



Investigative Research Report 2014, No. 2

The Situation of Stateless Ethnic
Vietnamese in Cambodia

LIMBO ON EARTH:

An Investigative Report

On the Current Living Conditions and Legal Status of
Ethnic Vietnamese in Cambodia



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Stateless Vietnamese Investigative Report 2014

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Part 1 Introduction

1.1 Introduction

Limbo refers to a state of oblivion and confinement for those who are kept from entering into a heavenly place without having committed any misdemeanour. This word aptly describes the state in which the ethnic Vietnamese minorities ("the ethnic Vietnamese") who have migrated to and have been residing in Cambodia for generations are living in. The recognized state of citizenship along with the benefits that one would experience as a holder of national identity, are the rights that the ethnic Vietnamese are barricaded from enjoying. The barriers, holding back the people from their rightful state of legal abode and enjoyment from being a recognized citizen come in the form of a complex, intertwining web created by the violent history of Cambodia, the lack of a consistent judiciary system, the incompetent law enforcement of the Cambodian government, and political turmoil, scapegoating and ostracisation. Furthermore, more so than just being deprived of their rights, they also had to, and continue to, suffer from discriminations and violence, just as they suffered through the atrocity of genocide during the Khmer Rouge regime.

"Statelessness is one of the most forgotten areas in the global human rights agenda"¹said Antonio Guterres, the High Commissioner of the United Nations High Commissioner for Refugees (UNHCR). According to the 1954 UN Convention relating to the Status of Stateless Persons, a stateless person is defined as "one who is not considered to be a national of any state, under the operation of its law." Are the ethnic Vietnamese "stateless" by that definition? The analysis of domestic laws of Cambodia and Vietnam regarding the issue of nationality would be the first step in ascertaining the right of abode and nationality status of these people. Referring to the report "A Boat without Anchors"², the relevant laws and legal frameworks have been analysed and it was found that the application of the law of nationality in force during the relevant period of birth or abode would determine each individual Vietnamese's potential to be accepted into a state as a citizen. The facts of each individual case might differ, therefore it is difficult to generalize and say whether the ethnic Vietnamese as a minority group are all entitled to nationality or not, yet ultimately, the problem with undocumentedation would prevent the ethnic Vietnamese from turning around their current high risk of statelessness. No matter if the person holds a strong claim³ for citizenship from either

¹Antontio Guterres at a press conference on the 8th December, 2011

²"A Boat Without Anchors", Lyma Nguyen and Christoph Sperfeldt

³ibid pp. 95 (a) members of the focal group born after 13 November 1954 have a strong claim for the recognition of previous acquisitions of Cambodian nationality, which they automatically acquired when they were born, on the basis of the *jus soli* provisions under the 1954 Nationality Law. However, the pertinent issue for these

Cambodia or Vietnam, the ethnic Vietnamese minorities from provinces such as Kampong Chhnang⁴ are regarded as “legal immigrants” or “foreign residents” by the Cambodian authorities and they are viewed as “illegal immigrants” by politicians and the people of Cambodia.

Cambodia is a signatory of international treaties such as the International Covenants on Civil and Political Rights (ICCPR)⁵, the Convention on the Elimination of Discrimination against Women (CEDAW)⁶, the Convention and Protocol relating to the Status of Refugees as well as a member of the Committee on the Rights of Children (CRC). However, it is no signatory of the Convention on the Reduction of Stateless Persons in which its parties agree to "...grant stateless persons rights equal to nationals or foreign nationals residing on the state's territory, including in the area of religion, association, labour, welfare, primary education, housing, access to courts, and property" amongst other promises⁷. That does not mean that Cambodia can ignore the rights of stateless persons though, since the language used in the ICCPR ensures the protection of rights “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”⁸ and this must include the ethnic Vietnamese in Cambodia. Therefore, regardless of whether they are entitled to citizenship under the operation of the law of Cambodia, Cambodia must also protect their rights. Does Cambodia adhere to these treaties in protecting the rights of their people? If not, how is the minority group in question affected by the lack of protection? This report seeks to examine the issues the ethnic Vietnamese face and ultimately, provide some recommendations as to what must be done to remedy the injustice.

In order to assess the issues stemming from statelessness affecting the ethnic Vietnamese and the consequential impact on Cambodia, Minority Rights Organization (MIRO) has conducted investigative research into the affected communities in Kampong Chhnang's Phsar Chhnang commune in order to draft a report to be submitted to certain stakeholders, the Cambodian government in particular, to find an appropriate solution for this group. Moreover, MIRO will use this research as the basis of the implementation of the project “Eliminating Statelessness of Khmer Krom and Vietnamese in Cambodia” in Cambodia. MIRO's objective is to decrease

persons is one of acquiring the documentary evidence to proof that they and at least one of their parents were born in Cambodia

⁴Vietnamese born in both Kampong Chhnang's Kandal and Chong Koh communities.

⁵International Convention on Civil and Political Rights, opened for signature on 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁶Convention 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)

⁷Convention on Statelessness, 1951

⁸Article 2 of the ICCPR

the number of Vietnamese stateless persons and to protect the rights of Khmer Krom asylum seekers and refugees in Thailand and stateless persons in Cambodia.

With its report, MIRO also wishes to provide information on ethnic Vietnamese so that the claim to citizenship and nationality will not be drowned out by the expressions of racism in Cambodia. This report is timely given the fact that anti-Vietnamese sentiments are on the rise in Cambodia. Disparaging attitudes towards “the Vietnamese” and several incidents of violent assaults on properties and persons in 2013 and the beginning of 2014, give cause for grave concern.

