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# REPORT ON CITIZENSHIP LAW: VIETNAM

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# Report on Citizenship Law

## Vietnam<sup>1</sup>

*Lyma Nguyen*

### 1. Introduction

Vietnam formed part of French Indochina from the end of the 19<sup>th</sup> century. France continued to rule Vietnam as a colony until the proclamation of Vietnam's independence in 1954 following France's defeat in the First Indochina War. After the end of French colonial rule, Vietnam was divided into two states and in 1955, the South was proclaimed as the Republic of Vietnam, and adopted its own constitution in 1956. After the fall of Saigon in 1975, the South became part of the newly united Socialist Republic of Vietnam (1976) and a new constitution was enacted in 1980. A new Nationality Law was adopted on 15 July 1988 (1988 Nationality Law), which was replaced by the Nationality Law of 1998 and subsequently by the current 2008 Nationality Law.

Vietnam's 2008, 1998 and 1988 laws all explicitly provide for the right to Vietnamese citizenship for all individuals in the Socialist Republic of Vietnam<sup>2</sup>. The 2008 law does not change the 1998 Law in any substantive way. However, the 1998 law extends conditions to be met for an application for Vietnamese citizenship, from the previous law. Whilst the 2008 law attempts to simplify the terminology of the 1998 law, the provisions governing the application, restoration, retention, loss, renunciation, deprivation and annulment of Vietnamese citizenship remain essentially the same in substance.

There have been developments in the terminology and definitions used across the 1998 and 2008 laws. For example, Article 2(3) of the 1998 Law uses the terms "Vietnamese residing abroad", to mean "Vietnamese citizens and people of Vietnamese origin, who permanently reside and earn their living in foreign countries"<sup>3</sup> and "Vietnamese living abroad" to mean "Vietnamese citizens and people of Vietnamese origin who are permanently or temporarily residing in foreign countries"<sup>4</sup>, whereas Article 3.3 of the 2008 Law defines only the term "overseas Vietnamese", to mean "Vietnamese citizens and persons of Vietnamese origin who permanently reside in foreign countries."<sup>5</sup> Article 3(4) of the 2008

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<sup>1</sup> Much of the content in this paper is drawn from 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). RegNet Research Paper No. 2014/50. Available at SSRN: <https://ssrn.com/abstract=2514121> or <http://dx.doi.org/10.2139/ssrn.2514121>.

<sup>2</sup> 2008 Nationality Law (Vietnam), Article 2(1); 1998 Nationality Law (Vietnam), Article 1(1) and 1988 Nationality Law (Vietnam), Article 1.

<sup>3</sup> 2008 Nationality Law (Vietnam), Article 2(4).

<sup>4</sup> 2008 Nationality Law (Vietnam), Article 2(3)

<sup>5</sup> 2008 Nationality Law (Vietnam), Article 3(3).

Law creates a new category of persons – “Persons of Vietnamese origin residing abroad” – and defines this class of persons as “Vietnamese people who used to have Vietnamese citizenship which had been determined at the time of their birth on the consanguinity principle and their offsprings (sic) and grandchildren are permanently residing in foreign countries”.<sup>6</sup> It appears that by including these additional categories of persons into the definitions of the 2008 Nationality Law, the legislature intended to provide opportunities for a greater scope of persons to access the law’s naturalisation provisions – including persons of Vietnamese origin who fled from Vietnam as refugees in the 1980s.

It is noted that, whilst public international law uses the term “nationality” to refer to the legal bond between an individual and a sovereign state, there is much confusion and overlap in the meaning and use of the terms “citizenship” and “nationality” in various domestic and foreign laws governing citizenship. This report, in line with the practice of the EUDO CITIZENSHIP observatory, employs “citizenship” as the default term, not only for the legal rights and duties attached to “nationality” but also to describe the legal status itself.<sup>7</sup>

Whilst the 2008 law attempts to simplify the terminology of the 1998 law, the provisions governing the application, restoration, retention, loss, renunciation, deprivation and annulment of Vietnamese citizenship remain essentially the same in substance. However, several amendments were made to the 2008 Nationality Law, specifically to address important citizenship issues arising for multiple categories of people:

- To enable naturalisation of “persons of Vietnamese origin residing abroad”, allowing dual citizenship for:
  - persons of Vietnamese origin residing overseas as part of the Vietnamese diaspora of refugees (including their children), who wish to *regain* their Vietnamese citizenship whilst retaining their foreign citizenship, with permission from the state
  - displaced persons living in Cambodia who suffered persecution amounting to genocide and crimes against humanity during the Democratic Kampuchea (The Pol Pot / Khmer Rouge regime)
- To specifically resolve the conflict of laws situation of Vietnamese women whose marriages with foreign nationals (particularly with Taiwanese and Korean men) end in separation or divorce, in order to avoid risks of the statelessness for these women when such marriages fail<sup>8</sup>

Article 3.3 of the 2008 Law defines only the term “**Overseas Vietnamese**”, to mean “Vietnamese citizens and persons of Vietnamese origin who permanently reside in foreign countries.”<sup>9</sup> This is a development in terminology, compared to the definitions used across the 1998 and 2008 laws. For example, Article 2(3) of the 1998 Law uses the terms:

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<sup>6</sup> 2008 Nationality Law (Vietnam), Article 3(4).

<sup>7</sup> See explanation given by the EUDO CITIZENSHIP Observatory in <http://eudo-citizenship.eu/databases/citizenship-glossary/terminology>.

<sup>8</sup> Trinh Thi Hoang Anh, Vietnamese Ministry of Labour, Powerpoint presentation, “Women’s Citizenship in Vietnam”, presented at the Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia, 28-29 October, Bangkok, Thailand (Co-hosted by the National Human Rights Commission of Thailand and the United Nations High Commissioner for Refugees). In addressing the issue of a person’s right to nationality, the 2008 Nationality Law also implements norms under the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Vietnam is a state party.

<sup>9</sup> 2008 Nationality Law (Vietnam), Article 3(3).

- “**Vietnamese residing abroad**”, to mean “Vietnamese citizens and people of Vietnamese origin, who permanently reside and earn their living in foreign countries”<sup>10</sup> and
- “**Vietnamese living abroad**” to mean “Vietnamese citizens and people of Vietnamese origin who are permanently or temporarily residing in foreign countries”<sup>11</sup>.

In defining “Overseas Vietnamese”, article 3(4) of the 2008 Law creates a new category of persons – “**Persons of Vietnamese origin residing abroad**” – and defines this class of persons as “Vietnamese people who used to have Vietnamese citizenship which had been determined at the time of their birth on the consanguinity principle and their offsprings (sic) and grandchildren are permanently residing in foreign countries”.<sup>12</sup>

The inclusion of these additional categories of persons in the 2008 Nationality Law would have the effect of enabling a greater scope of persons to access the naturalisation provisions, including persons of Vietnamese origin who fled from Vietnam as refugees in the aftermath of war, and their children.

