom people and the fact that though it national legislation, it has no legal value, as does the regulation and law on nationality<sup>48</sup>. However, the strict legal environment does not impede in the case of the Khmer Krom, who are entitled to citizenship; yet do not possess adequate documentation – Furthermore, because having Khmer Krom identity in itself is not sufficient to gain a status as a citizen in the law, officials and staff of authorities are often left unclear on how to carry out the orders of their superiors.<sup>49</sup>

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<sup>42</sup> Cambodian Center for Human Rights. *Citizenship Rights for Khmer Krom in Cambodia*, (2017), p.8.

<sup>43</sup> Human Rights Watch, “On the Margins: Rights Abuse of Ethnic Khmer Krom in Vietnam Mekong Delta”, footnote, 2009, 251-254, available at: <https://www.hrw.org/report/2009/01/21/margins/rights-abuses-ethnic-khmer-vietnams-mekong-delta>. Accessed on: April 25, 2018.

<sup>44</sup> Cambodian Center for Human Rights. *Citizenship Rights for Khmer Krom in Cambodia*, (2017), p. 4.

<sup>45</sup> Kirchner, *Living on the margins*, p.26.

<sup>46</sup> Cambodian Center for Human Rights. *Citizenship Rights for Khmer Krom in Cambodia*, (2017), p.18-19.

<sup>47</sup> Ibid. p.16.

<sup>48</sup> Ibid. p.12. .

<sup>49</sup> Ibid. p.12.

Living without the Khmer identity Cards and other legal documents Khmer Krom people also face challenges in access to education, for example, their children are not able to go to school because of the lack legal documents. The Minority Rights Organization (MIRO) in 2016 found that, from interviews with the local authority, there are many communities in which less than 20% of Khmer Krom children are accessing school due to lack of legal documents such as the birth certificate (even where Khmer children's attendance is close to 100%)<sup>50</sup>. Not different from the finding of MIRO, the finding of research by CCHR mentioned that Khmer Krom people are having the problem with accessing education and that "Children can't go to school" because of having no identity cards and birth certificates<sup>51</sup>. The study also found that differences of access to education depending on the age of the children, for example, the study found that in Takeo province, children without identity documents can access primary school and secondary school, but they are required to provide identity documents in order to access to high school – meaning that because of the lack of such identity documents, Khmer Krom children are not able to access high school at all, most not staying in school beyond Grade 7.<sup>52</sup>

Moreover, discrimination from local Khmer people and the Cambodia authorities is one of the big challenges Khmer Krom people face residing in Cambodia, and such discrimination is significant in the context of the adverse attitude to Vietnamese people, and ethnic Vietnamese who live in Cambodia. Moreover, Khmer Krom people are facing political discrimination by the authorities due to an assumption that they are opposition party supporters<sup>53</sup>. Findings by MIRO mentioned that Khmer Krom did not receive any support, facilitation or assistance by Cambodian local authorities, because the authority had discriminated against them based on their race as Khmer Krom people.<sup>54</sup>

In addition, "Fear" is a challenge that Khmer Krom people who have moved to reside in Cambodia are facing, evidenced by the fact that CCHR reported they were often not willing to give an interview to the research team because of fear of questioning from police or local authorities, and although they did not mention about the example of being returned to Vietnam, it is likely that the memory of deportation of many Khmer Krom people to Vietnam influences this fear<sup>55</sup>. This shows that Khmer Krom people are living with limited, in practice, freedom of speech in Cambodia.

In sum, even though the Royal Government of Cambodia has repeatedly declared to consider those Khmer Krom who were born in Kampuchea Krom and move to live in Cambodia as a Khmer citizens, to be offered a nationality and other administrative documents such as travel

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<sup>50</sup> Minority Rights Organization. *Research Finding Statelessness Minority Groups in Cambodia, Takeo, Kampong Chhnang, and Pursat Province*, (2016), p.5.

<sup>51</sup> Cambodian Center for Human Rights. *Citizenship Rights for Khmer Krom in Cambodia*, (2017), p.19

<sup>52</sup> Ibid.

<sup>53</sup> Ibid. p.18.

<sup>54</sup> Minority Rights Organization. *Research Finding Statelessness Minority Groups in Cambodia, Takeo, Kampong Chhnang, and Pursat Province*, (2016), p.21.

<sup>55</sup> Cambodian Center for Human Rights. *Citizenship Rights for Khmer Krom in Cambodia*, (2017), p.19.

documents<sup>56</sup>; practically the weakness and inconsistency of implementation by the authorities means that Khmer Krom people who have moved to reside in Cambodia cannot enjoy several basic rights that Khmer people, as citizens, enjoy.

## **2.2 The situation and problems faced by the Ethnic Vietnamese population**

### **2.2.1 Brief historical overview of the Ethnic Vietnamese minority in Cambodia**

#### **Pre-Independence:**

The Ethnic Vietnamese have become one of the largest minority groups in Cambodia; and yet are also very under-studied and there are not many pieces of information available about them<sup>57</sup>. The connection between Vietnamese minority groups and Cambodian society has been influenced by perceptions of the historical relationship between the two groups. Indeed a review of the secondary literature and the current data is indicative of a historical pattern of immigration throughout the lower Mekong region<sup>58</sup>. The boundaries between the areas controlled by Vietnam and Cambodia during the 18th and 19th centuries were undefined and fluid, and in the same time the flows of immigration began, such as Vietnamese tradesmen, fishermen, and farmers moving up to live along the Mekong River where they faced challenges with Khmer farmers<sup>59</sup>. Resulting in the presence of the Vietnamese minority in Cambodia, migration continued under the French colonization of Indochina from 1863 to 1953, and according to the colonial census in 1921, there were 150,000 ethnic Vietnamese (equal to around 6 percent of the Cambodian population) mostly living around the Tonle Sap Lake in fishing villages. This population was under the same governing and protecting from France, in civil matters as well as matters of nationality<sup>60</sup>.

#### **Under Sihanouk Regime from 1953-1970**

In 1953, after independence from France, Prince Norodom Sihanouk introduced new labels for ethnic groups including the tribes who had been living in the northern mountains, who were called “Khmer Loeu”, the Khmer minority who had been living in Kampuchea Krom were called “Khmer Krom”, Cham people as “Khmer Islam”. These categories persist until today and all receive the benefits of Cambodian nationality and citizenship. However, the ethnic Vietnamese

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<sup>56</sup> Human Rights Watch, “On the Margins: Rights Abuse of Ethnic Khmer Krom in Vietnam Mekong Delta”, footnote, 251-254, available at: <https://www.hrw.org/report/2009/01/21/margins/rights-abuses-ethnic-khmer-vietnams-mekong-delta>. Accessed April 23, 2018.

<sup>57</sup> 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* (2012), p.6 . Available on SSRN: <https://ssrn.com/abstract=2514121>. Accessed March 15, 2018.

<sup>58</sup> Ibid. p.11.

<sup>59</sup> Minorities Rights Group International, ‘Ethnic Policies under the new Cambodian government’, Minorities in Cambodia, (Manchester Free Press, UK, 1995), p. 17, available on: <http://minorityrights.org/wp-content/uploads/old-site-downloads/download-418-Minorities-in-Cambodia.pdf>. Accessed April 24, 2018.

<sup>60</sup> Annuska Derks, *Diversity in Ethnicity: A Picture of the Vietnamese in Cambodia*, in: *Center for Advanced Study: Ethnic Groups in Cambodia*, 2009, p. 536.

and Chinese were not counted into these categories<sup>61</sup>. During the Sihanouk regime (1953-1970), new regulations governing immigration and ethnic groups, as well as the policy relating to naturalization for Cambodian nationality, were adopted, including the law on the requirements and the procedures for naturalization of nationality and the law on nationality of 1954, which provided the requirements and conditions for children who are able to acquire nationality from birth, as well as the conditions and requirements for foreigners who have been residing in Cambodia and wish to apply for Khmer nationality (such as number of years which they have been residing in Cambodia progressively, their ability to speak the Khmer language as well as their understanding the Khmer Culture, etc).<sup>62</sup>. During the National Congress in 1963, it was in fact recommended to refuse naturalization to all ethnic Vietnamese with the reasoning that ethnic Vietnamese were unassimilable, and the Congress recommended to set up a committee to revoke the nationality of any naturalized person who broke Khmer custom<sup>63</sup>. This seems a key example of discrimination against ethnic Vietnamese groups in Cambodia<sup>64</sup>.

In the post-independence period, the size of the ethnic Vietnamese groups in Cambodia is difficult to determine due to the lack of a formal census and the use of different criteria to categorize ethnic groups; yet the by using a criterion of nationality, the formal census in 1962 identified 217,774 Vietnamese nationals (around 4 percent of the total publication of 5.7 million)<sup>65</sup>. Nevertheless, there was an argument that due to the political environment as well as to be eligible for restricted occupations, many Vietnamese minority might obtained the Cambodian citizenship, and as estimation during that time 1962, there were 39400 ethnic Vietnamese had lived in Cambodia mostly around Phnom Penh Capital<sup>66</sup>.

### **Under the Khmer Republic or Lon Nol Regime**

Following the Sihanouk regime, the Khmer Republic led by Lon Nol fostered a negative attitude and violence against the Vietnamese minority group, mostly in urban areas such as Phnom Penh. As a result of the subsequent attacks, thousands of ethnic Vietnamese were killed<sup>67</sup>. Moreover, in 1970, around 200,000 to 250,000 ethnic Vietnamese were forcibly deported to South Vietnam, according to the statistics of the Republic of Vietnam, and 28 percent of those who were deported had claimed to be Cambodian nationals<sup>68</sup>.

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<sup>61</sup> Nguyen and Sperfeldt, *A Boat without Anchors*, p.11.

<sup>62</sup> Stefan Ehrentraut, *Challenging Khmer Citizenship: Minorities, the State, and the International Community in Cambodia*, (2013), p. 48. Available on: [http://ticambodia.org/library/wp-content/files\\_mf/1437641661challengingKhmerCitizenship.pdf](http://ticambodia.org/library/wp-content/files_mf/1437641661challengingKhmerCitizenship.pdf). Accessed April 27, 2018.

<sup>63</sup> Minorities Rights Group International, *Ethnic Policies under the new Cambodian government: Minorities in Cambodia*, (Manchester Free Press, UK, 1995), p.20.

<sup>64</sup> Nguyen and Sperfeldt, *A Boat without Anchors*, p.12.

<sup>65</sup> Ibid.

<sup>66</sup> Peter A. Poole, "The Vietnamese in Cambodia and Thailand: Their Role in Interstate Relations", *Asian Survey* (1974), 14(4), 332-333, available on: <http://as.ucpress.edu/content/14/4/325.full.pdf+html>. Accessed April 24, 2018.

<sup>67</sup> Chou Meng Tarr, "The Vietnamese minority in Cambodia", 1992, p. 34. Available on: <http://journals.sagepub.com/doi/pdf/10.1177/030639689203400204>. Accessed April 24, 2018.

<sup>68</sup> Nguyen and Sperfeldt, *A Boat without Anchors*, p. 13



## **Under Democratic Kampuchea Regime**

Moving to Democratic Kampuchea from 1975 to 1979, the new regime implemented policy measures to forcefully deport ethnic Vietnamese from Cambodian territory<sup>69</sup>, and as estimation in late 1975, around 150,000 to 170,000 ethnic Vietnamese were deported from Cambodia into Tay Ninh, Dong Tep, and An Giang, the Vietnamese provinces<sup>70</sup>. Nevertheless, the estimation of the number of ethnic Vietnamese after the forced deportations lies between 20,000 (Keirnan 1996) and 30,000 (Amer 1994, 1996), many of those living in mixed marriage”, while One hundred percent of the remaining number of around 20,000 ethnic Vietnamese were systematically killed during Democratic Kampuchea regimes then ethnic Vietnamese were completely gone from Cambodia by the end of 1978<sup>71</sup>.

## **Under the People’s Republic of Kampuchea Regime**

The presence of ethnic Vietnamese groups at a large scale appeared again in Cambodian territory after the fall of the Khmer Rouge Regime. The new regime was created with the assistance of the Vietnamese state, and while the official People’s Republic of Kampuchea figures claimed that there were only 56,000 Vietnamese residing in Cambodian territory in the middle of 1983, the Coalition Government of Democratic Kampuchea claimed that there were more than one million Vietnamese residing in Cambodia at the end of 1980<sup>72</sup>. Among those Vietnamese migrants were Vietnamese advisors, Vietnamese soldiers, and their families<sup>73</sup>, and many among them had either lived for many generations in Cambodia since before 1970 or came there to settle as, in early 1980, there was no border control from the Vietnamese government<sup>74</sup>.

During that time, the PRK adopted policy measures toward Vietnamese residents providing assistance for settling in Cambodia to the three Vietnamese immigration groups, the former residents returning to Cambodian, those who came to Cambodia after 1979, and immigrants who came to Cambodia after the policy was adopted<sup>75</sup>. According to the policy of the PRK government, the ethnic Vietnamese who had lived in Cambodia before and been deported in 1970 were accepted by the authority as general population; those who came to reside in Cambodia after 1978 the authority would allow to stay and work; and those to wished to come after the policy was adopted in 1982 would need to go through the official process of immigration<sup>76</sup>.

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<sup>69</sup> Ibid.

<sup>70</sup> Nayan Chanda, *Brother Enemy: The War after the War*, (New York, 1986) P. 16-17, available on: <https://www.scribd.com/doc/218031827/Brother-Enemy-The-War-After-the-War-Nayan-Chanda-1986>. Accessed April 28, 2018.

<sup>71</sup> Nguyen and Sperfeldt, *A Boat without Anchors*, p.14.

<sup>72</sup> Ibid. p.15.

<sup>73</sup> Ibid.

<sup>74</sup> Chou Meng Tarr, “ The Vietnamese minority in Cambodia”, 1992, p.40.

<sup>75</sup> Minorities Rights Group International, *Ethnic Policies under the new Cambodian government', Minorities in Cambodia*, (Manchester Free Press, UK, 1995), p.21.

<sup>76</sup> Ibid. p.22.

