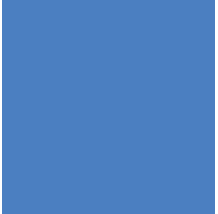
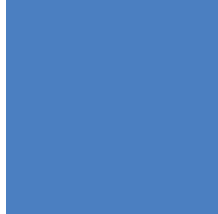
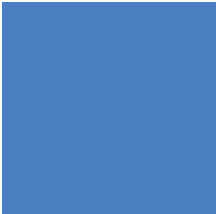




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COUNTRY
REPORT
2017/02

JANUARY
2017

REPORT ON CITIZENSHIP LAW: CAMBODIA



AUTHORED BY

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Global Citizenship Observatory (GLOBALCIT)
Robert Schuman Centre for Advanced Studies
in collaboration with
Edinburgh University Law School

Report on Citizenship Law: Cambodia
RSCAS/GLOBALCIT-CR 2017/2
January 2017

© Christoph Sperfeldt, 2017
Printed in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)

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Research for the 2016/2017 GLOBALCIT Reports has been supported by the European University Institute's [Global Governance Programme](#), the EUI Research Council, and the British Academy Research Project CITMODES (co-directed by the EUI and the University of Edinburgh).

The financial support from these projects is gratefully acknowledged.

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Report on Citizenship Law

Cambodia

Christoph Sperfeldt

1. Introduction

Cambodia inherited the nation-state idea from colonial times and has since struggled to adapt it to the realities of a culturally and ethnically diverse country. Almost two decades of war and genocide have left visible scars on its people and state structures. The state had to start almost from scratch when it developed a new citizenship regime during the 1990s. The current regime is characterised by a relatively well-developed legal framework – allowing both for *ius sanguinis* and *ius soli* provisions of conferral of citizenship, as well as naturalisation – behind which is hidden an often-different reality of implementation and practice. Laws on citizenship and other relevant regulations are rarely implemented as written, and citizenship-related statistics remain scarce. This limits an official account of the operation of Cambodia’s citizenship regime, as theory and practice do not often align.

This report provides first a historical background to the emergence of Cambodia’s contemporary citizenship regime, highlighting among others how ethnic-cultural notions of a ‘Khmer’ national identity have permeated its regulatory frameworks and tended to exclude other groups from citizenship.¹ It then describes the citizenship regime currently in place, its legal framework and issues related to its operation in practice. The status of selected groups, including those at risk of statelessness, is also brought into the picture. The report ends with a brief overview of current political debates and reforms. While the term ‘citizenship’ is used throughout the report, it should be noted that the term ‘nationality’ is often used synonymously in English translation of Khmer original texts. The Khmer language itself does not differentiate between these concepts.

¹ This report relies on research previously conducted by Christoph Sperfeldt and Lyma Nguyen, ‘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>.

2. Historical Background

Cambodia has a long history, but the French colonial period was perhaps most important for the emergence of the idea of a ‘Khmer’ nation and its subsequent local adaptation of concepts of nationality and citizenship. Many authors have argued that colonialism produced the main contours of the modern nation and Khmer nationalism (e.g. Chandler 1993). This production process was carried out by colonial elites and Khmer intellectuals by bonding up notions of cultural identity, historical heritage and religion and thereby creating the foundation for the modern national identity. Penny Edwards argued, “nationalists did not produce a national culture”, rather French colonialists and Cambodian intellectuals “eventually produced nationalists” (Edwards 2007: 7). The idea of *jiet* in Khmer (nation) was popularised and re-defined by adopting new meanings. In particular, it was increasingly used to signify both race and nation – ethnicity and the culture of the majority became the primary underpinnings of a national identity. This is also visible in the Khmer terms *jiet-kmae* (Khmer nation) and *jun-jiet* (nationality) (Edwards 2007: 11-15). Buddhism as a national religion (*sasana-jiet*) and Angkor Wat as a central historical icon – as apparent in the country’s national flags post-independence – were essential ingredients in the emergence of this national identity.

After independence from France, Cambodian nationalists carried on with this project and translated this ideal of *jiet* into a post-colonial nation-building project, including regimes for defining and administering citizenship (Ehrentraut 2013). While the French and English languages often distinguish between ‘Khmer’ as describing ethnicity and ‘Cambodian’ to denote Cambodian citizens or long-term residents, this distinction is absent in the Khmer language. The historical amalgamation of ethnicity/race/national culture and nation had profound implications for how post-independence Cambodia would conceive of notions of citizenship – of who would be seen to be belonging to the ‘Khmer’ nation and who not. This specific conception of a ‘Khmer’ national identity regularly contrasted with the actual ethnic and cultural diversity present on Cambodian territory. The following overview shows how ethnic and national differentiation was often used as a political strategy in power struggles throughout Cambodia’s modern history. These struggles are also reflected in the country’s consecutive citizenship regimes – both legally and in their practical operation – which often sought to redefine or reassert the boundaries of Cambodia’s citizenry.

2.1. The French Protectorate (1863 – 1953)

The French colonisation of Cambodia had a lasting impact on the country’s formal legal system, which henceforth adhered to principles of the civil law tradition. Prior to Cambodian independence, French Protectorate laws governed the acquisition of citizenship, primarily through the 1920 Civil Code, which was promulgated on 25 February 1920. The Code’s provisions regarding acquisition of Cambodian citizenship were amended through *Royal Ordinance No. 66 of 5 June 1934*. Under the amendments, citizenship (*nationalité*) was defined largely under the principle of *ius sanguinis*. Article 22 listed categories of people who ‘are Cambodian’ as being:²

² The provisions of *Royal Ordinance No. 66 of 1934* used in this paper are cited after a revised version of the 1920 Cambodian Civil Code (available in French language, unofficial translation). See *Code Civil Cambodgien* (1936), Phnom Penh: Societé d’Éditions Khmer.

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

The Code did not contain any explicit provisions for naturalisation. No specific reference was made to two of the largest immigrant populations during the French Protectorate: the ethnic Chinese and Vietnamese. The 1920 Civil Code was written in the French language and therefore largely inaccessible to most ordinary Khmer people, apart from a few educated individuals who were literate in French. It is generally difficult to ascertain how the law was implemented by the French Protectorate administration.

2.2. Independent Cambodia and the Sihanouk Regime (1953 – 1970)

The independence of Cambodia in 1953 was the culmination of a nation-building process with deep roots in the colonial period. With decolonisation, the idea of a ‘Khmer’ nation and the concept of a territorially defined ‘Khmer’ state found a manifestation under the new political regime of Prince Sihanouk. As part of the nation-building, the Prince introduced a typology of Cambodia’s cultural and ethnic diversity, distinguishing the indigenous tribes in the mountainous areas as ‘Khmer Loeu’ (Highland Khmer), the Cham as ‘Khmer Islam’, and the Khmer minority residing in the Mekong Delta, now part of Vietnam, as ‘Khmer Krom’ (Lowland Khmer). This typology distinguishes between groups that are part of the ‘Khmer’ nation (indigenous people, Cham, Khmer Krom) and larger longstanding immigrant groups that are excluded from it, in particular the Chinese and ethnic Vietnamese. Stefan Ehrentraut argued, “these categories continue to be widely used today and shape Cambodian thinking about nation and citizenship” (Ehrentraut 2011: 5).