Further, amendments were enacted in 2014 (having force as at 26 June 2014) to expand upon Articles 13 and 26 of the 2008 Nationality Law, in order to:

- clarify that Vietnamese citizens include both those who have attained citizenship status as at the date of the 2008 Law, and those who have naturalised
- specify that overseas Vietnamese residing abroad who have not lost their Vietnamese citizenship status prior to the enactment of the law, still retain it
- make retention of Vietnamese citizenship more flexible for ethnic Vietnamese persons residing abroad, by providing that such persons who have no proof of their Vietnamese citizenship status, should register with Vietnamese embassies abroad to have their Vietnamese citizenship recognised and Vietnamese passports issued.<sup>13</sup>

The amended law also abolishes the requirement for children with Vietnamese citizenship, who were adopted from Vietnam before 1 July 2009, to register with an overseas Vietnamese diplomatic mission, as a pre-requisite for retaining their Vietnamese citizenship.<sup>14</sup>

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<sup>10</sup> 2008 Nationality Law (Vietnam), Article 2(4).

<sup>11</sup> 2008 Nationality Law (Vietnam), Article 2(3)

<sup>12</sup> 2008 Nationality Law (Vietnam), Article 3(4).

<sup>13</sup> The author has not located an official copy of the Amendments. However, it is noted that the enactments took force on 26 June 2014. See Vietnam, “President signs order to announce amended nationality law”, 1 July 2014, at <http://en.vietnamplus.vn/president-signs-order-to-announce-amended-nationality-law/62461.vnp> (accessed 17 April 2017).

<sup>14</sup> See US Department of State (Vietnam), “Children Adopted from Vietnam before July 1 2009 No Longer Need to Register to Retain Vietnamese Nationality”, 10 July 2014, at <https://travel.state.gov/content/adoptionsabroad/en/country-information/alerts-and-notice/vietnam14-10-07.html>, accessed 18 April 2017. Prior to the amendment, Article 13.2 of the 2008 Nationality Law required that Vietnamese children adopted before 1 July 2009 register by 1 July 2014, to retain their Vietnamese citizenship status. Children who were adopted after 1 July 2009 were not required to register, because they automatically retained their Vietnamese citizenship under Article 37.1 of the 2008 Law. See US Department of State (Vietnam), “Children Adopted from Vietnam before July 1, 2009 must Register with the Government of Vietnam to Retain Vietnamese Citizenship”, 13 October 2013, at <https://travel.state.gov/content/adoptionsabroad/en/country-information/alerts-and-notice/vietnam13-25-10.html>, accessed 18 April 2017.

In general, a significant feature of the 2008 Nationality Law, when compared with the 1998 and 1988 laws, is the detail with which it stipulates the procedures and protocols governing citizenship applications, including providing clear time limits within which applications must be processed, and decisions made. In contrast with the 1998 Nationality Law, under which the process for filing and processing citizenship applications is set out in general terms, and the 1988 Nationality Law, which contains no provisions on the processes governing citizenship determination procedures, the 2008 Law stipulates specific provisions governing the granting, restoration, renunciation, deprivation and annulment of Vietnamese citizenship.<sup>15</sup>

Regulations which supplement the provisions of the 2008 Law, including the 2010 Joint Circular<sup>16</sup> and the 2009 Decree on Nationality Law,<sup>17</sup> appear to be efforts taken by the Vietnamese government to make the procedures governing citizenship applications more uniform and transparent, by stipulating procedures for the receipt, verification and translation of supporting documents in citizenship applications, fees, notification or outcomes, the recording of Vietnamese citizenship status in Civil Status Registers and the settlement of stateless persons in Vietnam.

Based on the letter of the law, Vietnam's legislation appears to have stronger protections against statelessness, including clearer and more detailed provisions on the application and decision-making processes, than some of its neighbouring countries, such as Cambodia, where the domestic citizenship law offers no protection or prevention against statelessness, and leaves open a wide scope of discretion for government decision-makers, creating a higher risk of inconsistent application of its citizenship law provisions for ethnic minority groups residing in Cambodia, such as the ethnic Vietnamese, or other unpopular minority groups.<sup>18</sup>

## **2. Historical Background**

### **2.1 The Colonial period**

Vietnam formed part of French Indochina from the end of the 19<sup>th</sup> century. France continued to rule Vietnam as a colony until the proclamation of Vietnam's independence in 1954 following France's defeat in the First Indochina War. Generally speaking, French laws, including the French Civil Code, applied to the colony, following practices of the French courts in Cochinchine with local modifications. Most laws dealing with matters of citizenship were therefore concerned with naturalisation to French citizenship. As Vietnam held the status of a colony under French rule – unlike those living in French Protectorates such as Laos

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<sup>15</sup> 2008 Nationality Law (Vietnam), Articles 20-38.

<sup>16</sup> Joint Circular No. 05 of 2010.

<sup>17</sup> Decree No. 78 of 2009.

<sup>18</sup> See 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). RegNet Research Paper No. 2014/50. Available at SSRN: <https://ssrn.com/abstract=2514121> or <http://dx.doi.org/10.2139/ssrn.2514121>.



and Cambodia – Vietnamese colonial inhabitants were treated as “subjects” and generally enjoyed more rights and privileges, including access to French citizenship.<sup>19</sup>

After the end of French colonial rule, Vietnam was divided into two states. In 1955, the South was proclaimed as the **Republic of Vietnam (ROV, 1955-1975)**, and adopted its own constitution in 1956. As the ROV existed in an almost constant state of warfare, political leaders mostly ruled through executive decrees and military law, although a number of French legal provisions remained in force. It is noted that it was the state of the ROV that received the ethnic Vietnamese refugees from Cambodia, fleeing from persecution under the Lon Nol regime at the beginning of the 1970s.

## 2.2 The Socialist Republic

After the fall of Saigon in 1975, the South became part of the newly united **Socialist Republic of Vietnam (1976)** and a new constitution was enacted in 1980. From 1986, the contemporary legal system was established when the Doimoi (Renovation) policy was introduced. A new Nationality Law was adopted on 15 July 1988 (**1988 Nationality Law**).<sup>20</sup>

### 2.2.1 The 1988 Nationality Law

This section provides a summary of the provisions of the 1988 Nationality Law.

Article 1 of Vietnam’s 1988 Nationality Law provides that the State of Vietnam “is the united State of all nationalities living together on the Vietnamese soil, all members of various nationalities have Vietnamese citizenship (sic)”.<sup>21</sup> Article 3 provides that the State only recognises one citizenship – Vietnamese citizenship – for “Vietnamese citizens” (meaning dual citizenship is not recognised). Article 4 provides that marriage, divorce, or cancellation of illegal marriage with foreign or stateless persons does not alter a person’s citizenship. Nor does the loss of a person’s spouse’s citizenship impact on that person’s citizenship.

Article 5 provides that a person has Vietnamese citizenship if that person has citizenship by birth, is admitted or re-admitted into Vietnamese citizenship, has Vietnamese citizenship in accordance with an international treaty of which Vietnam is a signatory, or obtains citizenship in accordance with the law.