1.2. Objectives and Methodologies

Due to the lack of updated information on the topic of Vietnamese statelessness, for the purpose of writing a project to be implemented within Kampong Chhnang province, MIRO’s staff conducted a fact-finding mission to the province in order to gather Vietnam’s statelessness related issues and the impact of statelessness on the ethnic Vietnamese.

The main objective of the research is to collect information and data on the Vietnamese’s living conditions and legality of abode in Cambodia in the fields of legal papers, rights to vote, education, as well as on the weak law enforcement and discrimination from politicians and the public. This field study will support MIRO in identifying the most urgent issues presently affecting the target group. In addition, it serves as a key foundation for the impact, outcomes and outputs as mentioned in the project “Eliminating Statelessness of Khmer Krom and Vietnamese in Cambodia”.

The field research was conducted on two separate occasions; the first of which took place from 8 to 10 July 2013, and the second from 17 to 19 October 2013. Both fact-finding missions were undertaken within the two communities of Kandal and Chong Koh, where most ethnic Vietnamese live. In these provinces around 35 people were interviewed including community leaders, vulnerable members, Cambodian ordinary people, commune chiefs and immigration police. These 35 respondents are deemed to be the representatives of 931 families (estimated 4,760 people) due to their knowledge of the living conditions and situation of the community, and their network and status within the community which allows their opinions to generally represent the rest of the community.



MIRO selected respondents aged between 50 and 80 years for the interviews. All of them were born in Cambodia and their families have lived in the country for many generations. They are currently residing in Kandal and Chong Koh villages, Phsar Chhnang commune in Kampong Chhnang province.

Also secondary research was conducted whereby relevant scholarly articles and news sources were used for the purpose of compiling a comprehensive report.

1. 3. Background Information

This research focuses only on the ethnic Vietnamese who were born in Cambodia and whose parents had migrated to Cambodia many years ago. It does not refer to those who legally or illegally migrated to Cambodia in the past 10 to 20 years. It focuses on those who are vulnerable to social and political discrimination, and in particular on the ethnic Vietnamese who were persecuted during the Khmer Rouge regime and continue to suffer grave injustice from political ostracisation, discrimination and disregard of their human rights.

1.3.1. Documentation and Current Nationality Status

Almost 90 per cent of the ethnic Vietnamese do not possess birth certificates and identity cards (ID cards); they have only their immigration cards and resident papers to prove that their residence in Cambodia is legal. The surveys conducted by MIRO revealed that only a small number hold ID cards and were only able to obtain them by paying bribes to the local authorities, often spending hundreds of US dollars in the process. MIRO considers these documents as illegal; equally, the procedures of the local authorities and polices are in violation of the law on nationality.⁹ Without ID cards and birth certificates, ethnic Vietnamese cannot vote and are barricaded from many social benefits that are enjoyed by the rest of the society.

At the same time, the Vietnamese themselves are not aware of the relevant domestic and international laws or the procedures on how to apply for their legal identity documents nor are their aware of their inherent human rights.

⁹Art. 22 and art. 7-17 of the Law on Nationality, Preah Reach Kram, SN/PRK/1096/30, promulgated on 09 October 1996

1.3.2. Deplorable Floating House Conditions

More than 90 per cent of the ethnic Vietnamese who were interviewed live in floating houses on the Tonle Sap River in Kampong Chhnang. These houses are erected on an assembly of bamboo poles with barrels attached underneath so that they float on the water. Usually, the houses have two or three rooms, which have no windows to protect their inhabitants from the rain, nor electricity or bathrooms; the toilets are latrines that open directly into the water. MIRO asked some Khmer people living along the river how they would feel about living on floating houses; most of them began laughing and replied that they would be afraid to live there and that this kind of lifestyle was only for the Vietnamese.



To live on the water might appear original or a little strange. Human beings are terrestrial mammals who live on solid ground. The ethnic Vietnamese do not live on the land because they do not have the rights. Even if they could afford to buy a plot of land, they still would not be able to possess the land because they do not have the relevant legal papers to certify that they are Cambodian citizens¹⁰.

When MIRO inquired whether they would prefer to live on the land, the majority answered in the affirmative. Life on land offers many advantages, especially in regard to safety. Some women told MIRO that they were constantly afraid that one of their children would fall into the water. Even though the children learn to swim at a young age, the danger of drowning is still very high, especially during times of strong winds, floods and high water levels. Moreover, most of the structures supporting the houses require frequent repair and maintenance due to rusting and erosion. Some families cannot afford these costs, and the consequences are deplorable: they live in damaged houses that one day will endanger their lives. By living on the water, they also face a plethora of health risks due to poor hygienic standards. The water is polluted with their own sewage. A variety of diseases such as typhoid, diarrhoea, high blood pressure and allergic reactions, eczema etc. are frequent. In fact, the

¹⁰ Art. 44, Constitution of the Kingdom of Cambodia provides: “All persons, individually or collectively, shall have the right to ownership. Only Khmer legal entities and citizens of Khmer nationality shall have the right to own land.”

primary cause of children's death in these communities is diarrhoea¹¹. Although diarrhoea can be treated easily, many ethnic Vietnamese cannot afford the treatment at the state hospitals or in private clinics.

Children have very little space to move and play on the floating houses, and the general lack of space is one of the reasons why ethnic Vietnamese would prefer to live on the land. This clearly stands in contradiction to the pleasant sight of these floating villages which the tourism industry presents as a beautiful part of the Vietnamese tradition and culture; tourist cruisers pass by in the dry season, but what the tourists are not aware of are the dangers that come with living in these houses and the reasons as to why the Vietnamese live in them.