Inspired by such thinking, the regime introduced new policies and laws to regulate the acquisition of citizenship and naturalisation for citizenship. One year after independence *Kram No. 913-NS of 30 November 1954* significantly amended the citizenship provisions of the 1920 Civil Code.³ The new law contained more comprehensive provisions and reflected citizenship requirements of the newly independent state of Cambodia. The law described Cambodian nationality as the ‘spiritual’ and political link to the Cambodian state, but also took into account specific minority groups. The law stated that “no distinction is made in favour [of] or to the detriment of Cambodian ethnic minorities living in the territory of Cambodia, such as Malays, Cham, Burmese, Lao, Kha, Kouy, Phnong, Por, Stiengs etc, nor the Tagalog Cambodians and former Thai nationals remaining in the territories surrendered to Cambodia by the Treaty of 23 March 1907”.⁴ Ethnic Chinese and Vietnamese groups were notably absent from these provisions, presumably because they were considered as ‘foreign residents’. Although the 1954 amendments provided important prohibitions against

³ *Kram No. 913-NS of 30 November 1954*, amending the 1920 Civil Code from Arts. 21 to 27. Also found in Clarion, Marcel (1960), *Droit Civil Khmer*. Phnom Penh: Enterprise Khmère de Librairie, d’imprimerie et de papeterie, 27-31 (hereinafter referred to as ‘1920 Civil Code, as amended in 1954’).

⁴ Unofficial translation from the French original. Refer to 1920 Civil Code (as amended in 1954), Art. 21.

discrimination of non-Khmer ethnic groups, the exclusion of large ethnic groups fostered an approach of linking citizenship with ethnicity, which made other ethnic minorities vulnerable to politicisation (Minority Rights Group International 1995: 27-28).

The conceptualisation of citizenship was most contested with regards to the presence of ethnic Vietnamese residents on Cambodian territory (Amer 2006). A National Congress, held in 1963, recommended that naturalisation be refused in principle to all Vietnamese residents on the grounds that they were ‘unassimilable’. The Congress also made recommendations to set up a committee with the powers to revoke the citizenship of any naturalised person who did not “respect our customs” (Ehrentraut 2011). These discriminatory measures seemed to have primarily targeted the ethnic Vietnamese in Cambodia. The 1962 census identified 217,774 Vietnamese ‘nationals’ within a total population of more than 5.7 million (almost 4 percent) (Poole 1974).⁵

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

Est Cambodgien, quelque soit le lieu de sa naissance:

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

The most important change to the previous colonial citizenship regime, however, was the introduction of a *ius soli* mode of conferral of citizenship. Under Article 22(2) citizenship is conferred automatically to a person born in Cambodia after 13 November 1954,⁶ where one of the parents was also born in Cambodia. Article 22(2) is replicated as follows:

Est Cambodgien lorsqu’il est né au Cambodge:

- a) l’enfant né d’un père né lui-même au Cambodge;
- b) l’enfant né d’une mère elle-même née au Cambodge;
- c) l’enfant né de parents inconnus. Tout enfant nouveau-né trouvé au Cambodge est censé y être né.

This new provision, conferring citizenship to children of non-citizen parents born on Cambodian territory, was especially important for many non-Khmer ethnic groups whose members resided in Cambodia for generations. Article 23 of the amended law enabled a foreign woman who married a Cambodian husband to acquire her husband’s Cambodian nationality. However, if a Cambodian national married a foreigner, they would retain their Cambodian nationality.⁷

Article 24*bis* of the law described the situations in which Cambodian citizenship can be renounced. The provisions ensured that renunciation of nationality would only be recognised where an individual can prove that he or she has secured citizenship from another

⁵ Poole (1974) argued that many ethnic Vietnamese may have adopted Cambodian nationality in order to be eligible for certain restricted occupations or due to the general political environment at the time. Using his own estimates based on a criterion of ethnicity, Poole estimated that 394,000 ethnic Vietnamese lived in the country at the time of the 1962 census, with almost one third living in and around the capital, Phnom Penh.

⁶ This specific date of 13 November 1954 appears to have been introduced by the subsequent *Circular No. 475-A* of 18 April 1955, which further clarified that “les enfants, nés au Cambodge après le 13 novembre 1954, sont cambodgiens de plein droit, quelle que soit la nationalité des parents, si leur père ou leur mère est née au Cambodge, sauf renunciation par voie judiciaire, dans les cas où elle est premise, si la mere seule était née au Cambodge. Faute de disposition dans la loi, ils doivent garder leur nom d’origine”. Cited from Clairon (1960).

⁷ 1920 Civil Code (as amended in 1954), Art. 23.

state.⁸ Articles 26 and 27 governed the procedures for renouncing Cambodian citizenship, including the publication of any judicial decisions in an official register or gazette.⁹ Article 25 governed the forfeiture of Cambodian nationality and provided that nationality may be forfeited in a number of circumstances, for instance, where a national voluntarily participated in the armed services of another state without authorisation; or continued to work in a foreign public office abroad, when asked to resign.¹⁰

Unlike the colonial Civil Code, the newly independent Cambodian state incorporated naturalisation provisions into its legal framework governing access to citizenship. The process of naturalisation was governed by amendments to the Civil Code through *Kram No. 904-NS of 27 September 1954* and *Kram No. 357-NS of 26 October 1959*. These amendments emphasised that naturalisation was not a right, but a “favour” exercised under administrative discretion. According to the new legislation, the applicant must:

- be of good character
- speak fluently Khmer and “demonstrate sufficient assimilation to the manners, customs and traditions of Cambodia”
- have five years of residency in Cambodia prior to the application
- reside in Cambodia at the time of the application, and
- not present a “physical or mental danger” or “a burden for the nation”.¹¹

The naturalisation provisions reflected a certain cultural ‘Khmerness’ expected from those who wanted to become citizens, as visible in the required degree of assimilation with Khmer customs and traditions. It may be relevant to note that this provision resulted from an additional amendment made in 1959, which augmented the requirement from “*justifier d’une assimilation suffisante de la langue cambodgienne*” in the original 1954 law to “*savoir parler couramment le cambodgien et justifier d’une assimilation suffisante aux mœurs, coutumes et traditions cambodgiennes*”.¹² These requirements were seen to be consistent with the promotion of a ‘Khmer’ national identity and have continued to permeate future legal frameworks on naturalisation, including similar provisions in the 1996 Law on Nationality.

The law on naturalisation reduced the five-year residency requirement to two years for foreigners born in Cambodia or foreigners married to a Cambodian national. It also lined out the formalities required to complete the application process. The law also specified that an individual’s naturalisation may lead to the naturalisation of the individual’s spouse and children.

In summary, the 1954 amendments to the Civil Code governing access to Cambodian citizenship introduced a number of novelties in comparison with previous colonial regime, in particular:

- (1) It incorporated *ius soli* provisions under which citizenship was conferred automatically to a person born in Cambodia after 13 November 1954, where one of the parents was also born in Cambodia; and
- (2) It opened legal avenues to apply for naturalisation for other individuals who wished to acquire Cambodian nationality.

⁸ 1920 Civil Code (as amended in 1954), Art. 24*bis*.

⁹ 1920 Civil Code (as amended in 1954), Art. 26*bis*.

¹⁰ 1920 Civil Code (as amended in 1954), Art. 25*bis*.

¹¹ *Kram No. 904-NS of 27 September 1954*, also at Clairon (1960): 32-34.

¹² *Kram No. 357-NS of 26 October 1959*, cited from Clairon (1960): 32.

No further citizenship legislation was adopted until the time of the Kingdom of Cambodia. While it is therefore theoretically possible to argue that the Civil Code remained in force, this framework was largely inaccessible for the following two decades of turmoil and civil war.