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

- Children whose parents are Vietnamese citizens have Vietnamese citizenship, regardless of where the child is born (*jus sanguinis*)
- If a child has one parent with Vietnamese citizenship and the other parent is stateless, that child will have Vietnamese citizenship
- A child born to stateless parents who have permanent residence in Vietnam will have Vietnamese citizenship

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<sup>19</sup> The relevant laws from the French Protectorate era are not discussed further in this report.

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

<sup>21</sup> 1988 Nationality Law (Vietnam).



- A child born in Vietnam to parents who are citizens or who have permanent residence in Vietnam, has Vietnamese citizenship unless the parents choose another citizenship for them, and
- Children found on Vietnamese territory, whose parents are unknown, have Vietnamese citizenship.<sup>22</sup>

Article 7 provides that foreign citizens and stateless persons residing in Vietnam may be admitted into Vietnamese citizenship if they are 18 years or older, have knowledge of the Vietnamese language, and have lived in Vietnam for at least five years.<sup>23</sup> If there are legitimate reasons, these conditions may be waived.<sup>24</sup>

Both Vietnamese citizens living abroad and persons who have acquired Vietnamese citizenship may be deprived of their Vietnamese citizenship if they are involved in serious acts damaging national independence or national interests.<sup>25</sup> Those who have lost their Vietnamese citizenship can be re-admitted if they show good cause.<sup>26</sup>

### 2.2.2 *The 1998 Nationality Law*

The 1988 Nationality Law was replaced by the *Law on Vietnamese Nationality* No. 07/1998/QH10 (**1998 Nationality Law**).<sup>27</sup>

Article 1 of Vietnam's 1998 *Nationality Law* provides that 'the Socialist Republic of Vietnam is a unified State of all ethnic groups living on the Vietnamese territory'<sup>28</sup> in which each individual is entitled to have a citizenship.<sup>29</sup> Similarly to the 1988 law, Article 3 of the 1998 law, provides that the state only recognises one citizenship – Vietnamese citizenship – for "Vietnamese citizens". Article 9 provides that a person's Vietnamese citizenship is not altered in the event of marriage, divorce or annulment of an unlawful marriage. The 1998 Law also states that a person will retain their Vietnamese citizenship where that person's spouse changes their citizenship.<sup>30</sup>

Article 15 of the 1998 Law provides that a person is considered to have Vietnamese citizenship by reason of birth, naturalisation, restoration, or in accordance with an international treaty to which Vietnam is a signatory. Articles 16 to 19 of the 1998 law, concerning the acquisition of nationality by birth, expands on provisions stipulated in Article 6 of the 1988 law<sup>31</sup> and provide for the citizenship of children as follows:

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<sup>22</sup> 1988 Nationality Law (Vietnam), Article 6(1-5).

<sup>23</sup> 1988 Nationality Law (Vietnam), Article 7(1).

<sup>24</sup> 1988 Nationality Law (Vietnam), Article 7(2).

<sup>25</sup> 1988 Nationality Law (Vietnam), Article 10(1) and (2).

<sup>26</sup> 1988 Nationality Law (Vietnam), Article 11.

<sup>27</sup> *Law on Vietnamese Nationality*, No. 07/1998/QH10 (20 May 1998) (entered into effect on 1 January 1999) (hereinafter referred to as "1998 Nationality Law (Vietnam)").

<sup>28</sup> 1998 Nationality Law (Vietnam), Article 1(2).

<sup>29</sup> 1998 Nationality Law (Vietnam), Article 1(1).

<sup>30</sup> 1998 Nationality Law (Vietnam), Article 10.

<sup>31</sup> The 1998 Law expands on Article 6 of the 1988 Law by explicitly ensuring Vietnamese nationality by birth in cases in which the child's father is unknown. Article 17(1) of the 1998 law's stipulates that a child will be granted Vietnamese nationality in cases where their mother is Vietnamese and their father is unknown. An equivalent Article is not provided for in the 1988 Law. The 1998 Law also inserts an additional provision under which a child born in Vietnamese territory whose mother is stateless and father unknown shall be granted Vietnamese nationality. See 1998 Nationality Law (Vietnam), Article 18(2).

- Children whose parents are Vietnamese citizens have Vietnamese citizenship, regardless of where the child is born (*jus sanguinis*)
- If a child has one parent with Vietnamese citizenship and the other parent is stateless, that child will have Vietnamese citizenship, regardless of where the child is born
- If a child's mother has Vietnamese citizenship and their father is unknown, that child will have Vietnamese citizenship, regardless of where the child is born
- Children found on Vietnamese territory, whose parents are unknown, have Vietnamese citizenship.<sup>32</sup>
- Article 20 provides that foreign citizens and stateless persons residing in Vietnam *may* be granted Vietnamese citizenship if they “fully meet the following conditions”:
  - Have capacity to engage in “civil acts as prescribed by Vietnamese law”
  - Abide by Vietnamese laws and the Constitution (in addition to “respecting the traditions, customs and practices of the Vietnamese people”)
  - Have sufficient knowledge of the Vietnamese language to enable integration into the social community of Vietnam
  - Have lived in Vietnam for at least five years, and
  - Have (financial or other) capacity to “ensur[e] their living” in Vietnam”.<sup>33</sup>

Certain foreign citizens and stateless persons may be granted Vietnamese citizenship without having to fully meet these conditions in certain cases, including situations in which nationality is obtained by birth or marriage, or where they have been helpful towards, or made meritorious contributions to “the Vietnamese fatherland”.<sup>34</sup>

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

In 2008 the 1998 Nationality Law was replaced by the current 2008 Nationality Law. Procedurally, the main distinguishing feature of the 2008 Law is the detailed manner in which it stipulates the order and procedures governing citizenship applications and related processes, including clear stipulations of time limits for decision-making. Where the 1998 Law provides for a single, more general provision governing the process for the filing of applications for settlement of citizenship matters and associated time limits, the 2008 Law stipulates very specific provisions governing the granting, restoration, renunciation, deprivation and annulment of Vietnamese citizenship<sup>35</sup>, including procedures for the receipt, verification and

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<sup>32</sup> 1998 Nationality Law (Vietnam), Article 16-17. Article 19 of the 1998 law, stating that children found on Vietnamese territory, whose parents are unknown, have Vietnamese nationality, expands upon the equivalent provision in the 1988 law, by limiting the availability of nationality by birth to children under the age of 15 in certain situations. Article 19(2) states that in situations in which that child is less than 15 years old and has found his parents, both of whom hold foreign nationality (or one parent holds foreign nationality or their guardian holds foreign nationality) than that child will no longer hold Vietnamese nationality. Where the child is aged between 15 and less than 18 years, then their written consent will be required.

<sup>33</sup> 1998 Nationality Law (Vietnam), Article 20(1).

<sup>34</sup> 1998 Nationality Law (Vietnam), Article 20(2).

<sup>35</sup> 2008 Nationality Law (Vietnam), Articles 20-38.

translation of supporting documents in citizenship applications, fees, notification of outcomes, the recording of Vietnamese nationality status in Civil Status Registers and the settlement of stateless persons in Vietnam. The 1988 Law, by contrast, provides no provisions on the procedure governing citizenship processing.