## **Under the United Nations Transitional Authority in Cambodia or UNTAC**

Later on, at the end of 1980, during the peacebuilding process, the presence of the ethnic Vietnamese minority in Cambodian territory remained an issue until the Paris Peace conference in 1991<sup>77</sup>. Established by the Paris Peace Agreement of 1991, the United Nations Transitional Authority in Cambodia (UNTAC) peacekeeping operation included assisting and organizing the first national election in 1993<sup>78</sup>. During that time, the opposition groups started to raise negative opinions against the ethnic Vietnamese groups, at the same time as the Khmer Rouge began a campaign of political violence against the ethnic Vietnamese, including a systematic armed attack targeting the ethnic Vietnamese community in remote areas around Tonle Sap lake during 1992 to 1993, resulting in 116 ethnic Vietnamese killed, 87 injured, and 11 abducted<sup>79</sup>. Opposition parties attempted to limit the number of ethnic Vietnamese able to register to participate in the 1993 election, by advocating changes to the conception of citizenship. As a result, not many ethnic Vietnamese were registered to participate in the election of 1993, despite its being organized by UNTAC<sup>80</sup>.

The meeting between the Cambodian and Vietnamese governments took place after the violence against the Vietnamese civilians in Cambodian territory in 1994, and the issue and security of those ethnic Vietnamese and Vietnamese immigrants who were living in Cambodia was on the agenda. As a result, both parties Vietnamese and Cambodian would work towards a solution for the issue, which involved treating ethnic Vietnamese like other foreigners<sup>81</sup>. Nevertheless, between 1996 and 1998, armed attacks against the ethnic Vietnamese groups again took place, conducted by the Khmer Rouge, and in April 1998 13 ethnic Vietnamese were killed in a fishing village in Kampong Chhnang Province<sup>82</sup>. After the national election 1998, the violence against the Vietnamese groups decreased; yet, their legal statuses, as well as their living conditions in Cambodia, were still insecure<sup>83</sup>.

### **2.2.2. The situation of the Ethnic Vietnamese in Cambodia today**

The situation in the past and present day for the ethnic Vietnamese groups in Cambodia is a product of the predominant concepts among Cambodian society of what defines nationality for

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<sup>77</sup> Nguyen and Sperfeldt, *A Boat without Anchors*, p.17.

<sup>78</sup> United Nations, "Cambodia-UNTAC Background", available on: <https://peacekeeping.un.org/mission/past/untacbackgr2.html>. Accessed April 24, 2018.

<sup>79</sup> United Nations Transitional Authority in Cambodia, *Human Rights Component: Final Report*, (September 1993), p.31, available on: [http://cambodia.ohchr.org/sites/default/files/report/other-report/Other\\_CMB091993E\\_0.pdf](http://cambodia.ohchr.org/sites/default/files/report/other-report/Other_CMB091993E_0.pdf). Accessed April 24, 2018.

<sup>80</sup> Nguyen and Sperfeldt, *A Boat without Anchors*, p.18.

<sup>81</sup> Ibid.

<sup>82</sup> United Nations, *Situation of human rights in Cambodia: Report of the Secretary-General*, UN doc [A/53/400 of 17 September 1998], para 130, available on: [http://cambodia.ohchr.org/sites/default/files/Annual-reports/SRSG\\_HR\\_CMB17091998E.pdf](http://cambodia.ohchr.org/sites/default/files/Annual-reports/SRSG_HR_CMB17091998E.pdf). Accessed on: April 34, 2018.

<sup>83</sup> Nguyen and Sperfeldt, *A Boat without Anchors*, p. 19.



minority groups<sup>84</sup>. Today, there are still not many available pieces of information regarding the number of the ethnic Vietnamese in Cambodian territory; neither are there data available to show how many Vietnamese were born in Cambodia territory and obtained the nationality by birth, or how many immigrated later<sup>85</sup>. However, according to the Minority Rights Group's estimation, there are around 400,000 to 700,000 ethnic Vietnamese people in Cambodia with the number of stateless among that group unknown<sup>86</sup>. The findings of two separate studies on statelessness among the ethnic Vietnamese in Kampong Chhnang province found that around 90 percent of ethnic Vietnamese are living without any identity documents including birth certificates or identity cards, and are at risk of being stateless, and those are mostly individuals who have been residing in Cambodia along the Tonle Sap lake and Mekong river for generations<sup>87</sup>.

Even though many ethnic Vietnamese have been residing in Cambodia for generations, they often do not have any documents to prove their claim to nationality or citizenship due to the forced deportations in 1970 and the destruction of records by the Khmer Rouge<sup>88</sup>. Moreover, Cambodian officials have long treated ethnic Vietnamese people under the categories of "immigration" or "foreign national" even where this may not be true, and in cases where the ethnic Vietnamese person's status as a citizen of Vietnam is also not clear<sup>89</sup>. The study of Minority Rights Organization in 2016 in 3 provinces including Takeo province, Pursat Province, and Kampong Chhnang Province found that only 4 percent among 414 ethnic Vietnamese respondents held a Khmer Identity Card, and only 48 percent of those respondents' children has a birth certificate and the reason that their children could not obtain the birth certificate is due to the discrimination and the refuse to issue by the local authority<sup>90</sup>.

Ethnic Vietnamese people have a lot of difficulties and challenges living in Cambodia without recognition and without legal documents, including discrimination from local authorities and local Khmer people, difficulties doing business or finding jobs, owning a house or land, and living in poor conditions<sup>91</sup>. Moreover, the study found that while 100 percent of Khmer Children are able to access school; only 20 percent or less of Vietnamese children are able to access to school due to lack of legal documents and discrimination.<sup>92</sup> The ethnic Vietnamese live in fear of being arrested by the authorities, forced to move out from their homes, and lack of money to pay for basic services such as documents and healthcare.<sup>93</sup> The situation ethnic Vietnamese group today has also become worse in recent years: with the local media in late 2017 reporting that the:

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<sup>84</sup> Chou Meng Tarr, "The Vietnamese minority in Cambodia", 1992, p. 33 – 47.

<sup>85</sup> Nguyen and Sperfeldt, *A Boat without Anchors*, p. 20

<sup>86</sup> Minorities Rights Group International, "Cambodia Ethnic-Vietnamese," available on: <http://minorityrights.org/minorities/ethnic-vietnamese/>. Accessed April 24, 2018.

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Minority Rights Organization, *Research Finding Statelessness Minority Groups in Cambodia, Takeo, Kampong Chhnang, and Pursat Province* (2016), p.19.

<sup>91</sup> Ibid, p. 22.

<sup>92</sup> Ibid, p. 15.

<sup>93</sup> Ibid, p. 23.

“Ministry of Interior is moving forward with a plan to 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>94</sup>

In conclusion, the ethnic Vietnamese minority in Cambodia lives in a very difficult situation, and are - due to the lack of documentation - denied various basic human rights as Cambodian citizens. In 2015, the long resident ethnic Vietnamese were “reportedly being asked to pay for a bi-annual immigration fee” to keep their documents up to date, or risk being arrested and imprisonment because of a lack of legal documents<sup>95</sup>.

In sum, the ethnic Vietnamese minority and Khmer Krom people who have been residing in Cambodia face similar challenges while their legal status is uncertain, and they are the most at high risk of statelessness. Without an explicit legal status they are unable to access and enjoy primary rights as the ordinary Cambodian citizen does, and cannot obtain access to work and education, live often with fear of being arrested, and cannot travel out of their area,. They cannot own a house or land and their living condition is often poor. There are several reasons which lead to them being unable to obtain nationality or other identity documents, and therefore to being stateless or at risk of statelessness, including cultural discrimination against those ethnic minority groups, as well as gaps and improper implementation of the relevant regulations on nationality and citizenship from the responsible authorities. Thus, what should the Cambodian government do to address the problems, outlined here, of those minority groups? Indeed, is the Cambodian government, under any legal obligation to solve the minority groups' issues? **Chapter 3** of this paper will illustrate the applicable legal framework, both international and domestic, to find out how it covers the issue of legal status, nationality, citizenship, or identity of ethnic minorities, in order to determine what the legal obligation for Cambodia may be to address the issues of those minority groups. Moreover, **Chapter 3** will illustrate existing or past state practice on the issue of statelessness to find out what actions or experience the Cambodian government could follow to deal with the problem of statelessness. **Chapter 4** will examine what the Cambodian government could in practice do to address and avoid statelessness in Cambodia, as a state party to the United Nations which has committed to addressing all human rights issues in its territory.

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<sup>94</sup> Phnom Penh Post, “Interior Ministry identifies 70,000 ‘improper’ citizens, mostly ethnic Vietnamese”, available on: <https://www.phnompenhpost.com/national/interior-ministry-identifies-70000-improper-citizens-mostly-ethnic-vietnamese>. Accessed on: April 23, 2018.

<sup>95</sup> Minorities Rights Group International, “Cambodia Ethnic-Vietnamese”.

### **3. Applicable Legal Framework on Statelessness**

#### **3.1 The Definition of Statelessness and the International Legal Standards**

##### **3.1.1. General Understanding of “Nationality” and “Statelessness”**

###### **Nationality**

Nationality is a legal bond between an individual and a State.<sup>96</sup> Nationality is the essential connection through which persons can enjoy the rights and benefits which are provided under international law<sup>97</sup>. The state exercises power over its nationals and at the international level protects its nationals through diplomacy or representatives<sup>98</sup>. Nationality generally is accepted as including the rights to enter or reside in the state of nationality, and the state of nationality must protect and grant the rights of entering or residence to its citizens<sup>99</sup>.

Article 15 of the Universal Declaration of Human Rights (UDHR) provides that all individual persons have the right to nationality, and moreover, may be required to obey or respect this as one of the international human rights obligations of the state<sup>100</sup>. Article 15 of UDHR provides that:

1. Everyone has the right to a nationality; and
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.<sup>101</sup>

Furthermore, nationality is regulated by rule of both domestic and international law, and the term and meaning and its contents were established depending on the domestic law, as a ruled by the State's Constitution, and generally was given differently by States<sup>102</sup>. Rules on nationality mostly fell in the scope of domestic law, and each can have different rules on nationality. Without uniformity, problems have arisen relating to the original obtaining of nationality, statelessness, and issues of multi-nationality<sup>103</sup>.

As has been discussed in Chapter 2 above, nationality is very important for an individual, and living without nationality or citizenship can lead to very difficult and challenging

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<sup>96</sup> UNCHR, Protecting the Rights of Stateless Persons, p.1, available on: <http://www.unhcr.org/about-us/background/4ca5941c9/protecting-rights-stateless-persons-1954-convention-relating-status-stateless.html>. Accessed April 13, 2018.

<sup>97</sup> Gudmundur Alfredsson, and Asbjorn Eide, *The Universal Declaration of Human Rights: A Common Standard of Achievement*, (The Netherland: Kluwer Law International, 1999), p.297

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid

<sup>101</sup> United Nation. *Universal Declaration of Human Rights*, Art.15.

<sup>102</sup> Alfredsson, and Eide, *The Universal Declaration of Human Rights*, p.298.

<sup>103</sup> Ibid. p.298-299.

circumstances<sup>104</sup>. The right to nationality and the entitlement of citizenship is necessary for the exercise of an individual's human rights.<sup>105</sup> As stated by UNHCR, "nationality provides people with an identity which allows them to enjoy a wide range of human rights. Lacking any citizenship or nationality, a person's primary rights will be undermined, and they will suffer a loss of the enjoyment of their life."<sup>106</sup> Furthermore, the right to a nationality, or right not to be stateless, is very important to individual because states may only allow their own citizens to enjoy full economic, social, civil and political rights within their sovereign territory<sup>107</sup>.

## Statelessness

A stateless person refers to a person who is not entitled any nationality of any state or a person who is not considered as a national by any state. Sometimes statelessness shall be "referred to as an invisible problem because stateless people often remain unseen and unheard"<sup>108</sup>. Stateless persons can be divided into two groups: (1), those who have not been legally entitled to any nationality are "de jure stateless", and those who have no effective nationality are "de facto stateless."<sup>109</sup>

**A de jure stateless person** is an individual who is not entitled to any nationality or citizenship either because of he/she was not given a nationality at birth or because during their lifetime they were deprived of nationality and did not acquire a new one.<sup>110</sup>

**A de facto stateless person** refers to an individual, who is outside his or her country of nationality and has no intention to validate his or her nationality or he or she is unable to receive any protection from that country.<sup>111</sup> A *de facto* could have more than one nationality but has been living outside the countries of nationality and is unable or without any legitimate reason, or unwilling to get protections from all countries of their nationality.<sup>112</sup> What is more, a stateless person defined under the scope of Article 1 of the 1954 Convention Relating to the Status of the Stateless Person is sometimes referred to as *de jure* even if the term was not explicitly mentioned

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<sup>104</sup> See Chapter 2 above.

<sup>105</sup> CAROL A. BATCHELOR, *International Journal of Refugee Law: Statelessness and the Problem of Resolving Nationality Status*, 10th Anniversary, (Oxford University Press, 1993), p.156.

<sup>106</sup> UNCHR, *Protecting the Rights of Stateless Persons: The 1954 Convention Relating to the Status of Stateless Persons*, p.1 available on: <http://www.unhcr.org/about-us/background/4ca5941c9/protecting-rights-stateless-persons-1954-convention-relating-status-stateless.html>. Accessed April 13, 2018.

<sup>107</sup> David Weissbrodt and Clay Collins, "The Human Rights of Stateless Persons", *Human Rights Quarterly* 28 (2006): p. 248, available on: <http://www.jstor.org/stable/20072730>. Accessed: 13-05-2018.

<sup>108</sup> UNHCR, "what is Statelessness?", available on: <http://www.unhcr.org/ibelong/wp-content/uploads/UNHCR-Statelessness-2pager-ENG.pdf>. Accessed April 13, 2018.

<sup>109</sup> THE EQUAL RIGHTS TRUST, "Unravelling Anomaly" *Detention, Discrimination and the Protection Needs of Stateless Persons*, (London, 2010), p.52. Available on:

<http://www.equalrightstrust.org/ertdocumentbank/UNRAVELLING%20ANOMALY%20small%20file.pdf>.

Accessed April 14, 2018.