2.3. Times of War and Transition (1970 – 1993)

Following the 1970 military coup against Sihanouk, Cambodia slid into a period of civil war and mass violence that lasted over two decades. The foreign policy context at the time was characterised by rising tensions with the two Vietnamese states, and the Vietnamese war increasingly spilled over onto Cambodian territory. The resulting violence led to a breakdown of law and state structures, with significant uncertainties over how questions of citizenship were handled during the time period following 1975.

2.3.1. Khmer Republic (1970 – 1975)

The 1970 coup against Sihanouk led to the establishment of the Khmer Republic under the regime of Lon Nol. The regime used nationalist propaganda to politicise negative sentiments towards the ethnic Vietnamese minority and other residents, eventually turning these into violent persecution, mainly in Phnom Penh and other urban areas. The subsequent attacks and massacres resulted in the killing of thousands of civilians, and some 200,000 to 250,000 Vietnamese fled or were forcibly repatriated to South Vietnam in 1970 (Poole 1974: 328-331, Pouvatchy 1976: 7).

2.3.2. Democratic Kampuchea (1975 – 1979)

After further escalation of Cambodia's civil war, the Khmer Rouge captured Phnom Penh in April 1975 and brought the Khmer Republic to an end. The Khmer Rouge abandoned all laws and structures and replaced them with a revolutionary regime. Under Democratic Kampuchea the situation for some minorities drastically deteriorated (Kiernan 1996). A discourse around a racially-defined Khmer nation was used to justify the expulsion and mass killing of certain ethnic groups, such as the Vietnamese and Chinese, or the forced and violent assimilation of others, such as the Cham (Kiernan 2001). For instance, it is estimated that around 150,000 to 170,000 ethnic Vietnamese were forced out of the country in 1975 – most of those who stayed behind were systematically killed during the Khmer Rouge regime (Chanda 1986: 16, Amer 2006: 360). In Case 002 before the Khmer Rouge Tribunal, the defendants have been charged with committing genocide against the Cham and the Vietnamese minority in Cambodia.¹³ Hundreds of thousands of Cambodians fled into neighbouring countries and eventually formed a sizable diaspora community. The Khmer Rouges' brutality had a long-lasting impact on Cambodia's social fabric and created legacies that its current citizenship regime is still dealing with.

¹³ See Office of Co-Investigating Judges, 'Closing Order', 15 September 2010 (D427), Case File No. 002/19-09-2007-ECCC-OCIJ.

2.3.3. *People's Republic of Kampuchea (1979 – 1989)*

Soon after the Vietnamese invasion and the fall of Phnom Penh in 1979, the communist People's Republic of Kampuchea (PRK) came into existence. The new regime relied on extensive assistance from Vietnam, while civil war continued in northern regions of the country. In the 1980s the flow of immigration reversed, and a new phase of immigration from Vietnam to Cambodia began. Estimates of the number of immigrants vary greatly in the politicised discourses at the time, and the literature does not provide a reliable assessment of these claims. Nevertheless, more credible estimates show that there were more ethnic Vietnamese in Cambodia than the authorities acknowledged, but fewer than opposition groups claimed. Median estimates range from 300,000 to 500,000 – putting the overall number at around the same level as the Vietnamese population in Cambodia at the end of the 1960s (Amer 1994: 220-222, Gottesman 2003: 163, Heuveline 1998: 63-64). Among those immigrants were newcomers, but also numerous Vietnamese who had lived in Cambodia prior to the mass forced emigrations of the 1970s. Without being able to further substantiate their statements, Heuveline argued that 'a majority of the Vietnamese immigrants were probably return migrants' (Heuveline 1998: 64), and Chou Meng Tarr wrote "the reality is that many of these Vietnamese 'settlers' were either Vietnamese who had lived for several generations in Cambodia prior to the 1970s, or were their descendants" (Chou Meng Tarr 1992: 40).

The PRK authorities regulated and administered the policies relating to immigration and citizenship through directives. In October 1982, the Council of Ministers issued Directive 38 on the organisation and administration of Vietnamese living in Cambodia (Amer 1994: 220-221). The directive distinguished former residents returning to Cambodia from new Vietnamese immigrants and allowed the former "to quickly settle down to a normal life" (cited from Minority Rights Group International 1995: 21-22). However, these policy documents refer to all of the various immigration and/or resident groups as "foreign residents", "notwithstanding the possibility that some of them could have held Cambodian citizenship before they were forced to leave the country in the 1970s" (Amer 1994: 221). Gottesman summarised the situation during the PRK period of the 1980s as follows: "As a recognised minority in Cambodia, the ethnic Vietnamese enjoyed a certain civic equality (...) The question of whether ethnic Vietnamese could become citizens was, however, never resolved" (Gottesman 2003: 166-167).

2.3.4. *United Nations Transitional Authority in Cambodia (1992 – 1993)*

The 1991 Paris Peace Agreement established the United Nations Transitional Authority in Cambodia (UNTAC), which carried out a large peacekeeping operation in order to organise free elections. Ahead of the first elections since decades, opposition groups stepped up their rhetoric against Vietnamese 'immigrants', and the Khmer Rouge instigated a campaign of political violence against Vietnamese civilians.¹⁴ The 1991 Paris Peace Agreements had stipulated that "every person who has reached the age of eighteen at the time of application to register, or who turns eighteen during the registration period, and who was either born in Cambodia or is the child of a person born in Cambodia, will be eligible to vote in the election".¹⁵ However, opposition parties attempted to limit the number of ethnic Vietnamese

¹⁴ In its final report, UNTAC's Human Rights Component documented the killing of 116 ethnic Vietnamese persons between July 1992 and August 1993; another 87 were injured and 11 were abducted – their whereabouts remained unknown. United Nations Transitional Authority in Cambodia (1993), *Human Rights Component: Final Report*, 31.

¹⁵ *Agreements on a Comprehensive Political Settlement of the Cambodia Conflict*, Paris, United Nations, 23 October 1991, Annex 3 'Elections', para. 4.

persons entitled to take part in the elections, which was evident in heated debates over the 1992 Electoral Law, reconfirming previously held ethnicity-based conceptions of citizenship (Edwards 1996). Little is known about how many ethnic Vietnamese were finally registered for the UN-organised elections, but field research indicated that a considerable number amongst the long-term residents were never registered, which also diminished their prospects to be considered in Cambodia's new identity management scheme that initially relied on UNTAC voter records.

These two decades of war, violence and political regime changes had a long-lasting impact on Cambodia's citizenship regime. Many pre-war archival and population records were destroyed, which meant that the state had to re-establish a registration system and citizenship register from scratch. The legal and administrative infrastructure was destroyed and human resources diminished. Large-scale displacements and the politicisation of ethnicity and citizenship during the conflicts created difficult legacies for Cambodia's citizenry. Under these conditions, any state would have found it challenging to rebuild a new citizenship regime.

2.4. Kingdom of Cambodia (1993 – today)

When Cambodia moved to creating a new post-conflict regime of citizenship, it is not surprising that past discourses re-emerged. In particular, the notion of 'Khmer citizen' and extent of Cambodian citizenship were the subject of heated political debates (Ehrentraut 2013). This was visible in the discussions surrounding the drafting of three legal texts that are of relevance to Cambodia's citizenship regime today: the Constitution, the immigration law and the nationality law.