### 3. The current citizenship regime: 2008 Nationality Law

The *Law on Vietnamese Nationality* No. 24/2008/QH-12 (**2008 Nationality Law**)<sup>36</sup> was passed by the National Assembly of the Socialist Republic of Vietnam on 13 November 2008 and came into effect on 1 July 2009.

Regulations which supplement the provisions of the 2008 Law include the Joint Circular No. 5 of 2010<sup>37</sup> and the Decree on Nationality Law No. 78 of 2009,<sup>38</sup> which together, make the procedures governing citizenship applications more uniform and transparent. These regulations stipulate clear procedures for the receipt, verification and translation of supporting documents in citizenship applications, fees, notification of outcomes, the recording of Vietnamese citizenship status in Civil Status Registers and the settlement of stateless persons in Vietnam. These regulations appear to be efforts taken by the Vietnamese government to make the processes for citizenship applications more uniform and transparent.

The Government also amended the 2008 Law in 2014, to clarify the status of overseas Vietnamese residing abroad who have not registered to retain their citizenship, and to make the procedure for naturalisation of those residing abroad more flexible and clear.

The following describes the basic features of Vietnam's current "citizenship regime".<sup>39</sup> The laws from 1988 and 1998 are still relevant, as citizenship (and statelessness) status need to be determined on the basis of laws in existence at the time a person is born.

Where the 1998 Law provides for a single, more general provision governing the process for the filing of applications for settlement of citizenship matters and associated time limits, the 2008 Law stipulates specific provisions governing the granting, restoration, renunciation, deprivation and annulment of Vietnamese citizenship.<sup>40</sup> The 1988 Law, by contrast, provides no provisions on the procedural matters.

Some important changes in the legislation will be discussed later in this paper, particularly the provisions concerning "Persons of Vietnamese origin residing abroad", aimed at assisting ethnic Vietnamese residing in Cambodia to naturalise in Vietnam, and the laws aimed at preventing statelessness of Vietnamese women whose marriages to foreign nationals (particularly Korean and Taiwanese men) end in divorce or separation.

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<sup>36</sup> *Law on Vietnamese Nationality*, No. 24/2008/QH-12 (13 November 2008) (hereinafter referred to as "2008 Nationality Law (Vietnam)").

<sup>37</sup> Joint Circular No. 05/2010/TTLT-BTP-BNG-BCA on the Implementation of Decree No. 78/2009/ND-CP (1 March 2010).

<sup>38</sup> Decree No. 78/2009/ND-CP Detailing and Guiding a number of articles on the Law on Vietnamese Nationality (22 September 2009).

<sup>39</sup> The author has not been able to access court decisions in Vietnam concerning citizenship to enable meaningful discussion of relevant case law that may have had an impact on citizenship legislation in Vietnam. In the near future, it is intended that the country profile on the Global Citizenship Observatory website will include documentation of important case law.

<sup>40</sup> 2008 Nationality Law (Vietnam), Articles 20-38.

### 3.1. General characteristics

The 2008 Vietnamese Nationality Law (unlike the 1988 and 1998 laws) contains detailed provisions setting out procedures for both applicants and decision makers in relation to applications for Vietnamese citizenship by birth<sup>41</sup>, through naturalisation<sup>42</sup> and restoration<sup>43</sup> as well as the loss of Vietnamese nationality by means of renunciation<sup>44</sup>, deprivation<sup>45</sup> and annulment.<sup>46</sup>

Article 2 of Vietnam's 2008 Nationality Law emphasises the equality of 'all ethnic groups living on Vietnamese territory' insofar as concerns entitlement to Vietnamese citizenship, by providing that 'the Socialist Republic of Vietnam is a unified State of all ethnic groups living on [the] Vietnamese territory'<sup>47</sup> in which each individual is entitled to have a nationality.<sup>48</sup> Consistent with provisions of the 1998 and 1988 laws, Article 4 provides that the state only recognises *one* nationality – Vietnamese nationality – for Vietnamese citizens. However, the law does provide for people of Vietnamese origin to regain their Vietnamese citizenship whilst retaining their foreign citizenship, in certain circumstances.

The 2008 Nationality Law specifically protects against the loss of citizenship arising from marital status by providing that a person's Vietnamese citizenship is not altered in the event of marriage, divorce or annulment of an unlawful marriage<sup>49</sup> and that a person will retain their Vietnamese citizenship where that person's spouse changes their citizenship<sup>50</sup>.

Vietnam is not a state party to the 1954 or 1961 Conventions on Statelessness.<sup>51</sup> However, the inclusion of the stateless definition or references to statelessness in domestic citizenship laws comprises an essential measure toward avoiding statelessness, protecting the rights of stateless people and encouraging an understanding and use of the term among state authorities.<sup>52</sup>

For example, Vietnam's 2008 Nationality Law expressly aims to "restrict the situation of non-nationality" and provides a definition of a "stateless person" as "a person who has neither Vietnamese nationality nor foreign nationality".<sup>53</sup> This definition accords with the Convention definition. The 2008 Vietnamese law also explicitly provides for conditions, which are aimed at positively preventing statelessness (Articles 8 – 10), and for procedures that have an effect of preventing and reducing statelessness – for example, children born in Vietnam, whose parents are stateless, have Vietnamese citizenship under the law, and children who have been abandoned on Vietnamese territory, likewise, have Vietnamese

<sup>41</sup> 2008 Nationality Law (Vietnam), Articles 15, 16 and 17.

<sup>42</sup> 2008 Nationality Law (Vietnam), Article 21.

<sup>43</sup> 2008 Nationality Law (Vietnam), Article 25.

<sup>44</sup> 2008 Nationality Law (Vietnam), Article 29.

<sup>45</sup> 2008 Nationality Law (Vietnam), Article 32.

<sup>46</sup> 2008 Nationality Law (Vietnam), Article 34.

<sup>47</sup> 2008 Nationality Law (Vietnam), Article 2(1).

<sup>48</sup> 2008 Nationality Law (Vietnam), Article 2(2).

<sup>49</sup> 2008 Nationality Law (Vietnam), Article 9.

<sup>50</sup> 2008 Nationality Law (Vietnam), Article 10.

<sup>51</sup> UN Status of Treaties website at <http://treaties.un.org>, accessed on 10 April 2017.

<sup>52</sup> UNHCR, 'Good Practices: Addressing Statelessness in South East Asia' (Report of the *Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons in South East Asia*, Bangkok, 28 and 29 October 2010), 4.

<sup>53</sup> 2008 Nationality Law (Vietnam), Article 8 provides that the law "creates conditions for children born in the Vietnamese territory to have a nationality and stateless persons permanently residing in Vietnam to acquire Vietnamese nationality".

citizenship (Article 17 & 18). Further, Article 22 provides that stateless persons who lack identification documents but have resided in Vietnam for at least 20 years will be permitted naturalisation in Vietnam. Importantly, the Vietnamese law contains detailed provisions governing the application process and processing time limits, so that – at least on the letter of the law – the process transparent and decision makers are accountable for timely decision making.