<sup>110</sup> UNHCR, "Legal and Protection Policy Research Series UNHCR and De Facto Statelessness", 2010, p. 61, available on: <http://www.unhcr.org/4bc2ddeb9.pdf>. Accessed April 15, 2018.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

in this convention; no treaties or international instruments have defined or categorized the *de facto* Stateless Person.<sup>113</sup>

### 3.1.2 The Definition of the Stateless Person under International law

The 1954 Convention Relating to the Status of the Stateless Person and the Convention on the 1961 Convention on Reduction of Statelessness are the primary instruments of international law which protect the rights of stateless persons and prevent statelessness.<sup>114</sup> The legal definition of “**Stateless Person**” as defined under the Article 1 of the 1954 Convention is: “a person who is not considered as a national by any State under the operation of its Law”.<sup>115</sup> Stateless Persons therefore refers to a group or individual who lives without recognition by any state as its citizens or nationals under their domestic law. Moreover, this definition has been recognized by the International Law Commission as a Customary International Law, applicable to all states regardless of membership to the conventions.<sup>116</sup>

Not just providing the definition of “Stateless Person”, the 1954 Convention regulated an obligation to state parties to provide without discrimination, the minimum standard of human rights to a stateless person including a person status, access to the judiciary, property and housing rights, education and employment rights, the fundamental freedoms including freedom of association and freedom of religion as well as an administrative measures such as travel documents and identity papers.<sup>117</sup> Stateless persons who fall into the definition under the 1954 Convention are entitled to all rights and duties which are stated in this Convention.<sup>118</sup> More importantly the Convention has regulated an obligation to address the issue of statelessness by requiring the state party to facilitate the process of naturalization of the Stateless person<sup>119</sup>. Also, to evaluate whether an individual or groups are stateless, the basic point is a legal definition of even if a person is obtaining citizenship of nationality by the operation law of the State.<sup>120</sup>

Moreover, the definition of Statelessness was interpreted in detail by the UN guidelines on statelessness (will be detailed in below section), and the UN High Commissioner for Refugees (UNHCR) issued these guidelines with the aim of providing the interpretive legal guidance for

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<sup>113</sup> UNHCR, “Guidelines on Statelessness No. 1: The definition of “Stateless Person” in Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons” (2012), para.8, available on: <http://www.refworld.org/docid/4f4371b82.html>. Accessed on: April 15, 2018.

<sup>114</sup> UNHCR, *Protecting the Rights of Stateless Person: The 1954 Convention Relating to the Status of Stateless Person*, p. 3, 9.

<sup>115</sup> UNHCR, *Convention Relating to the Status of Stateless Person*, (1954), Art 1. Available on: [http://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons\\_ENG.pdf](http://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf). Accessed April 15, 2018.

<sup>116</sup> UNHCR, *Expert Meeting: The Concept of Stateless Persons under International Law Summary Conclusions* (Prato, Italy, 27-28 May 2010) para 2, available on: <http://www.unhcr.org/4cb2fe326.pdf>. Accessed May 15, 2018.

<sup>117</sup> UNHCR, “UN Convention on Statelessness”, available on: <http://www.unhcr.org/un-conventions-on-statelessness.html?query=Treat>. Accessed May 15, 2018.

<sup>118</sup> UNHCR, *Protecting the Rights of Stateless Person: The 1954 Convention Relating to the Status of Stateless Person*, p.4.

<sup>119</sup> Weissbrodt and Collins, “The Human Rights of Stateless Persons”, p. 248.

<sup>120</sup> Nguyen and Sperfeldt, *A Boat without Anchors*, p.53.

those who have been involved in addressing the issue of statelessness, yet all these guidelines are not binding<sup>121</sup>.

### **The UNHCR Guidelines on Statelessness**

The UN High Commissioner for Refugees (UNHCR) issued the Guideline on Statelessness No.1 on "Definition of Statelessness", in order to assist NGOs, states, or other entities working on the issue of statelessness to interpret the definition of statelessness under the provision of Article 1 (1) of the 1954 Convention<sup>122</sup>. Moreover UNHCR issued the Guideline on Statelessness No.3 on "Status of Stateless Person at the National Level" to assist to the State, in its jurisdiction, to ensure the stateless individuals obtain the status<sup>123</sup>.

The UN Guideline No.1 divides the definition of Stateless Persons under Article 1 of the 1954 convention into two parts: "by any State" and "not consider as a national... under the operation of its law".<sup>124</sup> A pertinent question whether the terms "by any State" and "State" under the provision of article 1 (1) of the 1954 Convention will be elaborated. Although the definition of Stateless Person under Article 1 (1) is defined negatively ("not consider to be a national by any state"), an enquiry into even if individual is stateless is restricted to the states within which an individual retains an important connection; specifically, by descent, marriage, birth on the territorial jurisdiction, or a continual residence. In some situations, this may restrict the scope of an investigation to only one state.<sup>125</sup>

The term "**State**" under the provision of article 1 (1) of the 1954 Convention is instructed by how it has developed under international law.<sup>126</sup> Under international law, the State shall be understood as a political entity which has a defined territory, a permanent population, a centralized government, and full capacity to communicate with other States officially.<sup>127</sup> What is more, the State does not necessarily need to be recognized universally or on a large scale by other States, or be a permanent member of the United Nations; however, recognition or admission is an essential ground of Statehood.<sup>128</sup> There is a solid assumption in international law as to its congruity regardless of the effectiveness of the government, once State is established, that it remains as a "State" even if it loses an effective government due to internal war or conflict.<sup>129</sup>

Moreover, the meaning of "not consider as a national...under the operation of its law" is ambiguous. The term "Law" under the provision of article 1 (1) of the 1954 Convention can be understood broadly to cover a range of regulations and legal instruments including ministerial

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<sup>121</sup> UNHCR, "Guidelines on Statelessness No. 1".

<sup>122</sup> *Ibid.* para.4.

<sup>123</sup> UNHCR, "Guidelines on Statelessness No. 3: The Status of Stateless Persons at the National Level", (2012), para.2, available on: <http://www.refworld.org/docid/5005520f2.html>. Accessed April 15, 2018.

<sup>124</sup> UNHCR, "Guidelines on Statelessness No. 1", para 10.

<sup>125</sup> *Ibid.* para.11.

<sup>126</sup> *Ibid.* para 12.

<sup>127</sup> Ademonla Abass, *International Law: Text, Cases, and Materials* (Second Edition, Oxford University Press, United Kingdom, 2014), 117.

<sup>128</sup> UNHCR, "Guidelines on Statelessness No. 1", para 13.

<sup>129</sup> I A Shearer, *Starke's International Law*, Eleven Edition (London, 1994), p. 101.

decrees, judicial practice, government orders, and customary practice, etc.<sup>130</sup> This covers all circumstances where the written regulation is significantly modified when coming to its operation in practice.<sup>131</sup> Therefore, where an individual is not considered a national by a competent authority operating a discretionary or administrative function but is entitled to the nationality of the State by its legislation automatically, the ultimate decision that an individual is not a citizen is taken to be finally made under the State's operation laws. Such an individual in this circumstance shall be considered to fail the status of stateless person under a provision of the 1954 Convention.<sup>132</sup>

However, to determine whether an individual, under the state's law, is considered a national, a strict analysis of how a state operates its laws on nationality shall be required for any decisions that might impact the status of an individual.<sup>133</sup> Moreover, to determine whether a state recognizes a person to be its citizen or national, it is imperative to decide on which entities possess authority on the matter of nationality in a given state with which the individual has relevant links. Authorizing authority in this context refers to the competent authority which has the power to grant or withdraw a nationality, or which defines nationality status where nationality is automatically obtained or withdrawn.<sup>134</sup>

### **3.1.3. Protection of stateless persons under International Human Rights Instruments**

Nationality is the fundamental rights for people to enjoy their human rights. The Universal Declaration of Human Rights (UDHR) provides that "Everyone has the rights to nationality"<sup>135</sup>. Without the bond of nationality with any State, stateless persons generally do not have the basic rights that normal citizens are entitled to including the right to education, social welfare, employment, healthcare, housing, freedom of movement, political participation, etc.<sup>136</sup> Stateless Persons need an appropriate safeguard and attention to ensure that they can access and enjoy their primary human rights<sup>137</sup>.

The UN Refugee Agency, the UNHCR, is the responsible agency to identify, prevent, reduce and protect the stateless person<sup>138</sup>. Moreover, two main conventions, the 1954 Convention, and the 1961 Convention were adopted with the important provisions to address and avoid statelessness. In addition, there are many binding International Human Rights instruments regulating right to nationality as well as contributing to the protection and prevention of statelessness, such as the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the Convention on the

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<sup>130</sup> UNHCR, "Guidelines on Statelessness No. 1", para.15.

<sup>131</sup> Ibid. para.17.

<sup>132</sup> Nguyen and Sperfeldt, *A Boat without Anchors*, p.54.

<sup>133</sup> UNHCR, "Guidelines on Statelessness No. 1", para.16.

<sup>134</sup> Ibid. para.20.

<sup>135</sup> UNHCR, *Protecting the Rights of Stateless Person: The 1954 Convention Relating to the Status of Stateless Person*, p.2.

<sup>136</sup> UNHCR, "What is Statelessness?".

<sup>137</sup> UNHCR, *Protecting the Rights of Stateless Person: The 1954 Convention Relating to the Status of Stateless Person*, p.2.

<sup>138</sup> UNHCR, "Guidelines on Statelessness No. 1", p.1.



Elimination of Discrimination against Women (CEDAW), the Convention On the Rights of the Child (CRC), and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)<sup>139</sup>.

### **3.1.4. The protection of stateless persons under the 1954 Convention and 1961 Convention**

The 1954 Convention relating to the Status of Stateless Persons, and the 1961 Convention on the Reduction of Statelessness, combined with various non-derogate provisions in other international human rights regulations, give adequately comprehensive safeguards to protect the human man rights of the Stateless individual<sup>140</sup>. As the keystone of the international protection instrument for Stateless Person, the 1954 Convention set out through its articles within the obligation of the State parties to grant the rights to the Stateless Person rights without discrimination<sup>141</sup>, and equally to foreign nationals or nationals residing on their territory in an area such as the freedom of religions<sup>142</sup>, rationing<sup>143</sup>, Personal Status<sup>144</sup>, the rights to property<sup>145</sup>The freedom of association<sup>146</sup>Freedom of movement<sup>147</sup>, labor rights or employment<sup>148</sup>, access to the court<sup>149</sup>, housing<sup>150</sup>, public education<sup>151</sup>, and welfare<sup>152</sup>. Moreover, the Convention obliges state parties to provide an administrative assistant to the stateless person<sup>153</sup>, providing the identity papers and travel documents to stateless person who is not entitled to valid travel documents in their territory<sup>154</sup>. The Convention requires the State party to facilitate naturalization of the stateless person as well as to reduce the application fee and the charges of the proceedings<sup>155</sup>. Furthermore, the state party is required not to arbitrarily remove the legitimate stateless person from their territory<sup>156</sup>.

In addition to the regulation on the rights of stateless people in their sovereign territory, the 1954 Convention obliges the states party to provide the minimum standard of treatment to the

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<sup>139</sup> UNHCR, “What is Statelessness?”.

<sup>140</sup> Nguyen and Sperfeldt, *A Boat without Anchors*, p.56.

<sup>141</sup> The 1954 UNHCR, *Convention Relating to the Status of Stateless Person*, (1954), Art.3, available on: [http://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons\\_ENG.pdf](http://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf). Accessed April 15, 2018.

<sup>142</sup> Ibid, Article 4.

<sup>143</sup> Ibid, Article 20.

<sup>144</sup> Ibid, Article 12.

<sup>145</sup> Ibid, Article 13, 14.

<sup>146</sup> Ibid, Article 13, 14.

<sup>147</sup> Ibid, Article 26.

<sup>148</sup> Ibid, Article 17, 18.

<sup>149</sup> Ibid, Article 16.

<sup>150</sup> Ibid, Article 21.

<sup>151</sup> Ibid, Article 22.

<sup>152</sup> Ibid, Article 24.

<sup>153</sup> Ibid, Article 25.

<sup>154</sup> Ibid, Article 27&28.

<sup>155</sup> Ibid, Article 32.

<sup>156</sup> Ibid, Article 31.



Stateless Person such as treatment which is the same and as favorable as to the citizens, nationals, or other alliances, in general, and in all circumstances<sup>157</sup>.

A wide range of human rights provided under the 1954 Convention which oblige the state party to grant to the stateless persons based on their degree of attachment to the state, and some provisions are applicable to any persons who satisfies the definition of stateless person under article 1 of the convention and either subjected to the jurisdiction of the State party or present in its territory. Other rights; however, are conferred on Stateless person, conditional upon whether an individual is “Lawfully in” or lawfully staying in or habitually resident in the territory of the State party<sup>158</sup>. Those rights contained under this provision include right access to the courts, personal status, rights to property, public education, rationing, facilitated naturalization, and administrative assistance, are triggered when an individual being subjected to the jurisdiction of the State Party of the convention, and the right to identity paper and the freedom of religion are the additional rights to individual during his/her presence in the territorial jurisdiction of the State Party<sup>159</sup>.

In addition to the 1954 Convention, the 1961 Convention had established the obligation to the State to prevent and reduce statelessness by requiring the State to establish mechanisms in its legislation to address Statelessness existing at the birth or after in life as well as to prevent statelessness due to renunciation or loss of nationality<sup>160</sup>. The 1961 convention had provided that the State Party shall offer a nationality to:

- A person born in its sovereign territory who would otherwise may become stateless<sup>161</sup>;
- A person born outside its territory who would become stateless otherwise, if one of his/her parents is its citizens (having the nationality of the State party above mentioned)<sup>162</sup>.

Furthermore, the 1961 Convention contains limited circumstances in which a State can deprive an individual of his or her nationality or even leave a person stateless.<sup>163</sup> The Convention states that a loss of nationality permissible only when a person has obtained or is entitled to another nationality and such a loss shall be resulting from either marriage, divorce or adoption;<sup>164</sup> Loss of nationality by a person's spouse or children;<sup>165</sup> Renunciation of nationality by operation of domestic law.<sup>166</sup> Moreover, state parties must not deprive a person of nationality because of a transfer of territory,<sup>167</sup> On discriminatory grounds,<sup>168</sup> Or where the person would become entirely stateless.<sup>169</sup>

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<sup>157</sup> UNHCR, “Guideline on Statelessness No.3”, para 11.

<sup>158</sup> Ibid. para.13.

<sup>159</sup> Ibid. para.14.