In addition, the floating houses are very fragile as they are held in place only by anchors. This fragility makes them vulnerable to storms, large waves and the weather in general, exposing the inhabitants to the elements. In the rainy seasons, the weather aggravates every aspect of life for floating house villagers: In bad weather, they cannot fish and they must bring the boats close to the shores. During that time, snakes become frequent; their poisonous bites cause pain, injuries or even death.

The lifestyle of the ethnic Vietnamese must not be regarded as a tradition. It is important to understand that they did not choose to build their houses on the river; this was forced upon them by their dire circumstances and their lack of rights. One village chief reported that before the time of the Khmer Rouge, Khmer and Vietnamese people used to live together on the lands. But when most of the Vietnamese were forced to return to Vietnam or fled, they lost their land. When they returned at the beginning of the 1980s, they were no longer regarded as residents but as immigrants; as immigrants they were not allowed to possess land and thus had to settle on the water.

With all these dangers and problems presented by their way of living, if given the choice, most said that they would rather live on land.

1.3.3. The Place of Birth and Inhabitation

Police statistics in Phsar Chhnang commune indicate that an estimated 931 families (4,760 people)¹² live there in eight villages. All Vietnamese respondents told MIRO that their family, community members and they themselves were born in Kampong Chhnang province and have lived there for many generations. Therefore, they all consider Kampong Chhnang as their

¹¹ UNEP Cambodia Case Study 1: Floating Toilets for the Floating Villages in Tonle Sap Lake

¹² Vietnamese statistics collected from heads of Vietnamese communities and quoted on 15 January 2012 by Mr. Kuon Chhun Eng, chief of Phsar Chhnang commune/Sangkat, consisted of 8 villages (1- Phsar Leu, 2- Phsar Chhnang, 3- Chong Koh, 4- Sam Roang, 5- Koh Krabei, 6- Trapeang Bei, 7- Kampong Os, and 8- Kandal).

home and Cambodia their homeland. They also added that they view the Cambodian government as their own government.

The only period the ethnic Vietnamese did not reside in Cambodia was when they were forcibly deported to Vietnam by the Khmer Rouge. During the deportation, a high number of Vietnamese were killed. Once in Vietnam, they could not find places to settle in and were treated as refugees rather than nationals of Vietnam. The Vietnamese government, at that time, only provided them with basic food supplies which more often than not were insufficient. They could not find jobs because they did not have any relevant skills; the only skill they had was the fishing. The deported Vietnamese did not consider this forced deportation as a return to their own country; on the contrary, it was an expulsion from their own country, Cambodia.

In addition to interviewing ethnic Vietnamese in Kandal and Chong Koh, MIRO staff also interviewed Khmer people who live in the same communities as the Vietnamese. The Khmer confirmed that they have lived in peace with the ethnic Vietnamese since they were born there and share each other's every-day life and concerns. These Khmer consider their Vietnamese neighbours as Khmer even though they were born from Vietnamese ancestors. They also wished that they be treated equally and fairly by the Cambodian government officials and local authorities.

1.3.4. Occupation, Religion and Belief

The main source of income of all respondents and their family members in both villages is fishing. Some also run small businesses, either selling groceries, coffee and drinks or household supplies from small boats, or they work as boat mechanics in floating garages. Their livelihood improves when they can catch fish during the fishing season between November and May. At other times, their sources of income and livelihood are inadequate and fail to provide much at all. They cannot adequately sustain their families, especially during the fishing prohibition season between June and October. They were also asked whether the Vietnamese government has ever supported them to which they responded that sometimes they receive charity assistance in the form of food supplies from the Vietnamese government. Furthermore, they also obtained some aid from the Vietnamese communities abroad.

The majority of Vietnamese in Phsar Chhnang commune are Mahayana Buddhists, whereas Khmer are Theravada Buddhists. Both differ by their way of dressing and in regard to their social structures. Researches have revealed that the Vietnamese mostly follow Khmer

Buddhism nowadays.¹³ Some claimed that "Vietnamese Buddhism and Khmer Buddhism are the same" or "close enough." This shows the strong impact that residing in Cambodia has had on the religion of the Vietnamese people in Cambodia, whereby the Vietnamese have adopted in part the Khmer religion.

Part 2 Specific Difficulties Faced by Ethnic Vietnamese

2.1. Identification Papers

As mentioned above, MIRO's research found out that around 90 per cent of ethnic Vietnamese who were born and are living in Kandal and Chong Koh villages do not possess any identification papers such as birth certificates, family books or ID cards; about 10 per cent only hold ID cards acquired through bribing officials. Even though they were born in Cambodia and have been living in the country all their life, they are not considered as citizens by the Cambodian government, but as legal immigrants. Consequently, they hold immigration cards or resident books instead of Cambodian ID cards.

The Vietnamese who were born in Kampong Chhnang's Phsar Chhnang commune between 1930 and 1950 clearly expressed their sentiments regarding their identities: They consider themselves as Cambodian as Cambodia is the only country in which they have ever lived.. Two Vietnamese women from Chong Koh village, for instance, said that "...all of us in Chong Koh community were born here like our parents and grandparents and we do not even know where Vietnam is. We wonder why we are still considered as legal immigrants in Cambodia. We are an ethnic minority group, so the government should provide us with identification documents through any legal channels. Although we are regarded as legal immigrants in Cambodia by ordinary people, authorities and some politicians, we still consider ourselves as Cambodian people because we have been living here for many generations and have no other places to go to".