### 3.2 Acquisition of citizenship

The law provides that a person is considered to have Vietnamese citizenship on the grounds of birth, naturalisation, and/or where their citizenship is restored or in accordance with an international treaty to which Vietnam is a signatory.<sup>54</sup>

#### 3.2.1 Acquisition of citizenship by birth

The citizenship of children is provided for in articles 15 to 18 (inclusive) as follows:

- Children whose parents are Vietnamese citizens have Vietnamese nationality, regardless of where the child is born (*jus sanguinis*)<sup>55</sup>
- If a child has one parent with Vietnamese nationality and the other parent is stateless, that child will have Vietnamese nationality, regardless of the child's place of birth<sup>56</sup>
- If a child's mother has Vietnamese nationality and their father is unknown, that child will have Vietnamese nationality, regardless of place of birth<sup>57</sup>
- If a child is born to parents, one of whom is a Vietnamese citizen and the other is a foreign national, that child shall hold Vietnamese nationality if so agreed in writing by the child's parents at the time their birth is registered. In cases where the parents fail to reach an agreement about the selection of the child's nationality, the child will be deemed to have Vietnamese nationality<sup>58</sup>
- A child born to stateless parents who have permanent residence in Vietnam will have Vietnamese nationality<sup>59</sup>, and
- Children found on Vietnamese territory, whose parents are unknown, have Vietnamese nationality<sup>60</sup>

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<sup>54</sup> 2008 Nationality Law (Vietnam), Article 14.

<sup>55</sup> 2008 Nationality Law (Vietnam), Article 15.

<sup>56</sup> 2008 Nationality Law (Vietnam), Article 16(1).

<sup>57</sup> 2008 Nationality Law (Vietnam), Article 16(1).

<sup>58</sup> 2008 Nationality Law (Vietnam), Article 16(2).

<sup>59</sup> 2008 Nationality Law (Vietnam), Article 17(1).

<sup>60</sup> 2008 Nationality Law (Vietnam), Article 18(1). Article 18(2) stipulates that children under the age of 15 will lose their Vietnamese nationality if they discover that one of their parents holds a foreign nationality. Unlike the 1998 Law, the 2008 law does not stipulate conditions governing children aged 15 but younger than 18. See 2008 Nationality Law (Vietnam), Article 19.

### 3.2.2 Acquisition of Citizenship by Naturalisation

Article 19 of the 2008 Law provides that foreign citizens and stateless persons residing in Vietnam may be granted Vietnamese citizenship if they are capable of civil acts as prescribed by Vietnamese law, agree to abide by the Vietnamese Constitution and laws (in addition to “respecting the traditions, customs and practices of the Vietnamese nation”), have sufficient knowledge of the Vietnamese language to integrate into the Vietnamese community, have lived in Vietnam for at least five years, and are capable of earning their living in Vietnam.<sup>61</sup>

Certain foreign citizens and stateless persons may be granted Vietnamese citizenship without having to fully meet these conditions in particular cases, including situations in which nationality is obtained by birth or marriage, or where they have been helpful or have made meritorious contributions to Vietnam. Compared to 1998 Law<sup>62</sup>, the 2008 Law adds an additional requirement that those who apply for Vietnamese citizenship must have Vietnamese names.<sup>63</sup>

Persons who apply for Vietnamese nationality by naturalisation are required to pay fees, as set by the Ministry of Finance<sup>64</sup>, except for applicants who are deemed ‘poor’ and / or are Stateless.<sup>65</sup>

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

- An application for Vietnamese citizenship
- A copy of the Applicant’s birth certificate, passport or other substitute papers
- A curriculum vitae
- A judicial record issued by a competent Vietnamese authority for the period the Applicant has resided in Vietnam and their previous foreign country
- Papers proving the Applicant’s Vietnamese language skills, and
- Papers proving the Applicant’s ability to ‘make a livelihood in Vietnam’<sup>66</sup>.

Article 21 provides that a person applying for Vietnamese citizenship must file their dossier of application with the Justice Service at the provincial level where they reside.<sup>67</sup> Steps to be taken by the provincial-level Justice Service, as well as timeframes for action to be taken, are also set out in this provision, and in Joint Circular No. 5.<sup>68</sup> The applicant’s

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<sup>61</sup> 2008 Nationality Law (Vietnam), Article 19(1).

<sup>62</sup> Article 20 of the 1998 Nationality Law (Vietnam), governing the “Granting of Vietnamese nationality”, does not explicitly require that a person have a Vietnamese name, to be granted Vietnamese citizenship.

<sup>63</sup> 2008 Nationality Law (Vietnam), Article 19(2-4). Specifically Article 19(4) requires that persons applying for Vietnamese citizenship must have Vietnamese names, and that the names “may be selected by the applicants and written on the decisions on naturalization in Vietnam”.

<sup>64</sup> Decree No. 78 of 2009, Article 4.

<sup>65</sup> Article 4.2 (b) provides an exemption for those who are considered ‘poor under law’ and Article 4.2 (c) exempts Stateless persons who apply for naturalisation in Vietnam under Article 22 of the Law on Vietnamese Nationality. See Decree No. 78 of 2009, Article 4.

<sup>66</sup> 2008 Nationality Law (Vietnam), Article 20(1)(g).

<sup>67</sup> 2008 Nationality Law (Vietnam), Article 21(1).

<sup>68</sup> The provincial level Justice Service is required to register the application in a registry of applications for naturalisation in Vietnam, and at the same time, issue the Applicant with an official receipt. In the event that the

identity must be verified at the provincial level Public Security Department<sup>69</sup> and then submitted to the provincial level People’s Committee President<sup>70</sup>, before being submitted to the Ministry of Justice with a recommendation.<sup>71</sup> Within 20 working days<sup>72</sup>, the Ministry of Justice must re-examine the dossier, record the application in a dossier register<sup>73</sup>, and, assuming that all conditions for naturalisation in Vietnam are met, notify the applicant in writing about the procedures for renouncement of their foreign citizenship – except for cases in which the Applicant wishes to retain their foreign citizenship or is stateless.<sup>74</sup> Once written permission from the Applicant concerning the renouncement of their foreign citizenship is received, the Minister for Justice must report the case to the Prime Minister for submission to the President.<sup>75</sup> The President has 30 working days to make a decision<sup>76</sup> and the Ministry of Justice is then required to send the Applicant a copy of this decision within 10 working days.<sup>77</sup>

Article 22 of the 2008 Law provides that stateless persons who do not have adequate personal identification papers but have been residing in Vietnam for at least 20 years and obey Vietnam’s laws and Constitution will be permitted for naturalisation under the order, procedures and dossiers specified by the Government.<sup>78</sup>

### ***3.2.3 Acquisition of Citizenship by Restoration***

The law, in Article 23, stipulates situations in which a person who has lost their Vietnamese citizenship may apply for it to be restored and includes two categories additional to any preceding citizenship law: those who conduct investment activities in Vietnam and those who have previously renounced their citizenship in order to acquire a foreign citizenship, but have been unsuccessful in doing so.<sup>79</sup> Persons applying for restoration of Vietnamese citizenship “shall use their previous Vietnamese names”<sup>80</sup> and must renounce their foreign citizenship, except for some categories of persons, including those who are spouses or children of Vietnamese citizens.<sup>81</sup> Consistent with the 1998 Law, Article 7(1) of the 2008 law

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Applicant’s dossier is incomplete, the Justice Service must immediately notify the Applicant: Article 2(1), Joint Circular No. 5 of 2010.