<sup>160</sup> UNHCR, “What is Statelessness?”.

<sup>161</sup> UNHCR, *Convention on the Reduction of Statelessness*, (1961), Art.1.

<sup>162</sup> Ibid. Art. 4.

<sup>163</sup> UNHCR, “What is Statelessness?”.

<sup>164</sup> UNHCR, *Convention on the Reduction of Statelessness*, (1961), Art.5.

<sup>165</sup> Ibid. Art. 6.

<sup>166</sup> Ibid. Art. 7.

<sup>167</sup> Ibid. Art. 10.

It is, therefore, illustrated above that these two binding Conventions have played an important role in addressing and avoiding the issue of Statelessness by obliging the states party to take action in providing assistance to stateless persons and well as to facilitate the naturalization process of the stateless persons in their territory. The Royal Government of Cambodia does not adhere to these main conventions although it has ratified numerous human rights conventions. In Chapter 4, there will be a discussion as to why the Cambodian government should adhere to these two Conventions to address the issue of statelessness in its sovereign territory.

### **3.1.5. The Protection of Stateless Person under International Human Rights Regulations**

Besides the two primary conventions on Statelessness mentioned above, there are several binding international human rights instruments which contain provisions on protecting, preventing against, and reduction of Statelessness as well as containing provisions to promote and protect human rights by applying equally without discrimination on nationality, stateless or immigration status. Those Human Rights instruments include the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and International Convention on the Elimination of All Forms of Racial Discrimination (CERD); moreover Royal Government of Cambodia have access and ratified all these instruments<sup>170</sup>. Furthermore, as mentioned earlier, the non-binding human rights instrument, the Universal Declaration of Human Rights is the key stone of Human Rights protection. It will now be discussed how all those international human rights instruments regulate about the human rights related to the statelessness.

#### **Universal Declaration of Human Rights**

Even though the Universal Declaration of Human Rights is not a binding international human rights instrument; nevertheless, it is the key milestone as the human rights instrument the first times establishing the universal protection of fundamental human rights<sup>171</sup>. The Universal Declaration of Human Rights established the rights to nationality and banned the arbitrary deprivation of nationality of a person such as “everyone has the rights to a nationality; and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality”<sup>172</sup>. So, the Universal Declaration of Human Rights is an important keystone and a guiding instrument to protect the stateless.

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<sup>168</sup> Ibid. Art. 9.

<sup>169</sup> Ibid. Art. 8.

<sup>170</sup> Nguyen and Sperfeldt, *A Boat without Anchors*, p.58.

<sup>171</sup> United Nation, “Universal Declaration of Human Rights”.

<sup>172</sup> Ibid. Art.15.

## International Covenant on Civil and Political Rights (ICCPR)

The binding international human rights instrument, International Covenant on Civil and Political Rights (ICCPR) grants the right to receive a nationality to every child under its Article 24:

1. Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society, and the State;
2. Every child shall be registered immediately after birth and shall have a name;
3. Every child has the right to acquire a nationality.<sup>173</sup>

The entity responsible for monitoring the implementation of ICCPR, the Human Rights Committee, provided the interpretation of this convention that, while the purpose of the provision is to avoid the child who may receive less protection from his/her society and State due to his/her Stateless Status; nevertheless, to make an obligation to the State to offer its nationality to every child born in its territory. The State has to adopt convenient measure internally as well as collaborate with other States in order to ensure that all newborn children acquire a nationality<sup>174</sup>. Moreover, this provided the principle of equivalence and non-discrimination regarding the Nationality Status such as in Article 2 by requiring the State party to ensure all people under its jurisdictions and territory can enjoy the convention's rights (civil and political rights) without any discrimination such sex, color, race, religion, language, political view, property, social origin or national, birth or the Status<sup>175</sup>. Furthermore, under the Article 2 of the convention states party are obliged to ensure the effective remedy to an individual when it is found that the rights and freedoms of the convention have been violated<sup>176</sup>. This means that this provision would apply to any person who found their rights to nationality or their right to receive a nationality was violated. Also, Article 26 of the convention provision provides that all people are equal before the law within the equal and effective protection of the law without any discrimination on the social origin, nationality, birth, or their status.

There is, therefore, the provision under Article 24 of this Covenant, ensuring the rights of all children without discrimination to receive the special protection from family, society and State, as to the special Status of minor<sup>177</sup>. Moreover, the provision under this article in paragraph (2) and (3) provides an obligation to the State party, on its territory, to grant the nationality to stateless children, as well as to ensure all children obtain proper names by the proper registration with verified documents as provision for formal acknowledgement of the legal status of the

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<sup>173</sup> United Nations Human Rights Office of High Commissioner, *International Covenant on Civil and Political*, entry into force 23 March 1976. Available on: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>. Accessed April 16, 2018.

<sup>174</sup> Human Rights Committee, ICCPR General Comment No. 17: Article 24 (Rights of the child), para.8, available on: <http://www.refworld.org/pdfid/45139b464.pdf>. Accessed April 19, 2018.

<sup>175</sup> United Nations Human Rights Office of High Commissioner, *International Covenant on Civil and Political*, Art.2.

<sup>176</sup> Ibid.

<sup>177</sup> Joseph, Sarah, and Melissa Castan, *The International Covenant on Civil and Political Rights: Case, Materials, and Commentary*, Third Edition, Oxford, United Kingdom, 2013, p. 702-703.

child<sup>178</sup>. Thus, as a binding International Human Rights Instrument, the ICCPR has played an important role in addressing and avoiding the occurring of statelessness among children.

### **The Convention on the Rights of the Child (CRC)**

How does Convention on the Rights of the Child (CRC) deal with the issue of statelessness? The binding international instrument, the Convention on the Rights of the Child, had provided the obligation to the State party to develop measures to ensure the rights to nationality to all children without any discrimination as its provision under article 7:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. 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.<sup>179</sup>

This provision requires the state party to ensure the rights to nationality of the child, on one hand by immediate registration, and on the other hand by guaranteeing the implementation of this provision pursuant to their internal regulations as well as their obligation under international regulations, especially where the child may become stateless<sup>180</sup>. Moreover, states are required to provide convenient support and protections such as re-establishing the identity of a child, where the child is not legitimately deprived of any elements of identity<sup>181</sup>.

The provision under the article 7 of the CRC has been linked closely to the provision under article 24 of the ICCPR mentioned above, and provides an important measure to ensure the protection of the right to nationality of the child, by including the requirement to the state to immediately register and give a name after birth to the child to ensure that all children are recognized and receive legal status or identification with a states' nationality law<sup>182</sup>. Thus, the CRC has played a significant role in dealing with the issue of statelessness; especially in avoiding the occurrence of statelessness among children.

### **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**

In addition to the Convention on the Rights of the Child, and the International Covenant on Civil and Political Rights, another binding human rights instrument, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) requires that the State Party

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<sup>178</sup> Ibid, p. 725-726.

<sup>179</sup> United Nations Human Rights Office of High Commissioner, *Convention on the Rights of the Child*, entry into force 2 September 1990, Art.7, Available on: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>. Accessed April 19, 2018.

<sup>180</sup> I. Ziemele, "Article 7: the Right to birth registration, name and nationality and the right to know and be card by parents", in A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berhmans, and M. Verheyde (Eds.) *A Commentary on United Nations Convention on the Rights of the Child*. Martinus, Nijhoff Publisher, Leiden, 2007, 22.

<sup>181</sup> United Nations Human Rights Office of High Commissioner, *Convention on the Rights of the Child*, Art.7.

<sup>182</sup> Ziemele, "Article 7: the Right to birth registration, name and nationality and the right to know and be card by parents", p. 13, 23.

prohibit racial discrimination regarding nationality<sup>183</sup>. The provision under article 1 refers to racial discrimination while under article 5 is provided a list of human rights and freedoms, including the right to nationality that the State party shall guarantee to all individuals in its sovereign territory without discrimination<sup>184</sup>. Therefore, State parties to the convention have to guarantee the enjoyment of rights of all children in its jurisdiction without any discrimination regardless of nationality, or status of origin. The provision has a strong connection to the ICCPR and CRD in providing the enjoyment of rights to the nationality of the child and providing the obligation to treat all children in their territory without discrimination. Thus, the CRD convention has played an important role in addressing and avoiding statelessness.

Although the Royal Government of Cambodia did not ratify the 1954 and 1961 conventions on Statelessness; the RGC has ratified many International human rights instruments mentioned above, that have been playing important roles in preventing, protecting, and reducing statelessness. All the International Human Rights Instruments that RGC has ratified had provide a high standard of treatment, protection, and avoiding statelessness. However, we will discuss more, how Cambodia domestic law regulates the nationality, and then we will be able to find out the gaps and inconsistencies between the domestic law and the international instruments that Cambodia has ratified, and we will be able to find out how Cambodia should deal with the issue of statelessness in its territory. Before discussing that, however, we will first explain how other countries have dealt with the issue of statelessness, in order to find out the solution for Cambodia to deal with statelessness as effectively.

## **3.2. State practice on the issue of statelessness**

### **3.2.1. Case of Korean statelessness in Japan**

The 1954 Convention Relating to the Status of Stateless Person purposes to enhance the Stateless Persons' status, while the 1961 Convention on the Reduction of Statelessness aim to address the issue of Statelessness, yet the Japanese Government did not access these both conventions yet<sup>185</sup>. The Japanese Nationality Act follows the principles stated in the Convention on the Reduction of Statelessness and the Convention Relating to the Status of Stateless Persons. At birth, a child acquires Japanese nationality, including when both parents have unclear or unidentified nationality – as long as the child is born in Japan, it is a national (Article 2(3))<sup>186</sup>.

Persons of Korean descent, and the Muslim minority from Burma, the Rohingya, are the groups of concern in Japan, and around 300,000 individuals of Korean descent equal around 30 percent of the Korean populations in Japan have obtained the nationality or citizenship through

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<sup>183</sup> United Nations Human Rights Office of High Commissioner, *International Convention on the Elimination of All Forms of Racial Discrimination*, entry into force 4 January 1969, Art.5, available on: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>. Accessed April 19, 2018.

<sup>184</sup> Ziemele, “Article 7: the Right to birth registration, name and nationality and the right to know and be card by parents”, p. 3.

<sup>185</sup> UNHCR, “Overview of Statelessness: International and Japanese Context”, 2010, p.33, available on: <http://www.refworld.org/pdfid/4c344c252.pdf>. Accessed May 02, 2018.

<sup>186</sup> Ibid. p. 35.

naturalization<sup>187</sup>. The Korean people who are living in Japan today are the descendants of Korean people that had come for employment between 1910 and 1945, and those Korean migrants were declared resident aliens after World War II<sup>188</sup>. The Japanese government calculated nationality by the nationality of a person's parents, then the Koreans in Japan majoring around 90 percent are divided as "Japan-born, second-, third-, and fourth-generation Koreans of non-Japanese nationality"<sup>189</sup>.

In 1981, the Japanese government ratified the Convention on the Status of Refugees<sup>190</sup>, and then following this ratification, a new permanent resident status was made to cover former colonial subjects and their descendants<sup>191</sup>. Later on, between the late 1970s to early 1980s, the central and local governments of Japan adopted a series of reforms which made more secure the legal status of Korean people as well as granting them social security as well as health care benefits<sup>192</sup>. Moreover, the Japanese government in 1984 revised the postwar law on nationality for the first time since 1950. Since the revision, the children who were born from mixed-marriages between Japanese and foreigners were able to acquire the Japanese nationality through either their mother or father's nationality, and a requirement to adopt a Japanese-style name for the applicants who apply for the naturalization was no longer needed<sup>193</sup>. Then in 1991, the Japanese government created the "Special Permanent resident" for the former colonial subjects and their descendants, and then in 1993, the requirement of fingerprinting for permanent residents was abolished<sup>194</sup>. Korean people possessed more rights than other foreign aliens due to their legal status as a "special permanent residents"<sup>195</sup>.

Japan has taken almost 50 years to improve the matter of the legal status of stateless persons. Nevertheless, Korean people still do not obtain or enjoy the full benefits and rights as the Japanese citizens do<sup>196</sup>. Around only "15 percent of local authorities have permitted Korean permanent residents to vote" upon to a 1995 Supreme Court decision of Japanese<sup>197</sup>. Moreover, Japan's Ministry of Education does not recognize primary education degrees from Korean high schools, requiring graduates from these schools to attempt the same university entrance exams as school dropouts. Korean people are thereby unable to serve in most levels of the civil service<sup>198</sup>.

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<sup>187</sup> International Observatory on Statelessness, "Japan", available on: <http://www.nationalityforall.org/japan>. Accessed May 02, 2018.

<sup>188</sup> Ibid.

<sup>189</sup> Encyclopedia "Korean in Japan", available on: <https://www.encyclopedia.com/places/asia/japanese-political-geography/koreans-japan>. Accessed May 02, 2018.

<sup>190</sup> United Nations Treaty Collection. *Convention relating to the Status of Refugee*. Available on: [https://treaties.un.org/Pages/ViewDetailsII.aspx?src=IND&mtdsg\\_no=V-2&chapter=5&Temp=mtdsg2&clang=en](https://treaties.un.org/Pages/ViewDetailsII.aspx?src=IND&mtdsg_no=V-2&chapter=5&Temp=mtdsg2&clang=en). Accessed May 02, 2018.

<sup>191</sup> Erin Aeran Chung, "Exercising Citizenship: Koreans Living in Japan" V.24, N.4, 2000: p.160. available on : <http://www.jstor.org/stable/42705311>. Accessed May 02, 2018.

<sup>192</sup> Ibid. p.70.

<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

<sup>196</sup> International Observatory on Statelessness, "Japan".

<sup>197</sup> Ibid.

<sup>198</sup> Ibid.

Nevertheless, Tokyo Government in 2000 implemented a “program to protect the welfare of stateless children, whose births their mothers refused to register for fear of forcible repatriation”, and on 04 June 2008, Japan's Supreme Court “ruled against the nationality law which denied the nationality of the child who was born outside of marriage to a foreign mother and Japanese father”<sup>199</sup>. Moreover, under the provision of Japan’s current nationality law, children who were born of un-married Japanese father and foreign mother can acquire Japanese nationality only if before the mother gives birth; the baby has been recognized by the father<sup>200</sup>.