2.4.1. *Citizenship in Cambodia's 1993 Constitution*

A new Constitution was adopted in September 1993. Article 31 recognised and upheld respect for human rights throughout the newly established Kingdom of Cambodia. However, the Constitution's specific reference to 'Khmer citizens' in relation to Cambodia's "recogni[tion] and respect [for] human rights as defined in the United Nations Charter, the UDHR and all treaties and conventions concerning human rights, women's rights and children's rights" caused some uncertainty about the application of these provisions.¹⁶ There was strong concern that, whilst Cambodia's Constitution is eloquent in its language of human rights protections, the reference to 'Khmer citizens' leaves open an argument that constitutionally protected human rights are only applicable to Khmer nationals, and not to other long-term resident groups. The UN Special Representative for Human Rights in Cambodia commented as follows:

While such a recognition of human rights is welcomed, there are serious deficiencies in the Constitution. The most important is that the human rights guarantees are provided only to 'Khmer citizens'. (...) This formulation excludes many Cambodians, such as non-citizens and visitors, who do not qualify as Khmer citizens, from the ambit of the Constitution. In the absence of a clear law on citizenship and nationality, this may also result in the exclusion of ethnic groups who are not Khmer from constitutional protection. (...) In the historical context of the relationship between ethnic groups in Cambodia, the provisions of the Constitution relating to human rights as they are presently worded may give rise to risk that they could be

¹⁶ *Constitution of the Kingdom of Cambodia* 1993, Art. 31-33. Article 31 of the Constitution provides that, '[E]very Khmer citizen[s] shall be equal before the law'; Article 32 states that '[E]very Khmer citizen shall have the right to life, personal freedom and security'; and Article 33 provides that 'Khmer citizens shall not be deprived of their nationality, exiled or arrested and deported to any foreign country'.

used to justify discrimination against non-Khmer ethnic groups, such as Cambodians of Vietnamese or other non-Khmer ethnic origin.¹⁷

Concern was expressed by human rights organisations and UN officials that this drafting could be used by state authorities to exclude certain minority groups from full enjoyment of fundamental rights and freedoms on the basis that the constitutional guarantees are only provided to ‘Khmer citizens’ (Minorities Rights Group International 1995: 26). In 1996, the UN Special Representative for Human Rights, Michael Kirby, called for Article 31 to be “construed to embrace all Cambodian citizens, widely defined, to include persons of all ethnic communities having their established origin within the Kingdom of Cambodia or with other appropriate connections with Cambodia” and that, if the provision were to be interpreted as being “confined exclusively to Cambodian citizens of Khmer nationality, its discriminatory provisions should be immediately deleted by constitutional amendment”.¹⁸

2.4.2. *The 1994 Immigration Law*

The Immigration Law was one of the first laws to be considered by the new National Assembly following the UNTAC-organised elections. Article 2 considers an ‘alien’ to be “any person who does not have Cambodian nationality”. Article 4 then distinguishes between three types of aliens: (1) non-immigrant aliens (short-term visitors, including tourists, business people, foreign students and diplomatic staff); (2) immigrant aliens (aliens who are legally in Cambodia to perform their professions, or aliens who have not been included in any of the categories mentioned under non-immigrant aliens); and (3) immigrant aliens as private investors.¹⁹ Article 14 and 16 stress the importance of possession of resident cards.²⁰ However, despite the importance attached to residency permits in both the 1994 Immigration Law and the subsequent 1996 Nationality Law, local authorities encountered considerable, multi-year delays before the first residency cards were issued to ‘immigrant aliens’.

The 1994 Immigration Law and the problems associated with its implementation have significant consequences for many of Cambodia’s long-term residents who seek naturalisation. The unclear requirements of the Law, the lack of guidance for implementation and the delay in actually issuing residency cards have put many long-term residents – who are not recognised as Cambodian citizens by the authorities – at risk of being expelled from the country or, at the minimum, not complying with proof of residency requirements. The Immigration Law was met with protest from international NGOs, the UNHCR and the UN Secretary General who were concerned that population groups who have lived in Cambodia for generations could be categorised as ‘aliens’ and subsequently deported without the prospect of any fair hearing (Minorities Rights Group International 1995: 27, Berman 1996: 818). Although the provisions of the Immigration Law have not been broadly applied to the letter by Cambodian authorities, there remains a considerable degree of uncertainty for long-term residents.

¹⁷ Report of the Special Representative of the Secretary-General, Mr. Michael Kirby, on the situation of human rights in Cambodia, submitted in accordance with Commission resolution 1993/6, UN doc. [E/CN.4/1994/73 of 24 February 1994], paras. 132-133.

¹⁸ Michael Kirby, ‘Report of the Special Representative of the Secretary-General for Human Rights in Cambodia’, UN Economic and Social Council (E/CN.4/1996/93), 26 February 1996, 22.

¹⁹ Law on Immigration 1994, Chapter 2 to 4.

²⁰ Law on Immigration 1994, Art. 14.

2.4.3. 1996 Nationality Law

Article 33 of the Constitution of the Kingdom of Cambodia stipulates that Khmer citizenship should be regulated by a law. This was done through the adoption of the 1996 Law on Nationality, which represents the citizenship regime currently in force in Cambodia. Similar to the Constitution, the 1996 Law maintains the term of a ‘Khmer nationality/citizenship’. For instance, Article 2 of the Law provides that “any person who has Khmer nationality/citizenship is a Khmer citizen”. This circular definition fails to provide any insight into what Khmer citizenship actually means. The use in the Khmer language contrasts with previous citizenship laws, which were drafted in the French language and used the term ‘*cambodgien*’. It remains unclear whether these semantics have an impact on interpreting the legal provisions. Today’s citizenship regime is discussed in more detail in the next section.

Overall, these debates around the drafting of the current citizenship regime reveal the changing notions of a ‘Khmer’ citizen. The contest over the terminology in citizenship legislation in many ways symbolises the ongoing struggle over the conception of the ‘Khmer’ national identity – and its specific manifestation in Cambodian citizenship – and its capacity to take account of the ethnic and cultural diversity in today’s Cambodia. This is not only visible in political debates, but also in the attitudes of ordinary Cambodians. According to a 2007 survey conducted by the Alliance for Conflict Transformation (ACT), out of over 1,100 respondents in Cambodia, when asked how they would rank the criteria as stipulated by the Cambodian citizenship law, 91 percent of respondents found ‘by birth’ most important, and 66 percent considered ‘by naturalisation’ to be less important (Meas Sokeo & Tania Miletic 2007: 89-91). In deciding what factors are important in determining whether someone is a Cambodian citizen, 85 percent of respondents found being a “pure Khmer” (referring to parents and ancestors being Khmer) to be important; 57 percent considered “following Khmer traditions” to be important; and 54 percent mentioned “speaking good Khmer” (Meas Sokeo & Miletic 2007: 92-95). These figures seem to suggest that culture or ethnicity based conceptions of citizenship continue to dominate the attitudes of the majority population, despite the fact that the legal framework has progressively changed over time.²¹

3. The current citizenship regime

A review of Cambodia’s citizenship regime cannot be seen in isolation from the current state of the rule of law in the country (Peng, Phallack & Menzel 2012). As a post-conflict, developing country, Cambodia is still in the process of building structures and capacities that adhere to international standards. Past violence, especially during the Khmer Rouge regime, devastated the country’s physical infrastructure and its human resources, including legal professionals. The 1980s then paved the way for a socialist court system that was subordinated to the central party level and subtly inserted existing patrimonial structures into state institutions. From the 1990s onwards, foreign assistance promoted a liberal rule of law project, emphasising legislative reform and technical assistance. Hundreds of laws were drafted during those years, but the interventions have struggled to instil into the system a rule of law culture. When the World Justice Project published its rule of law index in 2015, Cambodia found itself ranking 99 out of 102 countries surveyed (World Justice Project 2015).