<sup>69</sup> Within five working days of receiving a complete dossier, the Justice Service must request written verification of the applicant’s identity from the provincial level Public Security Department: Verification must be conducted and a response provided to the Justice Service within 30 working days: 2008 Nationality Law (Vietnam), Article 21(2).

<sup>70</sup> Within 10 days of receiving results from the Public Security Department, the Justice Service must complete the dossier for submission to the provincial level People’s Committee President: 2008 Nationality Law (Vietnam), Article 21(2).

<sup>71</sup> The relevant People’s Committee President has 10 working days to consider, conclude and make their proposal to the Ministry of Justice: 2008 Nationality Law (Vietnam), Article 21(2).

<sup>72</sup> 2008 Nationality Law (Vietnam), Article 21(3).

<sup>73</sup> Including uploading on its portal, the list of the Applicants for settlement of nationality related matters: Joint Circular No. 5 of 2010, Article 3(2).

<sup>74</sup> 2008 Nationality Law (Vietnam), Article 21(3).

<sup>75</sup> The Minister for Justice must report the case to the Prime Minister for consideration and a decision, within 10 working days: 2008 Nationality Law (Vietnam), Article 21(3).

<sup>76</sup> 2008 Nationality Law (Vietnam), Article 21(4).

<sup>77</sup> Joint Circular No. 05 of 2010, Article 4(1).

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

<sup>79</sup> 2008 Nationality Law (Vietnam), Article 23(1)(f).

<sup>80</sup> 2008 Nationality Law (Vietnam), Article 23(4) (new provision).

<sup>81</sup> 2008 Nationality Law (Vietnam), Article 23(5)(a) (new provision).



complements Article 23 by stipulating that the State will draft policies to create favourable conditions to persons who have lost their citizenship to have it restored.

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

- An application for restoration of Vietnamese nationality
- A copy of the applicant's birth certificate, passport or other substitute papers
- A curriculum vitae
- A judicial record issued by a competent Vietnamese authority for the period the Applicant has resided in Vietnam and their previous foreign country
- Papers proving that the applicant is a former Vietnamese nationality, and
- Papers proving the eligibility for restoration of Vietnamese nationality as per the 2008 law.

Article 25 sets out the procedure<sup>82</sup> and applicable time limits for applications for restoration of nationality for both applicants residing in Vietnam<sup>83</sup> and applicants residing abroad.<sup>84</sup> Persons who apply for the restoration of their Vietnamese nationality are required to pay fees, as set by the Ministry of Finance.<sup>85</sup>

### 3.3 Loss of Vietnamese Citizenship

With regards to procedures governing the loss of Vietnamese nationality, Article 26 of the 2008 law provides that a person's Vietnamese citizenship may be lost on the grounds of renunciation, deprivation, or by failing to correctly register for the retention of their citizenship.<sup>86</sup>

Article 26 states that Vietnamese citizens can lose their nationality by being deprived of Vietnamese citizenship, under an international treaty of which Vietnam is a signatory, or under circumstances prescribed by the citizenship law.

Prior to amendments enacted in 2014, Overseas Vietnamese failing to register with overseas Vietnamese representative missions within 5 years after the 2008 Nationality Law

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<sup>82</sup> An applicant residing in Vietnam must file their dossier of application with the Justice Service at the provincial level where they reside. Applicants residing abroad must file their dossier to the overseas Vietnamese representative mission in their host country. If the applicant's dossier is incomplete, the agency that receives the dossier must immediately notify the applicant. Refer to 2008 Nationality Law (Vietnam), Article 25(1) and Joint Circular No. 5 of 2010, Article 2(1).

<sup>83</sup> Article 25(2) stipulates very specific time limits for each responsible agency to deal with applications for restoration of Vietnamese nationality from applicants residing in Vietnam.

<sup>84</sup> Article 25(2) stipulates very specific time limits for applications for restoration of Vietnamese nationality from applicants residing abroad. For time limits governing further steps in the process, see Article 25(4) and Joint Circular No. 5, Article 3(2). These laws are provided in the Annex.

<sup>85</sup> Decree No. 78 of 2009, Article 4.

<sup>86</sup> 2008 Nationality Law, Article 13(2).

came into force, in order to retain Vietnamese citizenship<sup>87</sup>, were at risk of losing their Vietnamese citizenship.

The 2014 amendments to Articles 13 and 26 (having effect as at 26 June 2014) enable Overseas Vietnamese more flexibility to have their Vietnamese nationality recognised by clarifying that Overseas Vietnamese residing abroad who have not lost their Vietnamese citizenship still retain it, and by taking away the need to register with an overseas mission within 5 years of the 2008 Nationality Laws coming into force.

The new Article 13(2) enables Overseas Vietnamese who have not yet lost their Vietnamese citizenship – but have no papers to prove their citizenship – to register with an overseas Vietnamese representative mission to verify their citizenship and be issued a Vietnamese passport. At the same time, the old Article 26(3), specifying that failing to register for Vietnamese citizenship constitutes a ground for loss of Vietnamese citizenship, is removed.

### ***3.3.1 Loss of Citizenship by Renunciation***

Article 27 of the 2008 Law sets out various grounds for renunciation of Vietnamese nationality (for example, to apply to acquire a foreign citizenship)<sup>88</sup> and situations in which Vietnamese nationals may not renounce their Vietnamese citizenship.<sup>89</sup>

Article 27 provides that citizens may renounce their Vietnamese citizenship if they have legitimate reasons, except in certain circumstances.

Exceptional circumstances include where the individual belongs to the military service<sup>90</sup>; has unpaid tax or other financial obligations toward an agency, organisation or individual in Vietnam<sup>91</sup>; is under examination for a penal liability<sup>92</sup> or where the renunciation of Vietnamese citizenship would affect Vietnam's national interests.<sup>93</sup>

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

- an application for renunciation of Vietnamese citizenship
- a curriculum vitae
- a copy of the applicant's Vietnamese passport, identity card or other papers<sup>94</sup>
- a judicial record issued by a competent Vietnamese authority
- papers proving that the applicant is carrying out procedures for the acquisition of foreign nationality<sup>95</sup>, and

<sup>87</sup> In accordance with Article 13 of the 2008 Law, as stipulated in Article 26(3).

<sup>88</sup> 2008 Nationality Law (Vietnam), Article 27(1).

<sup>89</sup> For example, where the individual is subjected to criminal investigations or procedures (Article 27(2)(b) – (d)); employed as civil servants, serving in the armed forces (Article 27(4)); owe a tax debt to the state (Article 27(2)(a)); or where it is deemed to be detrimental to Vietnam's national interests (Article 27(3)).