Therefore, although the Japanese government does not access either the 1954 Convention Relating to the Status of Stateless Person or the 1964 Convention on the Reduction of Statelessness; the country has been playing an essential role through their domestic regulations such as the nationality law as well as the court decision in order to reduce, protect and prevent statelessness. Moreover, as a signatory state of the Convention on the Right of the Child, Japan guarantees that children born in its territory shall not become stateless.

### **3.2.2 Case of statelessness in Thailand**

The Kingdom of Thailand was not on the list of state parties of the 1954 Convention Relating to the Status of Stateless Person<sup>201</sup>, or the 1961 Convention on the Reduction of Statelessness<sup>202</sup>. Moreover, Thailand has not signed the 1951 Convention relating to the Status of Refugees and the 1967 Protocol<sup>203</sup>. However, the Thai Government has a good intention to address the problem of the Statelessness in its territory; for example, in 2016, Thaksin Shinawatra, the Thai Prime Minister declared that "two million stateless people would be granted Thai citizenship"<sup>204</sup>. The plan to address the statelessness problem covers several stateless groups such as immigrants who have been residing at least ten years continuously in Thailand, as well as children studying in schools in the Kingdom<sup>205</sup>.

Since 1962, Burma was ruled by a military dictatorship with human rights violations, crimes, and violation against ethnic groups regularly occurring. This led millions of families and individuals to start moving to find a safe and secure place by crossing into Northern Thailand<sup>206</sup>. After moving to Thailand, Burmese migrants were denied the status of political refugee and just

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<sup>199</sup> Ibid.

<sup>200</sup> Supreme Court of Japan, “Case to seek revocation of the disposition of issuance of a written deportation order”, No. :2006 (Gyo-Tsu) 135, 2018, available on : [http://www.courts.go.jp/app/hanrei\\_en/detail?id=955](http://www.courts.go.jp/app/hanrei_en/detail?id=955). Accessed May 02, 2018.

<sup>201</sup> United Nation Treaty Collection, “Convention Relating to the Status of Stateless Person”, available on: [https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg\\_no=V-3&chapter=5&Temp=mtdsg2&clang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?src=TREATY&mtdsg_no=V-3&chapter=5&Temp=mtdsg2&clang=en). Accessed May 02, 2018

<sup>202</sup> United Nation Treaty Collection, “Convention on the Reduction of Statelessness" Available on: [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=V-4&chapter=5&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-4&chapter=5&lang=en). Accessed May 02, 2018.

<sup>203</sup> UNHCR, “ State Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol”, available on: <http://www.unhcr.org/protection/basic/3b73b0d63/states-parties-1951-convention-its-1967-protocol.html>. Accessed May 02, 2018.

<sup>204</sup> International Observatory on Statelessness, "Thailand", available on:<http://www.nationalityforall.org/thailand>. Accessed May 02, 2018.

<sup>205</sup> Ibid.

<sup>206</sup> Ibid.



received few rights during their residing, and they were not a citizen of any countries, becoming stateless, They were not able to enjoy basic rights including right to vote, freedom of movement, owning properties, employment, health care as well as access to education<sup>207</sup>. Moreover, “Children born to Burmese in Thailand are ineligible for citizenship either in Burma or in Thailand”.<sup>208</sup>

As an estimate, there are around 2 to 3.5 million Stateless people in Thailand,<sup>209</sup> including Rohingya as the largest group<sup>210</sup>, and Thailand's northern hill tribe people including members of the Hmong, Akna, Lanu, Shan, Lisu, Yao and Karen ethnic communities<sup>211</sup>. However, the number of stateless children is also not exactly known, and just an estimation says the number may be around 100,000 in border towns; yet, another estimation says that around 3,000 to 5,300 children are born to 500,000 migrant workers every day, and those migrant workers mostly from Vietnam, Burma and Laos<sup>212</sup>. The Kingdom has refused the citizenship of hill tribe people since the arrival and movement of migrants and refugees in the 1980s into Thailand<sup>213</sup>. The issue of citizenship law implementation, the discrimination, and corruption by the local authorities of Thailand are key challenges for stateless people in Thailand, and the racism and prejudice regarding admission to educational institutions is the challenge of stateless children in accessing education<sup>214</sup>.

However, by the end of 2011, with the support and assistance from the UNHCR and NGO partners, the Thai government had offered Thai nationality/citizenship to more than 27,000 statelessness people who have been residing in Thailand<sup>215</sup>. Currently, due to UNHCR, there are 438,821 individuals registered as stateless<sup>216</sup>. Numerous stateless people and those in danger of being stateless in Thailand originate from zones where national outskirts have changed, leaving their nationality being uncertain, and some are the member of “hill tribes” residing in the remote zones which unable in accessing for information and procedure to obtain the nationality, and some are those who have been living without legal document or without registration since the past<sup>217</sup>.

The Kingdom of Thailand committed to ending statelessness by 2024<sup>218</sup>. Thailand’s government ruled to all district authorities to identify and issue the legal documentation ranging from “Thai

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<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

<sup>209</sup> The Thailand Project, "Statelessness in Thailand," available on: <http://www.thethailandproject.org/who-we-help-stateless.html>. Accessed May 03, 2018.

<sup>210</sup> Center for Migration Studies, “The Stateless Rohingya In Thailand”, available on: <http://cmsny.org/the-stateless-rohingya-in-thailand/>. Accessed May 15, 2018.

<sup>211</sup> International Observatory on Statelessness, “Thailand”.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid.

<sup>214</sup> The Thailand Project, “Statelessness in Thailand”.

<sup>215</sup> UNHCR, "Resolving Statelessness in Thailand," available on: <http://www.unhcr.org/ibelong/resolving-statelessness-in-thailand/>. Accessed May 03, 2018.

<sup>216</sup> UNCHR, “Overcoming Statelessness in Thailand one Case at a time”, available on: <http://www.unhcr.org/news/latest/2016/11/5836af624/overcoming-statelessness-Thailand-case-time.html>. Accessed May 03, 2018.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid.



nationality to permanent or temporary residence – to eligible stateless students in its database”,<sup>219</sup>. As a result of this government action, 65,000 students obtained the benefits of being able to access high-level educations, and stateless students, as well as their families who have been residing in the area where UNHCR cooperated with Thai authorities in addressing the problem of statelessness, can acquire nationality, birth certificate registration, and other important civil status documents<sup>220</sup>.

Therefore, Kingdom of Thailand has a strong commitment as well as having good cooperation with UN agency, the UNHCR, in addressing and dealing with the problem of Statelessness, especially as it has shown its commitment to end statelessness by 2014. This is the best sample for other Southeast Asian states to cooperate with UNHCR in the ending Stateless campaign, called “The #Ibelong Campaign”<sup>221</sup>.

### 3.2.3 Case of Statelessness in Malaysia

As with the Kingdom of Thailand, The Federation of Malaysia is listed one among the countries containing a large number of stateless persons in Asia and the Pacific<sup>222</sup>. Malaysia is not a signatory State to the 1951 Refugee Convention and its 1967 Protocol, and does not have any administrative or legal framework for ruling over refugees, and it has no mechanisms for processing the refugee and asylum seekers when they reside in the State<sup>223</sup>. The sheer number of refugees further complicates the absence of a legal framework for managing refugees, 4 million, 1.9 million of whom are undocumented and scattered around the territories<sup>224</sup>. Malaysian law does not provide any distinction between what constitutes as refugees/asylum-seekers and undocumented migrants, those including, and refugees are therefore vulnerable to arrest for immigration-related offences and may be subjected to detention, prosecution, whipping, and deportation, including refoulement<sup>225</sup>.

Undocumented children of migrants in Sabah and the Rohingya have been considered as the most demanding statelessness case in Malaysia<sup>226</sup>. Escaping from persecution in Burma, thousands of Rohingya refugees have been moving and residing in Malaysia, and as an estimate around 15,000 to 20,000 have been registered; however, an unofficial estimation is around

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<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> UNHCR, “#Ibelong Campaign to End Statelessness”, available on: <http://www.unhcr.org/ibelong-campaign-to-end-statelessness.html>. Accessed May 03, 2018.

<sup>222</sup> Rodziana Mohamed Razali, “Addressing Statelessness in Malaysia: New Hope and Remaining Challenges”, 2017, p. 3, available on: [http://www.institutesi.org/WP2017\\_09.pdf](http://www.institutesi.org/WP2017_09.pdf). Accessed May 02, 2018.

<sup>223</sup> UNHCR, “Submission by the United Nations High Commissioner for Refugee For the Office of the High Commissioner for Human Rights’ Compilation Report - Universal Periodic Review: MALAYSIA”, P.1, available on: <http://www.refworld.org/pdfid/513d9a0e2.pdf>. Accessed May 03, 2018.

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

<sup>226</sup> International Observation of Statelessness, “Malaysia”, available on: <http://www.nationalityforall.org/malaysia>. Accessed May 03, 2018.

70,000<sup>227</sup>. The first arrival of Rohingya into Malaysia was in 1984; then a large number arrived in 1992 after the forcible ejections by the military regime of Burma<sup>228</sup>.

According to the UNHCR, the United Nations agency responsible for the issue of refugee and statelessness, in West Malaysia there are around 10,000 people who were refused to obtain the nationality, and they are not able to access to education, employment, and social welfare. In East Malaysia, the number of Stateless people is unknown<sup>229</sup>.

Malaysia does not ratify either the 1961 Convention on the Reduction of Statelessness or the 1954 Convention relating to the Status of Stateless Persons, however, under its domestic framework, the Constitutional Law of Malaysia provides main protections which offer a fundamental in preventing and reduction of the Statelessness in the State<sup>230</sup>. Malaysia's Constitution states that a child is a citizen of Malaysia by operation of law, for those children who born in the territory of Malaysia, yet being not born as national of any other county, and could not obtain, by registration within one year of birth, a nationality of another country<sup>231</sup>. Furthermore, throughout the Federation Constitution, the deprivation of nationality is prevented if causing statelessness and the obtaining nationality by naturalization is provided<sup>232</sup>. In contrast, numerous of gaps of the domestic framework still exist; for example, there is no article preventing the renunciation of citizenship, and as such a child who was born from a Malaysian mother abroad, if the father is also Malaysian, will only obtain the citizenship by descent<sup>233</sup>. As a result, the Rohingya children are born as statelessness despite having permission to live in Malaysia legally.<sup>234</sup>

All though not a State party to the 1951 Convention and its 1967 protocol; the Federation of Malaysia nevertheless has a long-standing custom of humanitarian commitment and liberally offering to refugees and asylum-seekers provisional asylum on humanitarian grounds, and has ensured the assistance and protection to those groups such as allowing those refugees accessing the public health care with 50 percent discount for medical fees, as well as issue to the refugees' children who born are born in Malaysia with birth certificate<sup>235</sup>.

Although Malaysia does not have any government body or agency duty to cooperate with UNHCR on the issue of refugees; UNHCR has been working since 1975 in Malaysia and has cooperated in order to manage the refugee issue, with the Ministry of Home Affairs, Ministry of

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<sup>227</sup> Ibid.

<sup>228</sup> Ibid.

<sup>229</sup> UNHCR, "Ending Statelessness in Malaysia", available on: <http://www.unhcr.org/ending-statelessness-in-malaysia.html>. Accessed May 03, 2018.

<sup>230</sup> UNHCR, "Submission by the United Nations High Commissioner for Refugee For the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: MALAYSIA", p.2, available on: <http://www.refworld.org/pdfid/513d9a0e2.pdf>. Accessed May 03, 2018

<sup>231</sup> UNHCR, "Submission by the United Nations High Commissioner for Refugee For the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: MALAYSIA", p.2.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

<sup>234</sup> International Observation of Statelessness, "Malaysia".

<sup>235</sup> UNHCR, "Submission by the United Nations High Commissioner for Refugee For the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review: MALAYSIA", p.2.

Ministry of foreign Affairs as well as the Immigration Department<sup>236</sup>. In addition, in Malaysia, the UNHCR has played important roles in dealing with the issue of statelessness as a result from the cooperation dealing with the statelessness issue in Malaysia between the local non-governmental organization, the Development of Human Resources in Rural Areas (DHRRA) and with the assistance from the UNHCR, the number of stateless individuals were reduced as an estimate from 40,000 individuals in 2009 to 12,400 individuals as of the end of 2017<sup>237</sup>.

Thus, the issue of statelessness and refugees in Malaysia has been moving into a best case situation due to the cooperation between the Malaysian government and the UNHCR cooperating with grassroots civil society organizations to identify, protect, prevent, and reduce the Statelessness.

In conclusion, the cause of the arising of statelessness among the three countries above, Japan, Malaysia, and Thailand, are similar – they are due to the movement of people and an occurring of statelessness of the child due to the gaps of their domestic nationality law. However, among these three countries, they have the different approach to deal with the issue of statelessness. As mentioned, the Japanese, although they do not subscribe to the 1954 Convention and 1961 Convention, have been fixing and strengthening their domestic nationality law. Malaysia, as has been mentioned, has been committed to address the issue of Statelessness by cooperating with UNHCR as a non-governmental organization and working closely with stateless people, furthermore, Malaysia has been treating asylum seekers with the minimum standards that they can access to basic rights. Thailand also has a strong commitment to deal with the Statelessness issue, by strengthening its regulations and the implementation, as well as working closely with the UN refugee agency and local NGOs. As have been mentioned above, thousands of Stateless people in Thailand have been able to obtain Thai citizenship.

Of the rise of statelessness in Cambodia, has been mentioned in Chapter 2, is not that different from the three countries above, and improper implementation and gaps of the domestic law are the challenges that ethnic minorities in Cambodia face to obtain nationality<sup>238</sup>. However, how could Cambodia deal with this issue? We will discuss what Cambodian government could do to address the issue of statelessness.

### **3.3. Domestic legal framework & issues of implementation**

An independent State, a permanent member of the United Nations, and a State Party to many international human rights instruments, the Royal Government of Cambodia stated in its Constitutional law in the first paragraph that:

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<sup>236</sup> Ibid. p.3.

<sup>237</sup> UNHCR, "Ending Statelessness in Malaysia", available on <http://www.unhcr.org/ending-statelessness-in-malaysia.html>. Accessed May 03, 2018.

<sup>238</sup> See Chapter 2 above.