Only the wealthy and well-connected ethnic Vietnamese can afford to obtain legal documents through illegal means and consequently the social and legal benefits that all citizens, regardless of wealth or status, should rightfully have are exclusive to the rich. The malpractices of the local authorities and the police are breaching the existing laws on nationality¹⁴ and immigration¹⁵. The identification papers are the most important for them to

¹³ "...while many Vietnamese strive to be Khmaer-sot"(pure Khmer) Phnom Penh Post, 26 January, 1996

¹⁴Art 22, Law on Nationality "any official issuing false identity documents shall be punishable from 5-10 years in imprisonment"

¹⁵Law on Immigration, promulgated on 22 September 1994

live legally and have an adequate quality of life; it's their key to escape poverty. Their living standards would be substantially improved as the identification papers would enable them to send their children to school, borrow money from the bank, find jobs, participate in elections, travel freely, have access to natural resources, stand as a party in courts and own land.

Once or twice a year, the immigration police come to the houses of the Vietnamese in Phsar Chhnang commune to collect the data of their family members. For this service, the police will ask them to pay Riel 10,000 (US\$ 2.5) or more per person. Sometimes, the police will reduce the amount.

Some Vietnamese recounted that they frequently went to the police station in Phsar Chhnang commune to ask about the procedural rules to apply for ID cards however, similarly, they were told that the State does not have any administrative regulations to provide these to ethnic Vietnamese. The respondents' wish to acquire identification papers in order to become full Cambodian citizens became apparent as the interviews went on; they often expressed this wish repeatedly. They know that legal documents are essential to improve their lives and rights. Without the documentation they continue to suffer from discrimination, poverty, health problems, non-access to education, housing, social security, judicial justice in court and restrictions on their freedom of movement.

2.2 Education of Vietnamese Children

MIRO's two research missions to Kampong Chhnang revealed that only 9 per cent of ethnic Vietnamese children go to state schools. The rest or rather, the vast majority, are denied access to the public education system for several reasons.

The main problem that prevents most of the children from going to school is the overwhelming poverty in which their families live. The majority of families are predominantly concerned with surviving on a day-to-day basis; especially during fishing season the children have to support the families to make a living. Although state primary school is free for all children, some parents cannot even afford the transport to school or the lunches their children will have to buy there.

The fundamental reason why Vietnamese children of Kampong Chhnang cannot access school is the requirement that a birth certificate has to be submitted to enrol.¹⁶ In effect, a child can attend school only if he/she has a birth certificate.¹⁷ Even potential employers may ask for those documents for administration and identification.¹⁸

¹⁶ This issue is developed in "Weak Law Enforcement" part. 2.3.

¹⁷ Birth certificate is a big issue to attend school, as a report from UNICEF in Cambodia develops it. <http://unicefcambodia.blogspot.com/2013/07/unicef-supports-cambodian-commune.html>

¹⁸ Child Rights Foundation (CRF), *Study Report, Birth Registration in Cambodia*, p. 18.

Another reason, similar to the previous but less obvious during the interviews, is a deep sense of basic insecurity. The uncertainty about their legal status makes some families anxious as to whether they will be able to stay in Cambodia all their lives or if they will be deported back to Vietnam one day. Thus, as they do not know what the future holds for them, they do not want their children to learn only the Khmer language. This arguably can be attributed to the high illiteracy rates in Khmer of the ethnic Vietnamese.

Another problem is the lack of Vietnamese teachers at Khmer state schools to teach the Vietnamese children in their own language. The school commission is trying to solve that problem. At the same time, there are a few private Vietnamese classes opening on the floating villages, teaching Vietnamese language in Kandal and Chong Koh. However, a teacher expressed concern, admitting that it is tiring work and is not consistent, “When I am ill there is no school” he said.¹⁹ Besides that, parents might have difficulties to cover the daily school fees and transportation costs of around Riel 500 (US\$ 0.125). Obviously, the current state of education for Vietnamese children leaves a lot to be desired.

In order to facilitate Vietnamese children to be accepted to the state school, MIRO’s provincial representative in Kampong Chhnang has supported ethnic Vietnamese in Kandal village to bring their children to register for birth certificates at Phsar Chhnang commune. So far, only 57 Vietnamese children have been granted birth certificate letters (instead of the form which can only be issued for Khmer nationals) but no official ones.²⁰ The school in Kandal village starts from grade one. 37 Vietnamese students have been enrolled recently and more are still being registered. Yet, according to MIRO provincial staff, only 10 Vietnamese children are actually attending school presently. Many parents rely on their children to help fishing, but many neither understand the importance of school nor are they aware of their children’s rights to education. As a result, Vietnamese children are sometimes banned from school when they do not attend regularly.

The small percentage of Vietnamese children who have access to education stands in stark contrast to international UN Conventions and national legal provisions. Essentially, the right to education is a constituent of many international treaties such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), etc. As Cambodia signed and ratified the ICESCR, the government is obliged to respect its provisions.

¹⁹“Teaching Vietnamese Boat Children” The Phnom Penh Post, 13 May, 2011

²⁰ Certification Letter: “We, Phuon Chhuy Eng, chief of Sangkat Phsar Chhnang, Kampong Chhnang, certify that Chaot Lihuo, male, Vietnamese nationality, was born on 25/3/2004 in Kandal village, Sangkat Phsar Chhnang, Kg Chhnang. Date of issuance 05/11/2012.

Article 13 of the ICESCR²¹ stipulates that:

The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

Article 28 of the UN Convention of the Rights of the Child provides that:

“Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity” and in 1.A states that signatories must work to make primary education “compulsory and accessible to all”.