²¹ Interestingly, among the small sample of ethnic Vietnamese respondents, around 75 percent agreed or strongly agreed with the statement ‘I would rather be a citizen of Cambodia than any other country’ (Meas Sokeo & Miletic 2007: 100).

In 2010, the UN Special Rapporteur on Cambodia carefully described the situation of its judiciary as follows: “a combination of a lack of adequate resources, organisational and institutional shortcomings, a lack of full awareness of the relevant human rights standards, and external interference, financial or otherwise, in the work of the judiciary, has resulted in an institution that does not command the confidence of people from many walks of life”.²²

These remarks point to the need to look beyond the relatively well-developed legal framework in Cambodia and consider the often-different reality of implementation and practice. Laws on citizenship and other relevant regulations have rarely been implemented as written. Thus, the following account of the current citizenship regime is complicated by a lack of certainty over the degree of respect for, and enforcement of relevant laws and policies. Many laws and regulations are not easily available in public. The same is true for written judgments or citizenship-related statistics. Against this background, it is important to note that this report is limited to the available information, and it does not purport to be comprehensive or portray in an accurate manner the current practical operation of Cambodia’s citizenship regime.

In order to facilitate an understanding of the subsequent discussions of Cambodian laws on citizenship, the graph below provides an overview of the hierarchy of Cambodian laws and regulations, as currently applied under the Kingdom of Cambodia. Generally, lower laws and regulations should conform with higher laws, and in the event of a conflict between legal instruments, higher legal instruments prevail.

Graph 1: Hierarchy of Cambodian Laws

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

Source: Adapted from OHCHR Cambodia at http://cambodia.ohchr.org/KLC_pages/klc_english.htm (accessed 12 November 2011)

²² Professor Surya P. Subedi, *Statement by the United Nations Special Rapporteur on the situation of human rights in Cambodia*, Phnom Penh, 17 June 2010. See also ‘Report of the Special Rapporteur on the situation of human rights in Cambodia, Surya Subedi’, UN doc. [A/HRC/15/46 of 16 September 2010].

3.1. The main modes of acquisition and loss of nationality

3.1.1. Acquisition of Nationality by Birth

The 1996 Law on Nationality provides for both *ius sanguinis* and *ius soli* conferral of nationality. Article 4(1) provides that, in order to obtain ‘Khmer’ nationality by birth, a child must be born from a parent who has Khmer citizenship.²³ This provision thus allows for automatic conferral of citizenship, ‘regardless of place of birth’ to children born to a parent with Cambodian citizenship (*ius sanguinis*).

Article 4(2) provides that ‘any child who is born from a foreign mother and father (parents) who were born and living legally in the Kingdom of Cambodia’ shall obtain ‘Khmer’ nationality. Furthermore, nationality can be granted to a child from unknown parents and who is found in Cambodia.²⁴ Thus, this provision allows automatic conferral of citizenship for a child born in Cambodia from foreign parents – *if* it can be demonstrated that *both* of the child’s parents were born in Cambodia and had legal residence there.²⁵ As such, the scope of the 1996 Law is arguably more limited than the scope of the citizenship regime that came into effect by the 1954 amendments to the Civil Code. While the 1996 Law requires that *both* parents are born in Cambodia *and* have legal residence in Cambodia, the 1954 legal framework only required (at least) one parent born in Cambodia, and did not contain any ‘legal residence’ requirement.

The 1996 Law on Nationality does not stipulate what is meant by ‘living legally’ in Cambodia and what status or documents would be required to prove legal residence in the country. Further, it is not clear whether these provisions sufficiently take into account the many deficiencies of Cambodia’s legal and administrative system. With no clear, accessible system in place to govern all ‘immigrant aliens’, in terms of providing the necessary residence or immigration documents, it is difficult for many parents of newborn children to prove that they were ‘living legally’ in Cambodia. This task is made more difficult by virtue of the more than two decades of civil war during Cambodia’s modern history and the destruction of past official records.

3.1.2. Acquisition of Nationality by Marriage

The Law on Nationality stipulates in Article 5 that in order to obtain Khmer citizenship by marriage, a foreigner must live together with his Khmer spouse for a period of three years after the registration of a marriage certificate. The legislation further provides that a sub-decree will be implemented to formalise the procedure for application for Cambodian citizenship. This seems to have only occurred in 2013 with the adoption of *Sub-decree No. 286 on the Forms and Procedures of Acquisition of Citizenship through Marriage*.²⁶ The sub-decree lays out the administrative requirements and procedures for applying for Cambodian citizenship after fulfilling the condition of living together for a period of three years. The final decision about conferring citizenship is made by Royal Decree.²⁷

²³ In the case of illegitimate children they must be either recognised by either parent, or a court may issue a judgment stating that the child was born from a Khmer national/citizen. *Law on Nationality* 1996, Art. 4(1).

²⁴ *Law on Nationality* 1996, Art. 4(2)b.

²⁵ *Law on Nationality* 1996, Art. 4(2)a.

²⁶ *Sub-decree No. 286 dated May 31, 2013 on Forms and Procedures of Acquisition of Citizenship through Marriage* (Royal Gazette, Year 13, No. 48, dated June 30, 2013).

²⁷ *Law on Nationality* 1996, Art. 5.

The Cambodian government has increasingly viewed this provision through the lens of its counter-trafficking efforts. Many young Cambodian women marry foreign men, such as from China, South Korea or from Western countries, often with professional agencies playing the role of intermediaries. While Cambodian wives generally retain their citizenship, no statistics are available as to how many partners apply for Cambodian citizenship. In 2011, the Cambodian Foreign Ministries issued a *Prakas* to all foreign embassies in the country outlining certain restrictions on marriages between foreign men and Cambodian women based on the age and salary of the men in question.²⁸ Similar temporary bans had been imposed on South Korea. Cambodian human rights groups have expressed concern that such regulations violate Cambodian law and – because they only apply to one gender – flout Cambodia’s obligations under human rights conventions (Ou Virak 2011).

3.1.3. Acquisition of Nationality by Naturalisation

The Law on Nationality provides an avenue for naturalisation to Cambodian citizenship, which involves a discretionary administrative decision, if the following documentary and other requirements are met:²⁹

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

Article 16 states that naturalisation, if granted, shall be decided by a royal decree, and that “the formality and procedure for applying for naturalisation shall be determined by a sub-decree”.³⁰ Unlike the 1954 citizenship provisions, which set out the competent authorities for decision-making on naturalisation applications, the 1996 Law on Nationality is silent on the authorities and procedure. This left a significant gap in the legal framework, which provided no mechanism or guidelines as to the process available to apply for naturalisation. This lacuna was only partially filled in 2013 with the adoption *Sub-decree No. 287 on the Forms and Procedures for Acquisition of Citizenship through Naturalisation*.³¹ Nevertheless, the current situation still provides a wide discretion for low-level enforcement officers to base their decisions on rather vague criteria.

For instance, the requirement that an applicant reside in Cambodia continuously for seven years from the date of receipt of a residence card remains problematic, especially for

²⁸ The *Prakas* stipulated that foreign men wishing to marry Cambodian women must be under 50 years of age and earn more than USD 2,500 a month (Bradley & Szablewska 2016: 461-488).

²⁹ *Law on Nationality* 1996, Art. 8.

³⁰ *Law on Nationality* 1996, Art. 16.