The Kingdom of Cambodia recognizes and respects human rights as enshrined in the United Nations Charter, the Universal Declaration of Human rights, and all the treaties and conventions related to human rights, women's rights, and children's rights.<sup>239</sup>

Moreover, Cambodia has adopted many domestic laws, and regulations governing nationality as well as the status of individual including Cambodia Constitutional Law 1993, Cambodia Law on Nationality 1996, Cambodia Law on Immigration 1994, and other relevant sub-decree including Sub-Decree on Cambodian Nationality Identity Cards, etc.

### **3.3.1. Cambodia Constitutional Law 1993**

A new Cambodia Constitutional Law was adopted by a Constituent Assembly following the first election in Cambodia in 1993, and it came with the strong language in the term of human rights as its article 31 about the recognition and acceptance all human rights stated in United Nation Charter as well as the universal declaration of Human Rights and all the human rights instruments concerning to human rights, women's rights and children rights<sup>240</sup>. Moreover, it protects only "Khmer Citizens" in term of Human Rights protection, for instance, under the article 31 second paragraph:

Khmer citizens are equal before the law Khmer citizens are equal before the law, enjoying the same rights, liberties and duties regardless of race, color, sex, language, beliefs, religions, political tendencies, birth origin, social status, wealth or other situations<sup>241</sup>.

Therefore, under the provision of the Cambodian Constitutional Law is stated a strong provision obliging its government not to arbitrarily deprive the nationality of Khmer citizen "Khmer citizen shall not be deprived of his/her nationality ...except in case of agreement"<sup>242</sup>. As the keystone of the domestic laws including the covering on the right to nationality, nevertheless, the Constitutional law, does not mention in any of its articles to define the term "Khmer Citizen", as those Khmer citizens are guaranteed the enjoyment of rights and protection by the Cambodian government. Thus, due to the absence of the definition of Khmer Citizen, there is confusion as to who this applies to. Does the term "Khmer citizen" provided by this provision include the ethnic minority groups who have been living in Cambodia? As discussed in Chapter 2 above, the statelessness occurred among the ethnic Vietnamese minority groups as they are un-counted as Khmer citizens, and they are living without a clear status, and can be called stateless. However, we will discuss more deeply the gaps of this supreme law which left the arising of statelessness among ethnic minority groups in the next Chapter (Chapter 4).

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<sup>239</sup> The Kingdom of Cambodia. The Constitution of the Kingdom of Cambodia ( 24 September 1993), Art 31. Available on: <http://www.wipo.int/edocs/lexdocs/laws/en/kh/kh009en.pdf>. Accessed April 15, 2018.

<sup>240</sup> Ibid.

<sup>241</sup> Ibid.

<sup>242</sup> Ibid. Art. 33.

### 3.3.2. Law on Nationality 1996

Following the article 33 of the Cambodia Constitutional Law, "the acquisition of Khmer nationality shall be determined by law"<sup>243</sup>, the Cambodia Law on Nationality 1996 was adopted and in force on 20 September 1996<sup>244</sup> with the purpose of granting Khmer Nationality (or Khmer citizenship) to any individual who lives in Cambodia or abroad who has fulfilled the requirement under this law<sup>245</sup>. Also, the law has provided the provision to ensure about the preventing of arbitrarily depriving the nationality of the citizen such in article 2 stated that without an agreement, there shall be no deprivation of Khmer Nationality/Citizenship<sup>246</sup>, as well in article 3 mentioned that "Khmer citizens who are living in foreign countries shall not lose their nationality automatically"<sup>247</sup>. Also under article 18 it is provided that a Khmer Citizen may request without coercion to renounce his/her Khmer nationality in case he/she acquired another nationality and it shall be regulated by Sub-decree for the condition and procedure to request for the nationality renunciation<sup>248</sup>. So this means the law can carefully prevent the people from being stateless.

However, there still be a criticism regarding an unclear definition of the term "Khmer Citizen" while the article 2 just provided that "A person of Khmer nationality/citizenship is a Khmer citizen"<sup>249</sup>, so it means just a person entitled to Khmer nationality or citizenship is a Khmer citizen, yet the ethnic minority groups in the territorial jurisdiction who are not entitled of Khmer Citizenship are not a Khmer Citizen, then they are not subject to be protected by the Constitution. So this is an issue of domestic legislation on protecting the stateless person or non-citizenship in the territory.

Nevertheless, the Cambodian Law on Nationality 1996 provides approaches to obtain the Khmer Nationality/Citizenship with various conditions, such nationality by birth, nationality by marriage, and nationality by naturalization.

#### Acquire Khmer Nationality by Birth

A provision under the article 4 of the Cambodian Law on nationality 1996 provides the that, the child shall acquire a Khmer nationality/ Khmer citizenship by birth, regardless the place of birth, and be being born in Cambodia territory:

Article 4 Paragraph (1):

1. Shall obtain Khmer nationality/citizenship regardless of the place of birth:
  - ◆ Any legitimate child who is born from a mother or father who has Khmer nationality/citizenship, or
  - ◆ Any illegitimate child who is born from and recognized by mother or father who has Khmer nationality, or

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<sup>243</sup> Ibid.

<sup>244</sup> The Kingdom of Cambodia. Cambodian Law on Nationality, adopted August 20, 1996. Available on: [https://www.wto.org/english/thewto\\_e/acc\\_e/khm\\_e/WTACCKHM3A3\\_LEG\\_37.pdf](https://www.wto.org/english/thewto_e/acc_e/khm_e/WTACCKHM3A3_LEG_37.pdf). Accessed May 03, 2018.

<sup>245</sup> Ibid. Art.1.

<sup>246</sup> Ibid. Art. 2.

<sup>247</sup> Ibid. Art. 3.

<sup>248</sup> Ibid. Art. 18.

<sup>249</sup> Ibid. Art. 2.

- ◆ Any child who is not recognized by a mother and father (parents), when the court passed a judgment stating that such child was really born from a mother or father who has Khmer nationality/citizenship.<sup>250</sup>

Article 4 Paragraph (2):

2. Shall obtain Khmer nationality/citizenship by being born in Cambodia:
  - ◆ Any child who was born from a foreign mother and father (parents) who were born and living legally in Cambodia.
  - ◆ Any child who was born from an unknown mother or father (a parent) and a newly born child, who is found in Cambodia, shall be considered as having also been born in Cambodia.<sup>251</sup>

It is, therefore, under the provision article 4 (1), in order to obtain the Khmer nationality from birth, as regardless of the place of birth, the child must be born from both or one side of his/her parents who has a Khmer nationality; nevertheless, the condition that in order to obtain the Khmer Nationality as being born in the territory of Cambodia, the child must be born from a foreign parents who were **born** and **living** legitimately in the territory of Cambodia or from unknown parents, or a newly born child who was found in the territory of Cambodia.

Therefore, the Cambodian Law on Nationality grants the nationality from birth to children regardless place of birth either in Cambodia territory, however, it does not grant the nationality from birth to every child who is born in Cambodian territory if they are not falling into both conditions under the article 4 paragraph 2. As mentioned in Chapter 2 above, this causes the rise of statelessness among the ethnic Vietnamese minority children, and Khmer Krom children, because they do not fall into the scope of this provision. We will discuss in deeper in Chapter 4, the gap of this law on nationality.

### **Acquire nationality by marriage**

Marriage with a Cambodian man or woman is one approach to obtain a Cambodian Nationality provided under the provision of Cambodia Law on Nationality 1996. The article 5 of the provision stated that to acquire the Khmer Citizenship by marriage, he or she, a foreigner who married with Cambodian man or woman must together living after the official marriage certificate registration at least three years<sup>252</sup>. The application and procedural to obtain the Khmer Citizenship may provide by Sub-decree, and the final decision to grant the nationality will be decided by Royal- decree<sup>253</sup>.

### **Acquire nationality through naturalization**

An individual is able to obtain Khmer Nationality by naturalization as the article 7 stated that "Foreigners may apply for Khmer nationality citizenship by naturalization", yet the naturalization are the privilege of Kingdom of Cambodia, not the rights of an individual.

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<sup>250</sup> Ibid. Art. 4, para. 1.

<sup>251</sup> Ibid. Art. 4, para. 1.

<sup>252</sup> Ibid. Art. 5.

<sup>253</sup> Ibid. Art. 5.

Nevertheless, the application for request naturalization may be refused by discretionary power in any cases<sup>254</sup>. Under article 8 of the provision, foreigners who wish to obtain the Khmer Nationality by naturalization must complete the conditions such as:

1. Shall have a paper certifying that he/she has good behavior and moral conduct issued by the chief of the commune (Khom) or district (Sangkat) of his/her own residence.
2. Shall have a letter of certification of past criminal records which stated that he/she had never been previously convicted of any criminal offense.
3. Shall have a document certifying that such person has his/her residence in the Kingdom of Cambodia and been living continuously for seven (7) years from the date of reception of the residence card which was issued under the framework of the Law on Immigration.
4. Shall have a residence in the Kingdom of Cambodia when applying for naturalization.
5. Shall be able to speak Khmer, know Khmer scripts and has some knowledge of Khmer history and prove evidence clearly that he/she can live in harmony in Khmer society as well as can accept good Khmer customs and traditions.
6. Shall have his/her mentality and physical aptitude that will neither cause danger nor burden to the nation<sup>255</sup>.

Moreover, under article 9 it is mentioned that a foreigner who was born in Cambodia, the condition which requires 7 years of progressive living in Cambodia should be decreased to a 3 year periods<sup>256</sup>, and this provision shall apply to any foreigner who proves the evidence that he/she provided or achievement or any special merit for the interest of Cambodia<sup>257</sup>. Moreover, the condition regarding the progressive living seven years period shall be exempted for any foreign investor who invests in the capital of from 1,250,000,000 riels and up with the authorization letter from Cambodian Development Council (CDC)<sup>258</sup> Or without any authorization letter from Cambodian Development Council (CDC), yet legally implements his/her project with the permission of Cambodian Law<sup>259</sup>. In addition, any foreigner who had donated from 1,000,000,000 riels or more to the national budget for purposes of restoration or to develop Cambodian economy, he/she is able to obtain the Nationality by naturalization if he/she had fulfilled requirements in sub-paragraph 1, 2, 5, and 6 under article 8<sup>260</sup>. The Law on Nationality also provides that the foreigner who has a spouse or a child under 18 years old may apply for Khmer nationality by naturalization as a whole family (a husband, a wife, and a child under 18 years old)<sup>261</sup>.

The granting of Khmer Nationality by naturalization is decided by Royal-Decree, and the procedure and application regulated Sub-decree<sup>262</sup>, and any individual who has been accepted to be granted Khmer Nationality takes an oath before the Supreme Court<sup>263</sup>. Moreover, the provision prevents and avoids Khmer Citizens from being Statelessness due to renouncing the

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<sup>254</sup> Ibid. Art. 7.

<sup>255</sup> Ibid. Art.8.

<sup>256</sup> Ibid. Art.9.

<sup>257</sup> Ibid. Art.13.

<sup>258</sup> Ibid. Art.10.

<sup>259</sup> Ibid. Art.11.

<sup>260</sup> Ibid. Art.12.

<sup>261</sup> Ibid. Art.14.

<sup>262</sup> Ibid. Art.14.

<sup>263</sup> Ibid. Art.17.



Nationality as the renouncement of Khmer nationality is possible in case an individual who is at least 18 years without any coercion to renounce and he/she is entitled to another nationality<sup>264</sup>.

### 3.3.3 Law on Immigration 1994

Under the provision of Cambodian Law on Immigration 1994, there are many important articles which link to the provision of Cambodian Law on Nationality 1996 regarding the Status of immigration and the definition of aliens who residence in Cambodia; moreover it plays a very important role related to nationality. As under article 2 of the provision provided that, an alliance refers to any individual who has no Khmer Nationality/Khmer citizenship<sup>265</sup>. Moreover, article 4 had divides aliens into three groups: immigrant aliens, a non-immigrant alien, and an immigrant alien as private investor<sup>266</sup>. It is required to acquire the entering visa in advance through diplomatic authorities or missions<sup>267</sup>. Furthermore, under article 6 it is mentioned that the Ministry of Interior has to ensure all procedures for the registration, checks, and controls and issue the residence card and other legal documents of an alien who is coming to reside in Cambodia as a migrant<sup>268</sup>. Therefore, it means that all aliens who wish to stay in Cambodia must be legally entering and reside under the controlling and recording of the Cambodian government, which is lead to be benefit to them regarding if they would apply for Cambodian Nationality by naturalization, yet if they entering illegally, or legally reside in Cambodia, they will be faced with a lot of problems such they will be convicted and punished a crime and subjected to be imprisonment and deported<sup>269</sup>. Therefore, the provision under the Cambodian Law on Immigration 1994 is linked to the Cambodian Law on Nationality 1996 regarding the legal Status of individual who residence in Cambodia and benefit to all aliens regarding their legal status and be able to obtain the Khmer Nationality by Naturalization when they possibly fulfill the requirements under the Cambodian Law on Nationality.

To sum up, regarding the international framework, as mentioned earlier, Cambodia has ratified several International Conventions which provide the guarantee including the rights to nationality of the child yet, there is no effective implementation as the domestic measure are not pursuant instruments, then it shall be one of the causes of the occurring of Statelessness among the children of ethnic minority groups in Cambodia. Therefore, strengthening the implementation of this international framework to deal with the Statelessness issue is necessary. Moreover, while the Cambodian domestic framework is quite extensive in covering the issue of nationality, including the Constitutional Law 1993, the Law on Nationality 1996, Law on Immigration 1994, as has been discussed above, there are some gaps among the provisions under the Cambodian Constitutional Law 1993 regarding to not clearly define the term "Khmer Citizen" and the Cambodian Law on Nationality 1996 which does not cover to grant a national or identity to every child who born in territory. Moreover, the inconsistency of implementation of the relevant

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<sup>264</sup> Ibid. Art.18.

<sup>265</sup> The Kingdom of Cambodia, Law on Immigration of 1994 (22 September 1994), Art.2, available on: <http://www.refworld.org/docid/3ae6b52f8.html>. Accessed May 04, 2018.

<sup>266</sup> Ibid. Art. 4.

<sup>267</sup> Ibid. Art. 8, 11.

<sup>268</sup> Ibid. Art. 6.