<sup>90</sup> 2008 Nationality Law (Vietnam), Article 27(4).

<sup>91</sup> 2008 Nationality Law (Vietnam), Article 27(2)(a).

<sup>92</sup> 2008 Nationality Law (Vietnam), Article 27(2)(b).

<sup>93</sup> 2008 Nationality Law (Vietnam), Article 27(3).

<sup>94</sup> 'Other papers' are listed in Article 11 of the 2008 law – see Article 28(c).

<sup>95</sup> This requirement provides protection from potential statelessness that may result in the renunciation of a person's Vietnamese nationality by requiring proof of foreign nationality as a necessary requirement of the person's renunciation of Vietnamese nationality: Article 28(e).

- written certification of clearance of tax debts.

Article 29 provides for the procedure to be taken by applicants who reside in Vietnam<sup>96</sup> and the relevant time limits for such applications.<sup>97</sup>

### ***3.3.2 Loss of Citizenship by Deprivation***

Article 31 stipulates that Vietnamese citizens residing abroad may lose their citizenship by deprivation if they commit acts that cause serious harm to the national independence, construction and defense, or the prestige of Vietnam. These conditions are extended to persons who have been naturalised in Vietnam, regardless of whether they reside inside or outside of the State. Article 32 sets out the procedure and administrative authorities dealing with the verification of a complaint.<sup>98</sup>

Both Vietnamese citizens living abroad and persons who have acquired Vietnamese citizenship, may be deprived of their Vietnamese citizenship if they commit acts that cause serious harm to national independence or national interests.<sup>99</sup>

### **3.4 Specific rules and status for certain (numerically and politically important) groups**

Although there are no special rules in the 2008 Laws provided for specific significant groups, certain amendments made to the 2008 Nationality Law were enacted specifically to address important citizenship issues arising for (at least) three categories of people:

- “persons of Vietnamese origin residing abroad” (including allowing dual citizenship for such persons who wish to *regain* their Vietnamese citizenship whilst retaining their foreign citizenship, with permission from the state)
- displaced persons living in Cambodia who suffered persecution amounting to genocide and crimes against humanity during the Democratic Kampuchea (The Pol Pot / Khmer Rouge regime) and
- Vietnamese women whose failed marriages with foreign nationals (mostly with Taiwanese and Korean men) render them at risk of statelessness.<sup>100</sup>

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<sup>96</sup> For processes for filing applications from both applicants residing in Vietnam and applicants residing abroad, see Article 29(1) and Joint Circular No. 5 of 2010, Article 2(1) at Annex.

<sup>97</sup> Article 29(2) sets out time limits for applicants residing in Vietnam. See also Article 29(3) for timeframes over verification and decision-making processes at Annex.

<sup>98</sup> 2008 Nationality Law (Vietnam), Article 31-32. Article 31(1) sets out the competent authorities for decision making as including courts, the President, the Ministry of Justice and the Prime Minister.

<sup>99</sup> 2008 Nationality Law (Vietnam), Article 31.

<sup>100</sup> Trinh Thi Hoang Anh, Vietnamese Ministry of Labour, Powerpoint presentation, “Women’s Citizenship in Vietnam”, presented at the Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia, 28-29 October, Bangkok, Thailand (*Co-hosted by the National Human Rights Commission of Thailand and the United Nations High Commissioner for Refugees*). In addressing the issue of a person’s right to nationality, the 2008 Nationality Law also implements norms under the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which Vietnam is a state party.

### ***3.4.1 Vietnamese Women Marrying Foreign Nationals***

The 2008 Nationality Law, replacing the 1998 law implements norms pursuant to the UN *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)* and other human rights Conventions, specifically to resolve the conflict of laws situation of Vietnamese women who have failed marriages with foreign nationals (the majority of marriages being with Taiwanese and Korean men) and to prevent their statelessness when such marriages fail.<sup>101</sup>

Before the 2008 Nationality Law was enacted, there was a conflict of laws in the 1998 law for Vietnamese women married to Korean or Taiwanese men. The conflict was that under the 1998 Vietnamese Nationality Law, citizens are permitted to renounce their Vietnamese citizenship before acquiring another citizenship. However, under the Korean and Taiwanese citizenship laws (at least at that time), the renunciation of a person's former citizenship is a pre-requisite for naturalisation. The Vietnamese Ministry of Labour, in 2010, reported that almost all Vietnamese women marrying foreign nationals had wanted to acquire their husband's citizenship. If the marriage broke down, or ended in divorce or separation, the consequence is that the woman, having been made to renounce her Vietnamese citizenship, became at risk of statelessness, if her other nationality is tied to that of her husband's.

### ***3.4.2 Displaced Persons of Vietnamese Origin who Have Lived in Cambodia***

The report "A Boat Without Anchors", considers the citizenship status of a focal group from among the ethnic Vietnamese minority residing in Kampong Chhnang Province, Cambodia. Members of this focal group had suffered persecution under Pol Pot's Khmer Rouge regime in the 1970s, including forcible deportation to Vietnam. The report analyses the question whether members of the group hold, or have access to, Vietnamese citizenship, in the context of a moral and collective reparation request made by ethnic Vietnamese minority Civil Parties, heard before the Extraordinary Chambers in the Courts of Cambodia, in which the Civil Parties sought recognition of, or access to, Cambodian citizenship. This report focused on an assessment as to Cambodian citizenship under the nationality legal frameworks of Cambodia, as a majority of members of the ethnic Vietnamese minority group claimed to have held Cambodian citizenship under the operation of previous nationality laws, which were in force prior to their forcible deportation to Vietnam in 1975, where they lived as refugees.

For a number of other "Overseas Vietnamese" who lived as refugees in Vietnam from the Cambodian diaspora, one example of the implementation of the statelessness provisions under the 2008 Vietnamese Nationality Law, was when 287 out of around 2,300 former Cambodian refugees who had lived for decades as stateless people in Vietnam were granted Vietnamese citizenship through assisted naturalisation procedures.<sup>102</sup> Under the new legal provisions, and the facilitated naturalisation procedures, stateless persons who had resided in

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<sup>101</sup> Trinh Thi Hoang Anh, Ministry of Labour, Powerpoint presentation, "Women's Citizenship in Vietnam", Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia, 28-29 October, Bangkok, Thailand (*Co-hosted by the National Human Rights Commission of Thailand and the United Nations High Commissioner for Refugees*).