Moreover, after the Paris Peace Agreement, Cambodia became a more democratic country whereby the Cambodian Constitution recognizes and respects human rights. Article 31 of the Constitution of the Kingdom of Cambodia states that the Kingdom of Cambodia shall recognize and respect human rights as prescribed in the United Nations Charter, the Universal Declaration of Human rights, the covenants and conventions related to human rights, women’s and children’s rights. Therefore, the Kingdom of Cambodia needs to respect and apply those provisions on a national level. Cambodia has made good progress to reach the second millennium goal which stipulates universal primary education by 2015.²² However, it should go further and include minority groups in its efforts.

2.3. Weak Law Enforcement

Law enforcement is particularly weak in regard to the issuance of identification papers. As explained above, when ethnic Vietnamese wish to register their child with the local authorities²³ they are told that no procedures exist for this purpose and as a result their children cannot get birth certificates. One village chief told MIRO that when ethnic Vietnamese families come to register a child, he cannot process their request even if he wished to because the government does not provide any procedural rules to empower them to act.

²¹ Cambodia signed this treaty in 1980 and ratified it in 1982.

²² <http://www.kh.undp.org/content/cambodia/en/home/mdgoverview/overview/mdg2/>

²³ By being registered, a child receives a birth certificate, which will allow it to go to school and apply for an ID card at the age of 18. It is the key to prove a claim to Cambodian citizenship.

Nevertheless, the Sub-Decree 103 provides that²⁴:

“As for a baby of any immigrants or foreigner having lived lawfully in the Kingdom of Cambodia who was born in the Kingdom of Cambodia, the parents may register the baby’s birth at the Commune/Sangkat where they are living permanently or at the Embassy or General Consulate or Consulate of their country to the Kingdom of Cambodia. In case when the registration is to be held at the Commune /Sangkat, family name, first name and parents’ names of the baby shall be written in Latin characters along with the Khmer script. The nationality of the child shall be governed by the Law on Nationality by the Kingdom of Cambodia”.

This article explicitly stipulates the right of ethnic Vietnamese children to apply for a birth certificate, in conjunction with the following conditions:

1. The parents must be immigrants or foreigners;
2. They must have lived lawfully in the Kingdom of Cambodia;
3. The child must have been born in Cambodia;
4. The parents must live permanently in the commune in which they will ask for a birth certificate.

Obviously, there is a contradiction between what is prescribed in the law and what occurs in practice given the fact that the ethnic Vietnamese fulfil these conditions. First of all, their immigration cards prove that they are immigrants (1) living lawfully²⁵ (2) in Cambodia. Or at least, it is possible to interpret their documents and argue their case in this way. Secondly, their children and grandchildren were born in Cambodia (3), as MIRO discovered through its investigations. This contradiction highlights the arbitrary application of the law, lack of knowledge by authorities of the laws in place, and discriminatory practices at local levels.

Moreover, a Vietnamese woman told MIRO that when she went to register her child within the compulsory period of 30 days after the birth²⁶, the commune chief told her to come back when her child is older. He argued that the baby did not need a birth certificate yet because it had not reached school age yet. This shows the level of ignorance or perhaps concealed discrimination that authorities hold which is completely unacceptable, legally and morally.

Birth registration is a fundamental human right enshrined in Article 7 and 8 of the 1989 UN Convention on the Rights of the Child²⁷. It gives every child the right to be registered at birth

²⁴Sub-Decree 103, art. 27.

²⁵ If the immigration police hands out immigration cards to the ethnic Vietnamese, it means that there is a legal basis that allows them to do so.

²⁶ as is prescribed in Sub-Decree 103, art. 17.

²⁷ Cambodia ratified the Convention on 15 October 1992, without making any reservations.

by the state within whose jurisdiction it is born. The registration is the only key which will allow children to realize other human rights integral to their development and well-being. It is the most crucial administrative step needed in order to build a protective environment against abuse, violence, exploitation and statelessness. An unregistered child cannot go to school and acquire the most basic knowledge like reading and writing and will face extreme difficulty in obtaining legal employment. Neither will the individual be able to receive a marriage certificate when they start their own family, further limiting their quality of life and potential. Every child must have equal opportunity to education; this provision is a Cambodian constitutional rule provided in article 48:

“The State shall protect the rights of children as stipulated in the Convention on Children, in particular the right to life, education, protection during wartime, and from economic or sexual exploitation”.

If an ethnic Vietnamese child does not receive a birth certificate, it will not be able to access education in Cambodia. Therefore, this provision is not respected. Moreover, this article does not require any identification papers; it does not assert that the state shall only protect “Khmer children”. It is a general provision that is supposed to protect every child and provide a basic education to all. Therefore, ethnic Vietnamese need to get birth certificates if Cambodia wants to live up to this internationally recognized human right which the Government of Cambodia has ratified and consequently incorporated in Cambodian legal system.

Regarding the issue of identity cards, the same holds true. All persons interviewed just as their children and grandchildren cannot apply for ID cards, and therefore, do not have Cambodian nationality or the rights which ensue from it. Nevertheless, article 4(2) (a) of the 1996 Law on Nationality provides that an individual:

“Shall obtain Khmer nationality/citizenship by being born in Cambodia (1):

Any child who was born from a foreign mother and father (parents) who were born (2) and living legally (3) in Cambodia.

As ethnic Vietnamese²⁸ who were born in Cambodia (1), from parents also born here (2)²⁹ and living legally³⁰ (3), they should be allowed to apply for an ID card”.