<sup>269</sup> Ibid. Art. 29.



regulations by the authorities and improper implementation also leads to the arise of statelessness among the ethnic minorities in Cambodia.<sup>270</sup> As a result of improper implementation of the regulations, in late of 2017, the Minister of Ministry of Interior declared that the Ministry was planning to revoke the official documents from 70,000 individual by claiming that the documents were “improperly issued”; according to H.E Sar Kheng the Minister of Ministry of Interior, the matter is not the problem of national policy, yet it is because of the weakness of the office's ability from the top level not at the bottom level that allowing the foreigners to hold inaccurate documents which were improperly issued, and he admitted that “it is a national problem, not any specific person” and “we need to solve this”.<sup>271</sup> So what should Cambodia do to address and avoid the issue of statelessness?

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<sup>270</sup> See Chapter 2, above.

<sup>271</sup> Phnom Penh Post, “Interior Ministry identifies 70,000 ‘improper’ citizens, mostly ethnic Vietnamese”, available on: <https://www.phnompenhpost.com/national/interior-ministry-identifies-70000-improper-citizens-mostly-ethnic-vietnamese>. Accessed April 23, 2018.

#### 4. Addressing the issue of statelessness in Cambodia

All though Cambodia is not a state signatory to the two main primary conventions, the 1952 Convention, and the 1961 convention, the country has ratified many international human rights instruments including the 1951 Convention relating to the Status of Refugees and the 1967 Protocol which play crucial roles to determine the status and rights of refugees as well as to define states' duties and responsibilities for refugees in their territory.<sup>272</sup> Moreover, the provision under Cambodian Constitutional Law has affirmed the rights of the people as it has recognized all human rights stated in the Universal Declaration of Human Rights and all the international human rights instruments<sup>273</sup>. Nevertheless, the problem of human rights violations still exist and are a major concern in Cambodia, including the problem of statelessness among the ethnic groups as mentioned in Chapter 2 of this paper.<sup>274</sup>

As outlined in Chapter 2, although there is no exact number of stateless people in Cambodia, the finding of many local NGOs and international NGOs has been that they exist largely among the ethnic Khmer Krom people and the ethnic Vietnamese minority groups<sup>275</sup>. Those stateless people are not able to enjoy basic human rights as the normal Khmer citizen does; for example, freedom of movement, access to education, employment, and numerous civil and political rights<sup>276</sup>. The main cause of their statelessness in Cambodia is gaps and improper implementation of domestic laws, and discrimination from authorities and local people against the ethnic Vietnamese<sup>277</sup>. As this issue is a primary concern of human rights, of which it is a violation, in Cambodian society, this Chapter asks what should the Royal Government of Cambodia do to deal with this problem? How can statelessness in Cambodia be addressed and avoided? Which country should Cambodia follow regarding its dealing with the issue of statelessness? Moreover, what would be the benefit to the Cambodian government of avoiding and preventing statelessness?

In order to address the issue of statelessness and avoid it, Cambodia could consider cooperating with the UNHCR and getting technical support and assistance on the issue of statelessness, identifying the stateless, and preventing, reducing, and protecting the stateless by correcting the gaps in proper implementation of legal frameworks, increasing awareness of authorities and individuals, and strengthening the implementation of international legal frameworks including accessing relevant international instruments.

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<sup>272</sup> UNHCR, "States Parties to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol".

<sup>273</sup> Cambodian, The Constitution of the Kingdom of Cambodia, Art. 3.

<sup>274</sup> See the chapter 2 above.

<sup>275</sup> Ibid.

<sup>276</sup> Ibid.

<sup>277</sup> Ibid.

## 4.1 Identify the stateless in the territory

Identifying the stateless is a significant step to address the issue of statelessness in Cambodia. This means to capture all information; for example, who the stateless among the Cambodian population are, and how their actual situation is, in order to be able to provide solutions, support and assistance. Moreover, identifying the stateless will benefit the government in enabling it to better control social security in its sovereign territory. The government should follow the following activities in order to identify the stateless:

- Review and analyze the national framework which links nationality and statelessness. Cambodia shall carefully review its domestic framework regarding nationality or status of refugees and statelessness, including the laws on nationality, constitutional law, immigration law, as well as to find out how the statelessness is linked to the State (Cambodia)<sup>278</sup>;
- Getting understanding of the definition of statelessness by working with experts and technical advisors to find out the process and procedures to determine statelessness. The government should cooperate with experts including the UNHCR to increase its understanding of statelessness, the issues the stateless face, and the impacts in its own territory.<sup>279</sup>;
- Capture information on Statelessness by providing support for data collection through surveys, a census or civil documents records including civil status registration, etc. In this activity the government should collaborate with organizations with expertise in the issue of statelessness to improve the capacity of government departments.<sup>280</sup>; and
- Analyzing the data after collecting to finalize, for example, the problem of statelessness or the persons at risk of statelessness related to legal documents, education, employment, security, health, living conditions, and issues related to age and gender. All the above information will be crucial to the Cambodian Government in finding the solution<sup>281</sup>.

Through identifying who the stateless are, Cambodia can capture all information including the exact numbers of stateless, understand the problem and situation of the stateless, realize how the national legal framework applies to them, as well as be able to find a suitable solution to address and avoid the issue of statelessness in the future, and address it today.

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<sup>278</sup> United Nation, “GUIDANCE NOTE OF THE SECRETARY-GENERAL: The United Nations and Statelessness”, 2011, P. 10. Available on: <https://www.un.org/ruleoflaw/files/FINAL%20Guidance%20Note%20of%20the%20Secretary-General%20on%20the%20United%20Nations%20and%20Statelessness.pdf>. Accessed May 03, 2018.

<sup>279</sup> Ibid.

<sup>280</sup> Ibid.

<sup>281</sup> Ibid.

## 4.2. Prevent, Reduce and Protect, Cambodia Statelessness

### 4.2.1. Correcting the Gaps of the Domestic Laws

#### Cambodian Constitutional Law

In the position of Cambodia's supreme law, the Constitutional Law strongly guarantees the right to nationality of citizens by providing that, unless in the case of mutual agreement, the nationality of a Khmer citizen shall not be arbitrary removed, moreover, although a Khmer citizen may have been residing abroad, they are still be able to enjoy the protection from the Royal Government of Cambodia, by law.<sup>282</sup> Furthermore, the provision under Article 31 of the Constitutional Law guarantees the right of Khmer citizens to enjoy several human rights including civil and political rights and being equal before the law without any discrimination regarding race, sex, birth or origin, religion, etc.<sup>283</sup> However, the Cambodian Constitutional Law does not clearly define the definition of the term "Khmer Citizen" which leaves the question, are the ethnic minority groups residing in Cambodia Khmer Citizens? Are they able to enjoy the human rights and protection from Cambodian government? Are those ethnic groups' rights to nationality guaranteed under the law? What is their legal status due to their being resident in Cambodia?

Under the Law on Nationality of the Kingdom of Cambodia, those who are entitled to Khmer nationality or citizenship are Khmer citizens.<sup>284</sup> Moreover, under its Article 19 it is stated that:

“Only those persons of Khmer nationality/citizenship may have the right to receive and hold identity cards of Khmer nationality and passports of the Kingdom of Cambodia.”<sup>285</sup>

It is, therefore, the provision under Article 2 and Article 9 of the Law on Nationality which completes the meaning of the term "Khmer Citizen" under the Constitutional Law. So the Khmer citizen who is lawfully protected by the Constitution are only those holding official Khmer nationality. There is not any article mentioning who is the exact Khmer Citizen as mentioned under the Constitutional Law besides referring to those entitled to Khmer nationality through citizenship. Neither the Cambodian Constitution nor the Cambodian Law on Nationality explicitly counts the ethnic minority groups as Khmer Citizens. As a result, statelessness occurs among the ethnic Vietnamese minority groups who have been residing in Cambodia for generations<sup>286</sup>.

In addition to the term Khmer National or Khmer citizens, there was no clear definition under the Constitution or law on nationality stating whether minority or ethnic groups are Khmer citizens. Nevertheless, in 1953, King Norodom Sihanouk had categorized the Cambodian ethnic groups among the ethnic groups in the territory including "Khmer Loeu", "Khmer Islam", and "Khmer Krom", and these categories have been widely used continuously until today and played a role in

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<sup>282</sup> Cambodian, the Constitution of the Kingdom of Cambodia, Art. 33.

<sup>283</sup> Ibid. Art.31.

<sup>284</sup> Cambodia, Cambodian Law on Nationality, Art 2.

<sup>285</sup> Ibid. Art.19.

<sup>286</sup> See in Chapter 2 above.

shaping Cambodian considerations of citizenship and nation. However, the ethnic Vietnamese minority groups were excluded from these categories and lost the benefits of being officially one of Cambodia's ethnic groups, which led, for some, to the benefits of nationality<sup>287</sup>.

Thus, the gaps in the constitutional law in providing the definition of "Khmer Citizen" as led to Statelessness or the risk of being stateless among the ethnic minority groups including the long-term ethnic Vietnamese who have been residing in Cambodian territory for years. However, as in the case study mentioned in Chapter 3 above, the Constitutional Law of Malaysia can act as a good example or model in preventing or avoiding statelessness as it guarantees that children are Malaysian citizens bylaw, including for those who were not born as a citizen of any country and are not able to obtain the nationality of any countries by registration within one year of birth<sup>288</sup>. So, this author would recommend that the Cambodian government in order to participate in preventing and reducing statelessness should consider to review and revise the provisions under Constitutional Law to ensure that the supreme law guarantees all minority groups can obtain Khmer nationality, rather than become stateless.

### **Cambodian Law on Nationality**

What are the gaps of the Cambodian Law on Nationality which led to arise of statelessness? Several strict conditions to acquire or obtain Khmer nationality under the provision of the Cambodian Law on Nationality have led to statelessness among ethnic minority groups including Vietnamese and Khmer Krom people<sup>289</sup>.

Article 4 of the Cambodian Law on Nationality regulates the conditions for obtaining Khmer nationality that is (1) regardless place of birth, and (2) the condition of being born in Cambodia<sup>290</sup>:

Regardless of the place of birth, even those born outside of Cambodia shall obtain the Khmer Nationality or Citizenship if they are:

- “Any legitimate child who is born from a mother or father who has Khmer nationality/citizenship, or
- Any illegitimate child who is born from and recognized by mother or father who has Khmer nationality, or
- Any child who is not recognized by a mother and father (parents), when the court passed a judgment stating that such child was born from a mother or father who has Khmer nationality/citizenship”<sup>291</sup>.

According to the first paragraph, Khmer nationality is guaranteed by the Cambodian Law on Nationality to children being born from Khmer national parents regardless of their place of birth and whether he/she is a legitimate or illegitimate, recognized or not recognized by his/her parents.

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<sup>287</sup> Stefan Ehrentraut, *Challenging Khmer Citizenship*, p. 48.

<sup>288</sup> See Chapter 3 above.

<sup>289</sup> See Chapter 2 above.

<sup>290</sup> Cambodia, Cambodian Law on Nationality, Art.2.

<sup>291</sup> Ibid. Art.4.

However, the provision under the second paragraph of Article 4 of the Cambodian Law on nationality regulates requirements for a child to obtain Khmer nationality by being born in Cambodian territory:

- “Any child who was born from a foreign mother and father (parents) who were born and living legally in Cambodia;
- Any child who was born from an unknown mother or father (a parent) and a newly born child, who is found in Cambodia, shall be considered as having also been born in Cambodia.”<sup>292</sup>

Under this paragraph mentioned (1) only children whose parents have been born and legally residing in Cambodia territory, and (2) the children and newborn children whose parents are unknown and found in Cambodia, and have been considered as being born in Cambodian territory, shall obtain Khmer nationality. So, how about a child who is born from ethnic minority parents or foreign parents yet his/her parents were not born in Cambodia? How about the child who is born from the ethnic minority parents who were born in Cambodia, yet is not entitled to any legal documents or who has been living without any legal documents? There is no provision covering those children to enable them to be able to obtain Khmer nationality even though they were born in Cambodian territory.

Therefore, as result of the gaps of these provisions, many children have been born stateless among the ethnic minority groups including the Vietnamese children and Khmer Krom children in Cambodian society. For example, according to a study by Minority Rights Organization in 2016, 48% in total of 402 respondents (among the ethnic groups including Vietnamese and Khmer Krom) said that their children are entitled to the birth certificate, thus it means that 52% of respondents, their children are not entitled of the birth certificate, and the reason that their children were not able to obtain it is due to their Vietnamese heritage and the discrimination<sup>293</sup>. In addition as the study mentioned that among the 402 respondents, only 18% of Khmer Krom are entitled to a Khmer identity card while only 15% of them have a birth certificate and 16% have a resident book, and among the respondents only 4% of ethnic Vietnamese are entitled to a Khmer identity card while only 5% of them have the birth certificate, 31 % have immigration cards, and 25% have the resident book<sup>294</sup>, so a large number among the ethnic minority is not counted as a Khmer citizen and is instead just living as legal or illegal immigrants. Then, these should be a reason that effect to their children being not qualified to the condition of obtaining the Khmer nationality (birth certificate) under article 4 of Law on nationality. A large scale of the ethnic minority in Cambodia has been born statelessness or at risk of becoming so, and it is a very big concerning number. The Royal Government of Cambodia should consider to amend this provision and condition in order to ensure that all children born in Cambodian territory are not stateless as pursuant to the international human rights which Cambodia has obligation and duty to follow, for example, the provision of the Convention on the Rights of the Child (CRC), which

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<sup>292</sup> Ibid. Art.4, para 2.

<sup>293</sup> Minority Rights Organization. *Research Finding Statelessness Minority Groups in Cambodia, Takeo, Kampong Chhnang, and Pursat Province*, (2016), p.19.

<sup>294</sup> Ibid.

requires states party to develop measures to ensure the right to nationality of all children without any discrimination, due to Cambodian status as a state party to the Convention<sup>295</sup>.