<sup>102</sup> UNHCR, 'Good Practices: Addressing Statelessness in South East Asia' (2010), 19. Also see: UNHCR, 'Viet Nam ends stateless limbo for 2,300 former Cambodians', 19 July 2010 at <http://www.unhcr.org/4c447a796.html> (accessed 6 October 2012) and Intellasia.net, 'UN praises Vietnam for plan to give citizenship to 2357 Cambodian refugees', 22 July 2010, at <http://www.intellasia.net/un-praises-vietnam-for-plan-to-give-citizenship-to-2357-cambodian-refugees-132684> (accessed 6 October 2012).

the country for over 20 years were exempt from paying the usual application fees, did not have to produce a Vietnamese language certificate, and did not need to provide proof of having renounced their previous citizenship. This process recognised that proof of holding Cambodian citizenship was impossible to meet for this group, specifically because any identification, birth or residence records held were lost or destroyed due to events surrounding the Khmer Rouge period.<sup>103</sup>

### ***3.5 Acquisitions of citizenship after legislative reforms***

As Vietnam's legislative changes enacted in the 2008 Nationality Law was, in part, aimed at reducing statelessness, according to Vietnam's Ministry of Foreign Affairs, as at 2010, 289 applications had been approved in Ho Chi Minh City, 142 had been approved in Binh Phuoc province, and 1012 applications had been approved in Binh Duong province. The author does not have more recent statistics about applications approved for persons who are stateless, or are at risk of being stateless.<sup>104</sup>

According to a 2017 article from *Vietnamese Diplomatic Missions* (published by Vietnam's Ministry of Foreign Affairs), since the enactment of the 2008 Nationality Laws (over the past nine years), 674 (overseas-Vietnamese) have applied for Vietnamese citizenship.<sup>105</sup> It might be assumed that this comprises mainly of those from the Vietnamese diaspora who sought refuge in other states, however, it is unclear whether this number accounts for a larger scope of persons, such as the children of people from the Vietnamese diaspora, who, under the existing legislation, may also be eligible for naturalisation.

## **4. Current political debates and reform plans**

The amendments to the 2008 legislation which legalise dual citizenship has the potential to affect more than three million people from the Vietnamese diaspora, who, having left Vietnam as refugees in the late 1970s, throughout the 1980s and in the early 1990s, have resettled all around the world.<sup>106</sup> This recognition of dual citizenship is an exception to Vietnam's single-citizenship principle for Vietnamese citizens, enabling Vietnamese refugees who have become citizens of other countries to reclaim their lapsed Vietnamese citizenship without having to renounce their citizenship in the country in which they now reside. Under this legislation, children born overseas to at least one Vietnamese parent are amongst a new category of people able to claim Vietnamese citizenship.

<sup>103</sup> UNHCR, 'Good Practices: Addressing Statelessness in South East Asia' (2010), 19.

<sup>104</sup> Loan Ngo, Vietnamese Department of Foreign Affairs, Powerpoint presentation, "Vietnamese Naturalisation for Displaced Persons from Cambodia", presented at the Regional Expert Roundtable on Good Practices for the Identification, Prevention and Reduction of Statelessness and the Protection of Stateless Persons in South East Asia, 28-29 October, Bangkok, Thailand (*Co-hosted by the National Human Rights Commission of Thailand and the United Nations High Commissioner for Refugees*).

<sup>105</sup> Vietnam's Ministry of Foreign Affairs, *Vietnamese Diplomatic Missions* online, 'Revised nationality law lives up to overseas Vietnamese's expectations', accessed 21 March 2017 at [http://www.vietnamembassy-mexico.org/en/vnemb.vn/tin\\_hddn/ns081114085452?b\\_start:int=85](http://www.vietnamembassy-mexico.org/en/vnemb.vn/tin_hddn/ns081114085452?b_start:int=85).

<sup>106</sup> Frank Zeller, Sydney Morning Herald, "Vietnam to allow dual nationality", 14 November 2008, at <http://www.smh.com.au/world/vietnam-to-allow-dual-nationality-20081114-67db.html>, accessed 10 April 2017.

According to Vietnamnet Bridge, on 24 June 2014, over 95 % of the deputies of Vietnam's National Assembly approved the Law on Amendments and Supplements to the Law on Vietnamese Nationality. This suggests that politically, there is support for making retention of Vietnamese citizenship more flexible for Vietnamese residing abroad. Such an approach (abolishing the requirement to register where such failure would have resulted in loss of citizenship) is clearly aimed at increasing the number of Vietnamese citizens from the pool of those residing overseas.

The amendments were deemed to be necessary as many overseas Vietnamese do not know that they must register to retain their Vietnamese citizenship within five years of the 2008 Nationality Laws coming into force (the laws having come into force on 1 July 2009). In light of reports that after five years of the 2008 Laws being in force, only 6,000 overseas Vietnamese, out of 4.5 million living abroad, had registered for citizenship, it was recognized that millions of overseas Vietnamese might have lost their citizenship if they did not register by 1 July 2014. National Assembly Member, Mr Ha Huy Thong, stated, "If this Law is not amended before July 1, 2014, millions of Vietnamese living and working abroad will risk losing their Vietnamese citizenship".<sup>107</sup> Further, the Director of the National Assembly's Law Committee, Mr Phan Trung Ly, stated "[T]hese regulations aim to confirm the Party and State consistent policy towards overseas Vietnamese as prescribed in the Constitution and other articles of the Law on Vietnamese Nationality."<sup>108</sup>

It is clear that the legislature, by making the 2014 amendments to Articles 13 and 26 (relating to Overseas Vietnamese needing to register to retain citizenship), seeks to encourage persons of Vietnamese origin residing abroad to take up, or have recognised, any Vietnamese citizenship status they are entitled to. The repeal of the provision imposing a time limit for registration, will also support Overseas Vietnamese to create and maintain a close link with their "homeland" into the future.

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<sup>107</sup> Vietnam News, "NA agrees to loosen law on nationality", 18 June 2014, at <http://vietnamnews.vn/politics-laws/256330/na-agrees-to-loosen-law-on-nationality.html#UCf7L8eqSjb5SwPS.97> , accessed 18 April 2017. See also Tuoi Tre News, "Millions of Viet Kieu risk losing Vietnamese Nationality as registration deadline nears", 4 April 2014, at <http://tuoitrenews.vn/society/18813/millions-of-viet-kieu-risk-losing-vietnamese-nationality-as-registration-deadline-nears> , accessed 18 April 2017.

<sup>108</sup> Vietnamnet Bridge, "Amended Law on Vietnamese Nationality Passed", 24 June 2014, at <http://english.vietnamnet.vn/fms/government/105861/amended-law-on-vietnamese-nationality-passed.html> , accessed 17 April 2017.

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Zeller, Frank. Sydney Morning Herald, “Vietnam to allow dual nationality”, 14 November 2008, at <http://www.smh.com.au/world/vietnam-to-allow-dual-nationality-20081114-67db.html> , accessed 10 April 2017.

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*Convention Relating to the Status of Stateless Persons* (1954)

*Convention on the Reduction of Statelessness* (1961)

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

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

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

### ***Domestic Laws***

*Law on Vietnamese Nationality* (Vietnam), Order No. 22/2008/L-CTN. 2008 (13 November 2008)

*Law on Vietnamese Nationality*, No. 07/1998/QH10 (20 May 1998)

*Nationality Law* (Vietnam) (17 July 1988)

*Law on Amendments and Supplements to the Law on Vietnamese Nationality* (in force as at 26 June 2014).

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