The problem why they still only hold resident or immigration cards and cannot realize their

²⁸ Referring to those who were born after 1996. The retroactivity of this law is a complex question. If arguing that it cannot be applied retroactively, the 1954 Law on Nationality must be analyzed. This law also provides the jus soli principle in art. 22 (2).

²⁹ Most of the interviewed people had parents born in Cambodia and not in Vietnam.

³⁰ Their immigration cards or resident certificates prove that they are living legally on Cambodian territory. They are not illegal immigrants, therefore they fulfill this condition.

most basic and essential human rights conferred by nationality is that Cambodian authorities regard all members of the floating villages as “foreign residents”. They consider them as a group instead of individuals, who in most cases have the right to apply for nationality, or at least to register their children.

2.4. Right to Vote

MIRO’s research found out that around 97 per cent of ethnic Vietnamese who were born in Kampong Chhnang³¹ and are currently living in the villages of Kandal and Chong Koh were not allowed to exercise their right to vote in the last general election on 28 July 2013.³² They reported that when they went to register in the voting list at the communal election committee (CEC), they were asked to provide their legal identity papers such as birth certificates and ID cards. Since they do not have these documents, the CEC officials refused to register them based on their uncertain identity. In fact, they expressed their wish to exercise their voting rights as Cambodian citizens.

The research also indicated that 7 per cent of ethnic Vietnamese who live in the above mentioned villages were permitted to vote in the 2012 communal election since they held ID cards or had been put on voter lists. But in the 2013 general election, they were afraid to come forward to vote due to the anti-Vietnamese rhetoric before and during the election, especially from the opposition party activists regarding illegal immigration of Vietnamese nationals.

Newspaper articles detailing the treatment of ethnic Vietnamese during the election of 2013 could be found in abundance. “The Phnom Penh Post” reports that Srey Neak (name changed), whose name was on the voters’ list, was prevented from casting her vote. She assumes that pale Cambodians will not dare to go to the polling sites in the next election out of fear they will be kicked out. She reported opposition supporters saying “She’s also “yuon”³³! Kick her out!”³⁴ Srey Neak’s ethnicity is not clear, she might well be ethnically Khmer. There are many Cambodians with a fair skin color, but regardless of skin color or ethnicity, if one holds identification documents certifying the entitlement to vote, any action preventing one to do so would be acting in violation of the Cambodian constitution³⁵ and human rights doctrines.

³¹ MIRO interviewed the chiefs of Vietnamese communities in Kandal and Chong Koh and their members on 17-19 October 2013

³² Cambodia marked its general parliamentary election for the fifth term on 28th of July 2013.

³³ “yuon” is the Khmer word for “Vietnamese”, often considered to be derogatory.

³⁴ “Outcasts in their own country” The Phnom Penh Post, 13 August, 2013

³⁵ Article 34 - “Khmer Citizens of either sex of at least 18 years old, have the right to

Most of the respondents³⁶ said that if they had the right to participate in the election, they would cast their votes for a political party which would protect their rights and interests. From 1993 to 2013, they have never been permitted to vote. During the interviews they expressed their feeling of frustration of not being allowed to exercise their right to vote.

In addition to Cambodian domestic law³⁷ which does provide for protection for ethnic Vietnamese minority in Cambodia, there are many international conventions which Cambodia has signed and incorporated into its constitutional law in order to respect, protect and fulfil the promises it made by signing those treaties and agreements in the interest of its own citizens. For instance, ICCPR in article 25(b)³⁸ states that the right to vote and to be elected at genuine periodic elections should be incorporated into the domestic law as a basic human right. It is also consistent with article 5(c)³⁹ of the ICERD which also includes “the right to participate in elections - to vote and to stand for election”. Therefore, the Cambodian government as a signatory to these international treaties should strictly adhere to them in order to meet the needs of the Cambodian people including the ethnic minority groups in Cambodia.

Evidently, some ethnic Vietnamese born in Kampong Chhnang should be entitled to Khmer nationality. Following their entitlement to Khmer nationality, they should also be entitled to have the right to vote and to stand for elections. In conclusion, the Cambodian state party under the relevant international instruments has an obligation to ensure the implementation of these rights in accordance with its national law, and also with the international treaties with which Cambodia has signed.

³⁶ Vietnamese living in Kandal and Chong Koh were born in the communes of Peam Chhkaok, Kampong Os, Kampong Hav, Pou, Prolay Meas, and Kampong Chhnang.

³⁷ Art 4(2) (a) of the Law on Nationality states that “shall obtain Khmer nationality/citizenship, by having been born in the Kingdom of Cambodia: a) any child who is born from a foreign mother and father (parents) who were born and living legally in the Kingdom of Cambodia”.

³⁸ ICCPR, article 25(b): Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

³⁹ ICERD, article 5(c): In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights: Political rights, in particular the right to participate in elections - to vote and to stand for election - on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;

2.5. Money Extortion from the Local Authorities and Statistic Police

The Vietnamese floating village community members in Kampong Chhnang are reportedly vulnerable to intimidation and money extortion from authorities such as immigration police, economic police, water traffic police, military police, soldiers, fishing community members, security guards, etc. These authorities occasionally arrest them based on their lack of identification papers. Sometimes, they are sent to trial for minor cases.