#### **4.2.2 Proper implementation of the nationality framework & awareness raising for authorities and individuals**

Besides fixing the gaps in its domestic laws related to nationality, Cambodia shall concentrate on dealing with the issues of implementation of those relevant regulations from the local authority as well as the issue of discrimination to the ethnic minority groups which led to the rise of statelessness. As mentioned in Chapter 2 above, Khmer Krom people find it difficult to obtain Khmer nationality/citizenship because of the inconsistency of implementation by competent authorities on the high level declaration of government on the Khmer Krom identity plus the discrimination against those ethnic Khmer Krom by an assumption of their being Vietnamese people<sup>296</sup>. King Norodom Sihanouk, declared repeatedly in 1992 and once again in 2006 that Khmer Krom people whenever moving to live in Cambodia, they are able to possess Khmer nationality, yet there was not any clear guidance on how to execute the orders, and it has no value legal value as law, and when many submitted their application for Khmer nationality, Khmer Krom were asked to change their original name to make it seem more Khmer, and change their place of birth to be Cambodian<sup>297</sup>. Moreover, as mentioned in Chapter 2, the situation of ethnic Vietnamese minority is no different from the situation of Khmer Krom people regarding the possessing of Khmer identity. The main reasons that those ethnic Vietnamese are not able to obtain Khmer identity cards is because of their unclear citizen status due to the Pol Pot Regime destroying their civil registration documents and their lack of ability to prove their claim for Khmer nationality<sup>298</sup>. According to the MIRO report, 33 percent among 402 respondents replied that the reason that they cannot possess legal documents is due to discrimination from authorities<sup>299</sup>. Therefore, Cambodian should take action to ensure proper implementation of the regulations relating to nationality such as clarifying a proper legal process and procedure and ending the unlawful actions requiring Khmer Krom to change their name or place of birth in order to obtain Khmer identity. Regarding ethnic Vietnamese minority, the government should take action to clarify their citizenship status and allow them to hold effective documentation for future applications for nationality rather than keep them without clear legal status or as stateless. For the discrimination against both Khmer Krom and ethnic Vietnamese, the government should take actions to raise awareness among the competent authorities as well as to individuals and the public to increase understanding about human values, human rights, and especially the relevant regulations related to the citizenship rights and the procedure to acquire, these.

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<sup>295</sup> United Nations Human Rights Office of High Commissioner, *Convention on the Rights of the Child*, entry into force 2 September 1990, Art.7.

<sup>296</sup> See Chapter 2 above.

<sup>297</sup> Ibid.

<sup>298</sup> Ibid.

<sup>299</sup> Minority Rights Organization. *Research Finding Statelessness Minority Groups in Cambodia, Takeo, Kampong Chhnang, and Pursat Province*, (2016), p.19.



### **4.2.3 Cooperate with UNHCR and join the #Ibelong campaign**

The UN Refugee Agency, UNHCR, works to support, save, protect, and build a better life for refugees and the stateless<sup>300</sup>. In November 2014, the #IBelong Campaign was launched together with civil society, States, and other UN Agencies aiming to end statelessness by 2024, by addressing existing statelessness, avoiding new cases from emerging, and identifying statelessness and protecting stateless persons<sup>301</sup>. Cambodia would gain a lot of benefits by cooperating with UNHCR and joining the #Ibelong campaign to deal with the issue of statelessness in Cambodia. As in the case study mentioned in Chapter 3, Thailand should be the best sample for Cambodia to cooperate with UNHCR to deal with the issue of statelessness. In Thailand, the situation of ethnic minority groups and stateless people is almost the same as the situation of ethnic minority groups and statelessness people in Cambodia, and they were often discriminated against by the authorities<sup>302</sup>. The Thai Government also has strong commitment end statelessness by 2024, and is cooperating with the UNHCR to implement activities to assist and support the stateless. Moreover, Thailand has taken action by ruling to all district authorities to identify and issue the range of legal documents for stateless students, and as a result, 65,000 have obtained legal documents and are able to access school, as their families (residing in the area where UNHCR cooperated with Thais authorities) are able to obtain nationality, birth certificate registration and other important civil status documents<sup>303</sup>. Therefore, Thailand's work on the issue of statelessness ought to be such a good example for Cambodia to deal with avoiding and preventing statelessness in Cambodia. The Cambodian Government should work closely and cooperate with the UNHCR, and other local and international NGOs to avoid and prevent statelessness in Cambodia.

### **4.2.4 Strengthen the implementation of the international framework by accessing relevant international instruments, the 1954 Conventions, and the 1961 Convention:**

As mentioned in Chapter 3 above, these two preliminary international instruments have played a significant role in addressing and avoiding statelessness by regulating rights and improving the status of stateless people, providing the obligation to assist the stateless, and providing the primary important measures to states party to deal with the issue of statelessness in its territory.

Accessing these two Conventions is a way for Cambodia to expose its commitment to humanitarian and human rights standards, including the rights to nationality, and allowing Cambodia to address the gaps which stem from several approaches to ascription of nationality worldwide, and through accepting and recognizing universal protection measures for solving and

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<sup>300</sup> UNHCR, "About us", available on: <http://www.unhcr.org/about-us.html>. Accessed May 05, 2018

<sup>301</sup> UNHCR, "#Ibelong Campaign", available on: <http://www.unhcr.org/ibelong-campaign-to-end-statelessness.html>. Accessed May 05, 2018.

<sup>302</sup> See chapter 3 above.

<sup>303</sup> Ibid.

avoiding the issue of statelessness<sup>304</sup>. Moreover, it shows the commitment of the Cambodian government in dealing with this world-concerning issue, the issue of Statelessness Both conventions obligate states with numerous measures to address the issue of statelessness, as well as requiring states to provide and the stateless the enjoyment of all human rights. Therefore, it is very important to Cambodia to access and adhere to both conventions to address the situation of the statelessness populations in Cambodia today.

#### **4.2.5 Strengthen the implementation of the international frameworks**

Cambodia is a state party to several international human rights conventions, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and International Convention on the Elimination of All Forms of Racial Discrimination (CERD)<sup>305</sup>. All of these international instruments regulate the protection of the right to nationality of the person, for example, the ICCPR includes the right to obtain nationality for all children, and the CRC provides the rights to acquire the nationality of all children as well, while the CERD requires the states party to guarantee the right to a nationality to all people without discrimination regarding color, race, and national or ethnic origin<sup>306</sup>. Therefore, all these international instruments has play an important role in dealing with the issue of statelessness. Thus, the Royal Government of Cambodia, as state party to all these human rights instruments, should carefully check, review, and strengthen the implementation of these to ensure the implementation of its domestic laws and these conventions are consistent with each other. This would address the broader issue of human rights violations as well as the issue of statelessness in its sovereign territory.

All in all, in order to address and avoid the statelessness, the Royal Government of Cambodia should consider several actions including, capturing all information about the stateless in its territory by carefully identifying them and finding out the exact numbers, the groups, ages, and living conditions, and immediately provide assistance. Moreover, Cambodia should take immediate action to prevent, reduce and protect the Stateless, including checking, reviewing and fixing the gaps in related laws, including the constitutional law and the law on nationality as well as ensure the proper implementation of the relevant laws, and awareness raising about the rights of ethnic groups among authorities. Then, Cambodia should participate in such activities as the #Ibelong campaign to end statelessness, and cooperate with the UNHCR. Cambodia should also follow the Kingdom of Thailand's example in avoiding statelessness, of which cooperation with UNHCR is an example. Also, Cambodia should strengthen the implementation of the international legal framework that it is party to, including the two primary international instruments, the 1954 Convention, and the 1961 Convention.

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<sup>304</sup>UNHCR, Preventing and Reducing Statelessness: The 1961 Convention on Reduction of Statelessness, available on: [https://www.unhcr.it/wp-content/uploads/2016/01/preventing\\_and\\_reducing\\_statelessness.pdf](https://www.unhcr.it/wp-content/uploads/2016/01/preventing_and_reducing_statelessness.pdf). Accessed May 03, 2018.

<sup>305</sup> See Chapter 3 above.

<sup>306</sup> Ibid.

## 5. Conclusion and Recommendation

In conclusion, therefore, statelessness has occurred among ethnic minority groups, including the Vietnamese minority who have been residing in Cambodia for generations and the Khmer Krom people who have been moving to living in Cambodia from the Mekong Delta area (Kampuchea Krom). Nevertheless, the exact number of the Stateless persons in Cambodia is unknown.

The ethnic Vietnamese minority group and Khmer Krom people who have been living in Cambodia are facing in the same difficult situation and challenges. They are living without clear legal status, unable to obtain "Khmer Nationality" and are stateless. Several reasons led them to being unable to obtain Khmer Nationality, including cultural discrimination against those ethnic Vietnamese minorities, gaps of domestic regulations on nationality, and improper implementation of the relevant regulations on nationality. The stateless in Cambodia cannot enjoy fundamental human rights including the civil and political rights, as the ordinary Cambodian citizen does. They cannot obtain a legal job; their children cannot access formal education, they are often living with a fear of being arrested and cannot travel out-off their area, are unable to own a house or land, and are discriminates against by local Khmer people and authorities. Therefore, their quality of life is low, and they are often living with poverty.

This paper has observed that, regarding the international framework on Statelessness, there are several non-binding and binding international instruments in which statelessness is covered. The non-binding instrument, the Universal Declaration of Human Rights, is the keystone instrument which provides the rights to nationality, and as mentioned in article 15, every person has a right to nationality. Furthermore, the 1954 Conventions Relating to the Status of Stateless Person, and the 1961 Convention on the Reduction of Statelessness are the primary international instruments which aim to address the issue of Statelessness; nevertheless, Cambodia does not adhere to these conventions yet. However, Cambodia has ratified several binding international human rights instruments covering the issue of nationality including ICCPR, CRC, and CERD. All these instruments provide obligations to the States party to ensure without discrimination, that children will never be born as statelessness in their territory.

Regarding the Cambodian national framework covering the issue of nationality, including the Constitutional Law 1993, the Law on Nationality 1996, and Law on Immigration 1994 the issue is covered quite well. Nevertheless, there are some gaps among the provisions under the Cambodian Constitutional Law 1993, crucially; there is no clear definition of the term "Khmer Citizen" leading to uncertainty as to who is the "Khmer Citizen", and whether ethnic minority groups are counted. Furthermore, the provision under Cambodian Law on Nationality 1996 does not grant Khmer nationality to every child who is born in the territory; for example, the child who born in Cambodia but not falls into the article 4 (2) of this law will not be able to obtain Khmer Nationality by birth. Therefore, the inconsistency of Cambodia domestic regulations and international instruments covering on the nationality issue that Cambodia has ratified led the occur of statelessness among the children of Khmer Krom people and ethnic Vietnamese minority group. Moreover, improper implementations of the regulations are the major cause of arise of Statelessness among the ethnic Vietnamese and Khmer Krom people too.

Furthermore, the paper found that as in Cambodia, statelessness has also occurred in Japan, Malaysia, and Thailand. The cause and situation of the Statelessness among these three countries are almost the same, and mostly the Statelessness occurred regarding the moving of people and the gaps of the domestic regulation related to the nationality and the improper implementation of those regulations. The study found that the three countries, Japan, Malaysia, and Thailand, having not many different approaches to address the Statelessness issue in their territory, including improving strengthening the implementation of their domestic laws related to nationality, adhering to important international instruments as well as cooperation with UN refugee agencies and local NGOs. Thailand is one of the best examples for Cambodia to address the issue of Statelessness. The Thai government has strengthened the implementation of the regulations by ruling to the competent local authorities to identify the Stateless and cooperate with the UN refugee agency as well as local NGOs to address the problem and commits to ending the statelessness by the end of 2024.

Committed to addressing the issue of Statelessness as a United Nations member, Cambodia has the goodwill to obey its international obligations to address human rights violations in its territory. Therefore, this paper provides solutions for the Royal Government of Cambodia to address and avoid the statelessness in its territory. To address the issue of statelessness, Cambodia should consider several actions, including identifying the Stateless groups who have been living in Cambodia by collecting all information of them such as the exact numbers, their legal status, and their situation, and then do the awareness raising among them and the local authorities to increase understanding about human rights and procedure, and requirements to apply for Khmer nationality. Most importantly, Cambodia should check and review its domestic regulations to find the gaps and fix them to ensure that all provisions are pursuant and compliant with the international standards to ensure that no child is born as stateless. Moreover, Cambodia should strengthen the implementation of the international legal framework including the 1954 Convention and the 1961 Convention. Last but not least, Cambodia should cooperate with the UN refugee agency and get technical support and assistance to address the issue of statelessness, as in Thailand

## **Recommendations:**

Based on the findings of this paper, the author would make the following advice to the Royal Government of Cambodia:

- Review the provision under the Cambodian Constitutional Law to clarify the term "Khmer Citizen" with the exact definition, covering ethnic Khmer Krom people as Khmer Citizens that are able to enjoy all human rights and protection under the Constitutional Law as ordinary Khmer citizens.
- Review the provision of the Law on Nationality to ensure that a child will never be born as Stateless.
- Ensure all domestic regulations related to human rights and nationality fully comply with International Standards.
- Strengthen adherence to international obligations, and accede to the primary Convention of Statelessness, to ensure that no individuals who are living in Cambodia are prevented from the enjoyment of fundamental human rights regardless their national origin, race, color, or ethnicity.
- Adopt specific procedures and ensure the processes for issuing nationality for Khmer Krom and other ethnic groups, are properly implemented by the competent authority without discrimination, any illegal acts by requiring the changing their place of birth, or original name in order to apply for Khmer Nationality.
- Identify and collect all information about the Stateless, ensure all information of Statelessness is manageable, including their legal documents, and their actual situation.
- Take action to provide the birth registration for all children of ethnic minority groups who otherwise become Statelessness in the territory.
- Provides the necessary documents including travel documents, and other administration to the Statelessness which allow them to enjoy the basic human rights including employment, education, housing, and traveling, and other documents which benefit to them for future applying for Khmer Nationality
- Raise awareness by providing training/workshops to ethnic minority groups, including the Vietnamese minority and Khmer Krom people, about their human rights and protection under Cambodian law and international law, as well as the procedure and process to apply for Khmer Nationality and where they are able finding the information.
- Raise awareness among the competent authorities about the human rights under Cambodian Law and under the International law, primarily related to the discrimination against the ethnic minority groups.
- Adopt a national anti-racial discrimination strategy, containing specific actions to address discrimination against all ethnic minority groups.
- Publish the information broadly to all ethnic minority groups on how they can apply for Khmer nationality, and where they can seek the support and assistant through the application process.
- Cooperate with UN Refugee Agency (UNHCR) and other International or Local NGOs, to address the issue of statelessness.

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