³¹ *Sub-decree No. 287 dated May 31, 2013 on Forms and Procedures for Acquisition of Citizenship through Naturalization* (Royal Gazette, Year 13, No. 48, dated June 30, 2013).

many of Cambodia's long-term resident groups.³² As the Law on Immigration was only passed in 1994, no individual would have been eligible to apply for naturalisation until 2001 – and this does not yet take into account the fact that authorities only began issuing residence cards many years after the adoption of the Law. Recently, the Ministry of Interior began issuing new residence cards, perhaps in an attempt to regain greater control over a regime that for a long time had been left to the discretion of local authorities.

The 1996 Law on Nationality also provides a pathway for naturalisation through investment. Those investing more than USD 300,000 in Cambodia are exempt from the residence requirements and can apply for naturalisation.³³ Likewise, if a foreigner donates approximately USD 250,000 directly to the state budget, he or she is eligible to apply for naturalisation.³⁴ This citizenship-by-investment scheme was passed during the 1990s to encourage greater foreign investment in the Cambodian economy (Phnom Penh Post 1996). With Cambodia's economy experiencing significant growth over the past decade, this provision appears to be increasingly used by foreign investors, especially from Asia. However, no statistics are available, and the process remains non-transparent with repeated allegations of corruption. In 2013, an official from the Ministry of Interior reported to a local newspaper that more than 700 foreigners applied for Cambodian citizenship since 2000 – most of whom being Chinese and Korean nationals (Hurby & Khy 2013).

Finally, the 1996 Law on Nationality allows individuals who have offered any special merit for the interest of Cambodia to apply for naturalisation.³⁵ Based on this provision, a number of foreigners have been granted Cambodian citizenship, often due to their humanitarian, conservation or development work – the most prominent example perhaps being US actress Angelina Jolie.

3.1.4. Loss or renunciation of citizenship

Article 18 of the 1996 Law on Nationality states that a Cambodian national may apply to renounce their nationality voluntarily, if they are 18 years old or over, and have acquired another nationality.³⁶ This provision assists with preventing statelessness among those renouncing their Cambodian citizenship, as they have to provide proof of another citizenship at the time of renunciation. In 2013, the Cambodian government passed *Sub-decree No. 288 on the Forms and Procedures for the Renunciation of Citizenship*, which sets out administrative processes and conditions for relinquishing Cambodian citizenship.³⁷

3.1.5. Dual citizenship

Cambodia recognises dual citizenship. The provision is especially relevant for the many Cambodians living in the diaspora, such as in France, the United States and Australia. Nevertheless, the subject proved to be contested during the drafting of the 1996 Law on Nationality (Poethig 2004). Following the return of many Cambodians from their exile in the

³² Article 9 of the law reduces this requirement to 3 years for those born in Cambodia. This seems not to be consistently applied to many of the long-term resident groups in Cambodia.

³³ The law stipulates 1.25 billion Cambodian Riel, which is more than USD 300,000 at current exchange rates. See *Law on Nationality* 1996, Art. 10-11.

³⁴ The law stipulates one billion Cambodian Riel, which is approximately USD 250,000 at current exchange rates. See *Law on Nationality* 1996, Art. 12.

³⁵ *Law on Nationality* 1996, Art. 13.

³⁶ *Law on Nationality* 1996, Art. 18.

³⁷ *Sub-decree No. 288 dated May 31, 2013 on Forms and Procedures for the Renunciation of Citizenship* (Royal Gazette, Year 13, No. 48, dated June 30, 2013).

diaspora, various government officials argued that senior officials should only hold a single Cambodian citizenship. Ultimately, a controversial clause did not make it into the law, but the debate resurfaced at times of elections (Kuch Naren 2015).

3.1.6. Proof of citizenship: Cambodian identification documents

The acquisition of a national identity card constitutes proof of Cambodian citizenship. As such, the identity card is the key to engaging in civic life as it unlocks the mechanisms to enrol in voter registration, obtain civil registration, enable a holder to work, open bank accounts, acquire land and property, open a business, receive travel documents and much more. Cambodian national identity cards are issued in accordance with *Sub-decree No. 60 of 2007 on Cambodian Nationality Identity Cards*.³⁸ The 2007 Sub-decree reduced the age of eligibility from 18 to 15 and removed a provision that the criteria could be satisfied through “any document which could prove that such a person is a Khmer citizen”. In providing that “Cambodians of both sexes from age 15 years and up shall hold the Khmer ID Card”, the sub-decree also made the application for an identity card compulsory.³⁹ Article 5 of Sub-decree 60 provides that all Cambodian citizens over 15 are obliged to apply for an ID card using: (a) a birth certificate which proves that the person is a Cambodian citizen; (b) a family book which confirms that his or her spouse is a Cambodian citizen; (c) documents, judgments of a court or other evidence stating that the person was born from a father or mother with Cambodian citizenship, or (d) a Royal Decree proclaiming the recognition of the application for Cambodian citizenship to the person.⁴⁰

While legally identity cards cannot be issued to those who do not meet documentation requirements that prove Cambodian citizenship, bribery and illegal purchase of Cambodian identification cards outside of the official process are widespread and in practice pervert the country’s citizenship regime. As a consequence, many people who may not comply with the legal requirement, but otherwise have sufficient means, may hold Cambodian ID cards; while other long-term resident groups who may meet the *ius soli* requirements for acquiring Cambodian citizenship cannot afford to get proof of their citizenship. Thus, in practice, legal status of citizenship does not necessarily align with proof of citizenship. To counter this state of affairs, Cambodian authorities have begun to issue new electronic ID cards, supposedly to reduce graft carried out by various local officials (Hul 2013).

Similar challenges arise with regards to birth registration. All Cambodian citizenship regimes have attached significance to whether a person or their parents were born in Cambodia. Documentation proving birth is therefore key to proving a claim to Cambodian citizenship or to certain types of naturalisation. Article 2 of the *Sub-decree No. 103 on Civil Status* sets out that:⁴¹

Civil status is one of an attachment of nationality to [the] State and actual status which a person has in his or her family tree in a nation and which creates rights and duties to such persons. A certificate of civil status is a letter recording all civil citizenship of Cambodian and foreigner who legally resides in the Kingdom of Cambodia within the scope of jurisdiction of the Kingdom of Cambodia. Certificates of civil status include birth certificate, marriage certificate, and death certificate.

³⁸ *Sub-decree No. 60 on Cambodian Nationality Identity Cards* (2007), signed 12 June 2007. This sub-decree replaced the earlier Sub-decree No. 36 dated 26 July 1996.

³⁹ *Ibid.*, Art. 2.

⁴⁰ *Ibid.*, Art. 3.

⁴¹ *Sub-decree 103 on Civil Status* of 29 December 2000. Also referred to as ‘Sub-decree No. 103 on Civil Registration’.

Under Sub-decree 103, provision is also made for ‘immigrants and foreigners’ to register babies, but this is limited to those who have ‘lived lawfully’ in Cambodia.⁴²

Because of Cambodia’s tumultuous history, many Cambodians have no birth certificates. Taking this into consideration, Sub-decree 103 provides for applications for attestation of birth – but only for Cambodian citizens.⁴³ The 2004 *Sub-decree No. 17 on Amendment to Sub-Decree on Civil Registration* further stated that ‘Khmer citizen’ who have no birth certificate after 31 August 2005 shall apply for a civil registration letter that would certify their birth.⁴⁴ While these provisions open avenues for ‘Khmer citizens’ to apply retroactively for birth certification, no such avenue seems to exist for ‘foreign aliens’ who have, often long-term, legal residence in Cambodia. Given the importance attached to proof of birth in the 1996 Law on Nationality as well as previous citizenship regimes, this presents a clear obstacle to non-citizens who wish to attain proof of their birth on Cambodian territory (Hyde 2016). Moreover, these provisions appear to lead to circular and impossible requirements in that documentary proof of birth is required to establish or to prove Cambodian citizenship under the Law on Nationality, but that there is a requirement that one is a citizen to be able to retroactively apply for birth certificates. This situation would present an impasse to many long-term residents who may fulfil the legal requirements for applying for citizenship, but who cannot produce proof of their birth in Cambodia.