Immigration police officers from Phsar Chhnang commune regularly come to Vietnamese floating villages to collect the statistics of each family in order to issue resident papers⁴⁰ to the families. When they deliver the papers, the police ask for a payment of Riel 20,000 to 30,000 (US\$5 to US\$7.5) from each family. Everyone who reaches the age of 14 years is legally required to hold an immigration card and has to pay Riel 50,000 to 60,000 (US\$12.50 to US\$15) per person. For those who cannot afford the fee, the situation is very difficult.⁴¹

Moreover, the ethnic Vietnamese are often arrested when they go fishing along the Tonle Sap River. The fishing authorities tell them that they cannot fish here and either claim money from them, or arrest them if they cannot afford to pay, by confiscating their boats, so they will not be able to fish anymore. However, they do not arrest the Khmer fishermen who are fishing in the same area. Some Khmer people who were also interviewed expressed their dissatisfaction, but also their embarrassment of such practices.

Ethnic Vietnamese are also subjected to certain limitations such as the areas wherein they are allowed to fish. A family told MIRO staff that the fishing authorities allowed them to put their fishing nets only around their floating house, which corresponds to about twenty meters. With such a small radius, they cannot catch enough fish. As fishing is their most important way to make a living, they face a very difficult situation.

In all these cases, if ethnic Vietnamese have money to give to the police at once, they will not be arrested or subjected to restrictions. But most of the time, they cannot afford the amounts asked by the police. In order not to undergo any sort of penalty, some will borrow money from money lenders, who will ask for interest and put a deadline for the refund.

A Vietnamese woman, whose husband is a boat mechanic and runs a garage told MIRO that every year, before Chinese New Year, the police will come to her husband's shop, pretend there was a problem with his license and ask him to pay some money. The woman was very

⁴⁰Resident paper containing the whole family members

⁴¹Respondents No II, IV, XI & XV during the interviews

upset about this reckless money extortion because she knows it is only a pretext and that the police only try to get some extra money for beer for the New Yew celebration.

2.6 Discrimination against Ethnic Vietnamese by Politicians and the Public

Vietnamese in Cambodia have historically been a target for attack in every regime because of their different ethnicities. In the Lon Nol era between 1970-1975, hundreds of Vietnamese who lived along the Tonle Sap River were secretly assassinated and dumped into the river which flows to Vietnam, causing hundreds of thousands of Vietnamese to flee in fear to Vietnam.⁴² During the Pol Pot's regime, the ethnic Vietnamese group was targeted by acts of genocide carried out with the intention to exterminate them as a race. People with white skin, or those not able to speak Khmer clearly, were killed as they could be associated to Vietnamese.⁴³ Therefore, around two million Cambodian people, including Khmer Krom, were killed by the Khmer Rouge under the accusation of them being Vietnamese spies or having "Vietnamese heads and Khmer bodies".

Moreover when the Khmer Rouge took over the country in April 1975, many Vietnamese were forcibly removed⁴⁴ from Cambodia and massacred during deportation to Vietnam in late 1975 while the remaining who were living in mixed marriages between Cambodian and Vietnamese nationals were systematically killed and completely disappeared from Cambodia during the Khmer Rouge regime.⁴⁵ During an interview, a Khmer Rouge deportation survivor confided to MIRO how those people were killed; as they were considered as "mixed" people⁴⁶, they were quartered until death.

In present day Cambodia this anti-Vietnamese discrimination sadly is still alive whereby the discrimination of the ethnic Vietnamese is used as a tool in political campaigns of Cambodian politicians. During every election event in Cambodia, the Vietnamese have traditionally been the target for political discrimination, attacked by politicians and used as scapegoats in order for the politicians to gain support and votes for their political parties. As the ruling Cambodian People's Party (CPP) has historic attempts towards Vietnam for providing armed forces that helped overturn the Khmer Rouge, they politically need to protect the ethnic Vietnamese living in Cambodia. Therefore, the opposition politicians have used anti-

⁴² Vorhacheat, Radio Free Asia (RFA), 31-09-2013, Analyzed feature: "Illegal Vietnamese immigrants are remained unaddressed", www.rfa.org/khmer

⁴³ Vietnamese victims and survivors from the Khmer Rouge regime living in Chong Koh and Kandal villages

⁴⁴ "Charges that the Khmer Rouge executed a full-fledged genocide against ethnic Vietnamese is among the charges yet to be heard in Case 002 at the Khmer Rouge tribunal.", The Cambodia Daily, 17 July, 2013

⁴⁵ MIRO interviewed ethnic Vietnamese who suffered from and survived from the Khmer Rouge regime on 17-19 October 2013 in Phsar Chhnang commune. All of them lost family members.

⁴⁶ Half Vietnamese, half Cambodian.

Vietnamese campaigns to rally support against the ruling party accusing it of “a lax immigration policy that has made the country inviting to immigrants from its larger neighbour”⁴⁷ and stirring up the Khmer people to become angry against the ethnic Vietnamese.

Anti-Vietnamese bias seems to be on the rise since the election campaign of the 2013 general election. Opposition party leaders and their supporters have severely used political rhetoric and derogatory slurs against the Vietnamese in Cambodia, causing the Cambodian public to feel more and more resentment against the ethnic Vietnamese. Consequently, a lot of ethnic Vietnamese either did not go to vote or were violently attacked when they went to vote. At Stung Meanchey polling station in Phnom Penh, the violent assault against ethnic Vietnamese voters resulted in two police vehicles being burnt down by the opposition supporters⁴⁸. Many Vietnamese could not cast their vote because they prevented them from doing so. Liv Yang Bean was one of them. He reports that “they pushed me, and they were so many; I was scared that they would beat me up”.⁴⁹

In the wake of the general election, several incidents against Vietnamese nationals occurred that presumably have been racially motivated. Amongst these are the attacks and lootings of Vietnamese-run shops along Veng Sreng Street in Phnom Penh Pur Senchey district after the garment workers strike on 3 January 2014 and the mob killing of a Vietnamese man after a traffic accident on 15 February 2014 in Phnom Penh’s Meanchey district.