3.2. Status of selected groups

A number of groups may encounter specific challenges with regards to Cambodia’s legal framework on citizenship and its operation in practice (Kirchner 2015, Gleeson 2012). Some of these challenges relate to Cambodia’s history and others to its specific socio-political context. For the purpose of this report, the status of three selected groups is highlighted: the Cambodian diaspora, Khmer Krom, and ethnic Vietnamese.

3.2.1. Cambodian diaspora

As a result of war and conflict in the 1970s and 1980s, more than half a million Cambodians fled the country. Hundreds of thousands eventually resettled in third countries, with large Cambodian diaspora communities existing nowadays especially in the United States, France and Australia (Um 2015). Many of these former refugees and their children are able to have their Cambodian citizenship recognised or apply for citizenship in accordance with the 1996 Law on Nationality. Some of those have moved back to Cambodia and contribute as residents with dual citizenship to society (Poethig 1997). However, the ‘Khmer citizen’ approach in the Law on Nationality may at times create difficulties for some former refugees to prove an effective link with the country, especially those from minorities or with non-Khmer sounding names. This is compounded by the lack of adequate proof of citizenship by documentation and the destruction of archival records during the wars.

A special case is the deportations of Cambodian Americans from the United States, following the 1996 US immigration reform. The reform put into effect deportation provisions against aliens who had been convicted of crimes. A large number of Cambodian Americans,

⁴² Sub-decree 103 of 2000, Art. 27.

⁴³ *Sub-decree 60 on Amendment to Article 8 and 59 of the Sub-Decree on Civil Registration*, signed and sealed 24 June 2002, Art. 59 (new).

⁴⁴ *Sub-decree No. 17 on Amendment to Sub-Decree on Civil Registration*, signed and sealed 14 July 2004.

who had not applied for US citizenship, was affected by this legislation (Leitner Center 2010). For years, Cambodia and the United States were in a standoff over a bilateral repatriation agreement, which was eventually signed in 2002. For some of those affected by the program, Cambodia had initially refused to recognise them as its citizens, until a more regulated policy was agreed between the two states (Seng 2001). Between 2002 and the end of 2014, a total of 467 Cambodians were deported from the United States to Cambodia; many more are waiting in US immigration detention.⁴⁵

3.2.2. *Khmer Krom: At home?*

Ethnic Khmer are a sizable minority in Southern Vietnam. The region is often referred to as ‘Lower Cambodia’ (or Kampuchea Krom) and has longstanding historical ties with Cambodia (Taylor 2014). Economic, cultural and religious restrictions imposed by the Vietnamese government have marginalised the Khmer Krom community in Vietnam. Many Khmer Krom have therefore fled to Cambodia at different times in recent history. Similar to Prince Sihanouk who had declared the Khmer Krom a part of the Khmer nation, the current government has repeatedly stated that it considered the Khmer Krom to be eligible for Cambodian citizenship. In 2010, the Cambodian government affirmed in a written response to the UN Committee on the Elimination of Racial Discrimination (CERD) that “in principle, Khmer Kampuchea Krom are recognised as Cambodian citizens without any discrimination” (cited from Wells & Tharum Bun 2010).

However, and despite the government’s public assurances, Khmer Krom – both long-term residents and more recent arrivals – face significant obstacles when trying to formalise their Cambodian citizenship, especially with regards to applying for a Cambodian national identity card (CCHR 2011). Local officials often refuse to grant applications for an ID card on the grounds that many Khmer Krom do not satisfy the administrative requirements, including lack of a permanent residence in Cambodia and lack of a birth certificate or proof of citizenship of their Cambodian parents (Ang & Larkin 2014). In addition, many Khmer Krom are asked by local police officials – in contravention of the law – to change their often-distinct names into more traditional Khmer-sounding names when applying for documentation, indicating hidden discrimination against the group due to their origin from Vietnam (CCHR 2011: 20-25). Representatives of local NGOs estimated that 30 to 40 percent of Khmer Krom living in Cambodia, including long-term residents who have resided there for decades, lack proof of Cambodian citizenship by way of a national identity card (Miller 2011).

Thus, there remains a significant gap between the government’s public declarations on the Khmer Krom’s entitlement to Cambodian citizenship and the actual administrative practice regarding the formalisation of their citizenship status. The lack of proof of Cambodian citizenship inhibits affected Khmer Krom from accessing many political, economic and social rights enjoyed by ordinary Cambodian citizens (Penman 2013). Various advocacy groups continue to address the problem by calling on the government to ensure that its public position on citizenship for Khmer Krom becomes a reality for those who continue to lack proof of their legal status (Crothers 2013).

3.2.3. *Long-term ethnic Vietnamese residents: At risk of statelessness*

The ethnic Vietnamese in Cambodia is one of, if not the largest, minority group in the country (Amer 2006). Whilst many ethnic Vietnamese have Cambodian identification documents and

⁴⁵ Numbers reported by the Returnee Integration Support Center (RISC) at (Danaparamita 2015).

have successfully integrated into society, others continue to live at the margins of society and face difficulties substantiating their legal status in Cambodia (Berman 1996, Ehrentraut 2011). ‘The Vietnamese’ in Cambodia are not comprised of one single group, but comprise diverse sub-groups including Cambodian citizens of Vietnamese origin; ethnic Vietnamese in mixed marriages with Khmer spouses; long-term residents of Cambodia; and more recent immigrants seeking economic opportunities. One of the most vulnerable groups is Cambodia’s long-term ethnic Vietnamese minority (Seiff & Chhay 2013).

Recent research has shed some light on the citizenship status of these long-term residents. The research report ‘A Boat Without Anchors’ explored the status of members of the Vietnamese minority population residing on floating villages on the Tonle Sap in Kampong Chhnang province (Nguyen & Sperfeldt 2012). All respondents in this research indicated that they, and in the majority of cases also their parents were born in Cambodia, with the group belonging to longer existing ethnic Vietnamese communities in Cambodia, as distinct from more recent Vietnamese immigrants. The report assessed the status of this specific group under the applicable Cambodian and Vietnamese nationality laws and considered how the authorities of Cambodia and Vietnam view and treat this group under the operation of their respective laws. All respondents seemed to be living legally in Cambodia and possessed various forms of documentation identifying them as ‘foreign residents’. The report concluded that these communities appeared to be stateless. Without citizenship and other documentation, numerous ethnic Vietnamese in Cambodia do not have access to basic economic, political, and social rights and face an array of disadvantages, including limited freedom of movement, being unable to own land, and difficulty accessing employment, education, health care, and legal protection. In addition, few development activities have taken place in these communities (Ang et al. 2014).

The report also found that many Vietnamese minority communities have, by and large, no effective access to birth registration. The absence of birth registration documentation for children in these communities creates barriers for obtaining other documents relevant to exercising future rights and entitlements such as admission to school and access to Cambodian citizenship. In order to ensure that statelessness does not perpetuate through generations within Vietnamese minority populations, there is a need to expand universal birth registration to the children of these communities (Hyde 2016). Interestingly, some members of these communities have brought a claim for recognition of or access to Cambodian citizenship under the collective reparations mandate before the Khmer Rouge Tribunal (Nguyen & Sperfeldt 2014).

As the research for ‘Boat Without Anchors’ was limited in scope, its findings do not allow for making broader generalisations about the situation of all ethnic Vietnamese sub-groups on the Tonle Sap Lake. However, the few secondary sources available on this topic suggest that the problems experienced by the respondents are a more widespread phenomenon – although the exact magnitude of affected populations remains unknown (Ehrentraut 2011, Gleeson 2012). Due to the sensitivity of the topic, Cambodia does not publish regular statistics about ethnic Vietnamese populations on its territory. The government’s 2010 periodic report to the CERD refers to 72,775 individuals whose ‘mother tongue’ is Vietnamese.⁴⁶ These government figures are significantly below most contemporary estimates.

⁴⁶ ‘Written replies by the Kingdom of Cambodia concerning the list of issues (CERD/C/KHM/Q/8-13) formulated by the Committee on the Elimination of Racial Discrimination relating to Cambodia’s eight to thirteenth periodic reports (CERD/C/KHM/8-13)’, UN doc. [CERD/C/KHM/Q/8-13/Add.1 of 17 February 2010], Annex I, Table A3.

After years of silence, the issue has also re-emerged on the radar of various international human rights mechanisms, which Cambodia has ratified. During Cambodia's last reporting cycle under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the CEDAW Committee expressed concern that "women of Vietnamese origin undergo considerable difficulties in the registration of births and the acquisition of Cambodian citizenship, which places them at risk of statelessness". The Committee therefore called upon Cambodia to "intensify efforts to facilitate the birth registration of children born to Vietnamese mothers and their acquisition of citizenship".⁴⁷ The Human Rights Committee similarly raised the issue during its last review of the implementation of the country's ICCPR obligations and recommended that Cambodia "facilitate access to identification documentation" and "guarantee the right of children who were born on the territory of Cambodia to stateless parents to acquire a nationality".⁴⁸

Cambodia's national parliamentary election in July 2013 saw much debate about the place of the country's ethnic Vietnamese minority (Chhay, Ponniah & Boyle 2013). Whilst the contemporary politicised discourse in the country focuses primarily on who should have a right to vote, few commentators or policy-makers address the underlying question of the social and legal status of this minority group in Cambodia (Fewer 2016). An immigrant census, conducted by Cambodian authorities in 2014 and 2015, saw hundreds of illegal Vietnamese immigrants being deported from the country (Seiff 2014). But while the census focused on illegal immigrants, it did not seem to have been used productively to identify the many legal residents in Cambodia and to grant them proper legal status as available under Cambodian law. After a recent Vietnamese state visit to Cambodia, a joint government statement expressed the hope that "the Kingdom of Cambodia would continue to take measures in ensuring the legitimate rights of Vietnamese residents, equally treated as other foreign residents in Cambodia in conformity with the laws and regulations of Cambodia".⁴⁹ Perhaps as sign of some official recognition of the need for action, some long-term residents recently received new immigration cards, with a promise to reassess their status after seven years. While it is difficult to assess the intentions of the government, it seems that authorities are now taking a more systematic approach to recording these populations.

4. Current political debates and reform plans

In 2014, the Cambodian government reorganised the organisational structures responsible for administering its citizenship regime. It created within the Ministry of Interior two new departments: the General Department for Immigration and the General Department for Identification, the latter being in charge of handling the provision of identity documents (Aun 2014). According to the related sub-decree, the new General Department of Identification will be composed of departments responsible for birth and other civil registration, national identification cards, passports, citizenship and statistics (Khy 2014). The first priority of the

⁴⁷ CEDAW Committee, 'Concluding Observations on the Fourth and Fifth Periodic Report of Cambodia', UN doc [CEDAW/C/KHM/CO/4-5 of 18 October 2013], paras. 30-31.

⁴⁸ Human Rights Committee, 'Concluding Observations on the Second Periodic Report of Cambodia', UN doc [CCPR/C/KHM/CO/2 of March 2015], para. 27.

⁴⁹ *Joint Statement between the Kingdom of Cambodia and the Socialist Republic of Vietnam*, Phnom Penh, 16 June 2016, para. 8.

new department was to oversee the introduction of new generation electronic ID cards across the country (Pech 2015).

The department adopted a new National Strategic Plan of Identification (2017-2026), which is mainly guided by a rationale of improving civil registration and vital statistics across the Kingdom of Cambodia.⁵⁰ The main objective of the Plan is to build an integrated universal civil registration and population identification system, as a single source of information on individuals and the population. One initial step under the Plan will be to ‘develop an enabling legal environment for personal identification’, mainly by reviewing and amending legislation on civil registration and identification. This could potentially be an opportunity to address some of the deficiencies in the current legal framework (Mudrick 2014). A centralised citizenship management system could also contribute to reducing corrupt practices at local levels and establish a more reliable official record of a person’s legal status in Cambodia – both for citizens and long-term resident non-citizens. Thus, while seemingly driven by technocratic imperatives over registering populations in Cambodia, these policies could bring a new momentum into the citizenship debate, but only if they also consider the socio-political realities of minority, stateless or other marginalised populations. Otherwise, these initiatives would risk manifesting existing dynamics of exclusion and discrimination.

The recently adopted sustainable development goals enshrine under goal 16.9 “by 2030 provide legal identity for all including birth registration”. In doing so, the sustainable development goals acknowledge that means to prove legal identity are linked with access to development opportunities. This could provide further incentives for development donors to support Cambodia’s efforts in reforming its citizenship regime and to bring it in line with international standards and recognised human rights principles (Amaro 2016). Free birth registration is a key starting point for the recognition and protection of every person’s right to identity and existence, even if it does not deliver a robust enough legal identity comparable to that provided by citizenship. The current lack of birth registration, especially among vulnerable populations, creates a particularly high risk of statelessness for specific groups, including minority groups, and often inhibits children to gain access to public education and eventually to Cambodian citizenship. Birth registration is thus a vital first – and less political – step to help to promote an inclusive citizenship regime in Cambodia. Recent news reporting seems to indicate that the Cambodian government has recognised this challenge and aims to accelerate the rate of birth registration in the country (Turton 2015).

5. Conclusion

As with many post-colonial states, Cambodia has struggled with reconciling the idea of a nation-state as inherited from colonial times with its own cultural and ethnic diversity. While the country is ethnically rather homogenous by Southeast-Asia standards, the post-independence features of its citizenship regime stress an ethno-cultural centric conception of a ‘Khmer’ national identity, which has tended to sideline or exclude certain groups from citizenship. The account in this report has also shown that such divides have frequently been

⁵⁰ An earlier version of the draft national strategic plan is available at http://www.crvscambodia.org/upl/announced/KHM_NSPI_StrategicPlan_2015_2024_vF_EN_02_12_15.pdf (accessed 29 November 2016)

politicised in power struggles throughout Cambodia's modern history. This was especially visible during the almost two decades of war, violence and political regime change that had a long-lasting impact on Cambodia's citizenship regime, and created challenging conditions for rebuilding a new citizenship regime in the 1990s. Cambodia's current legal framework for citizenship and its practical operation reflect these historical and socio-political tensions. With Cambodia recently moving to the status of a lower-middle income country and gradually increasing administrative capacities, matters of legal identity will only grow in importance. It is hoped that in this process, Cambodia will come to recognise that a more inclusive citizenship regime could assist to strengthen, rather than weaken the bonds of its civic community.

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