In this heated atmosphere, ethnic Vietnamese in Phsar Chhnang closely follow these incidents and expressed their fear that the general animosity will also be directed at them. Thus, MIRO considers it of great importance to sharply condemn any anti-Vietnamese expressions and violent acts in order to prevent further aggravation that might have a negative impact on the claims ethnic Vietnamese have on nationality in accordance with the constitution of Cambodia.

⁴⁷ “CPP the Clear Choice for Ethnic Vietnamese Voters”, The Cambodia Daily 17 July 2013.

⁴⁸ MIRO’s election observers eye-witnessed the event at the scene inside Stung Meanchey polling station.

⁴⁹ <http://www.irinnews.org/fr/report/98786/ethnic-vietnamese-in-cambodia-face-discrimination>

Part 3 Conclusion

3.1. Conclusion

This report sought to provide an overview of the living conditions of ethnic Vietnamese in the communities⁵⁰ of Kampong Chhnang province, and to show their current state of every-day life in a country that does not consider them as citizens.

The importance of having a nationality is still not recognized sufficiently by the Government of Cambodia. The report illustrates the consequences for ethnic Vietnamese who are deprived of citizenship in Cambodia: the poverty of their living conditions, the lack of access to education, the deplorable situations in floating villages on the Tonle Sap River and the denial of participation in an economic, social and political life.

The lack of identification papers is the root cause for all other difficulties. Therefore, obtaining ID cards is the most crucial request for ethnic Vietnamese, following the procedure provided in the 1996 Law on Nationality. As the status of all those born after 1996 complies with the law⁵¹, at least the young ethnic Vietnamese should be granted citizenship. It is of paramount importance to act upon these predicaments, as the problems will only aggravate if not tackled within the near future.

This is particularly true for the children. Their lives are too precious to be constrained in this unjust way. Children have an inherent and fundamental right to be registered. This is the only way they can enjoy other fundamental human rights, such as education. The local authorities need to respect what is determined in Article 27 of Sub-Decree 103.

To consider Vietnamese who have been born and raised in Cambodia as immigrants does not correspond to their human rights under any analysis. By definition, an immigrant is a person who has entered and settled in a country which is not his or her native one. For most of the interviewed people, Cambodia is their native country. Although they keep their Vietnamese culture, most of them speak fluent Khmer, have good relationships with their neighbours, and generally do not create any trouble for the authorities. They even contribute to Cambodia's economy to some extent; as for example tourist visits to the floating villages add to the state revenue.

This illustrates that those people are not immigrants. They are a part of the country. Thus, they should be considered as full citizens.

⁵⁰ Kandal and Chong Koh.

⁵¹ Art. 4 (2) of the 1996 Law on Nationality

3.2. Recommendations

1. Urgently request from the local authorities to deliver birth certificates to ethnic Vietnamese children.

Children born in Cambodia have the right to be registered. No distinctions are made in the law in regard to ethnicity. Before being Vietnamese, a child is a child and therefore has a right to receive a birth certificate. This issue is the most urgent; children are born every day in Kampong Chnang's province. They need to have equal chances and opportunities to build a decent future.

2. Find a proper legal status for ethnic Vietnamese.

The legal status of immigrants or foreign residents does not apply to the ethnic Vietnamese interviewed in Kampong Chnang for several reasons:

- It deprives them of many essential human rights such as the right to education, to vote, to access justice as well as the right to work, to food and to adequate housing.
- The ethnic Vietnamese born after 1996 fulfill the conditions of art. 4 (2) (a) of the 1996 Law on Nationality.
- Some ethnic Vietnamese born before 1996 meet the conditions of art. 22 (2) of the 1954 Law on Nationality which also provides the *jus soli* principle. Therefore, many respondents have a strong claim to Cambodian nationality under this provision.
- As they were born in Cambodia, it is incorrect to say that they immigrated to Cambodia from a native country.

For all those reasons, the Ministry of Interior should provide procedures for the specific group in order for them to receive ID cards.

3. Raise awareness among ethnic Vietnamese about the importance of identification papers as well as about human rights.

MIRO calls for national and international organizations to provide legal and human rights training to ethnic Vietnamese who were legally born in Cambodia. With the little education Vietnamese receive, they do not know of any means to deal with their problems; thus there is a danger they could turn to violence as an alleged solution. The interviews with the ethnic Vietnamese clearly showed the lack of knowledge they have regarding their rights in general.

4. The Government of Cambodia should Enforce the Law

MIRO urges the Ministry of Interior to provide a sub-decree to clarify the procedures for both, nationality by birth and naturalization by application. All authorities who deal with

ethnic Vietnamese should implement the procedures and provide standardized service to them just like to Khmer people.

5. Ask the fishing authorities to stop money extortion against ethnic Vietnamese.

Many respondents were desperate about this situation. Although the Vietnamese know that extortion is illegal, they fear refusal would lead to harsh repercussions. This is absolutely unacceptable. Ethnic Vietnamese are very poor; their economic situation would improve, if they could use the money they pay for fees and bribes for their living. Therefore, they need protection from illegal extortions; the police should be charged for their misconduct.

6. Stop anti-Vietnamese speeches and discrimination towards Vietnamese in order for Cambodians to live in harmony in a peaceful society.

Cambodian politicians should refrain from trying to enlarge their electorate by making use of anti-Vietnamese rhetoric. The Cambodian people should be provided with unbiased information about the ethnic Vietnamese who have been living in Cambodia for many generations so that this minority group can become an integral part of a versatile Cambodian society.