

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: 3rd Cycle, 32nd Session

CAMBODIA

I. BACKGROUND INFORMATION

The Kingdom of Cambodia (“Cambodia”) is one of the few countries in South East Asia that has acceded to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*), ratifying both in 1992. Cambodia is not a Party to the *1954 Convention Relating to the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*.

At the national level, the Sub-Decree 224 establishing the “*Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia*” was enacted in 2009. This instrument aims “to contribute to ensuring the respect of human rights and rights of refugees so that refugees can enjoy their fundamental rights and freedom in accordance with the spirit of the *1951 Convention* and its *1967 Protocol* [...]”¹

As of 1 January 2018, the Refugee Department in the Department of Immigration has a total registered population of 32 refugees (24 male/8 female; five under 18 years old) and 16 asylum seekers (12 male/4 female; no data available on age). In addition to the official numbers, 32 individuals from the highlands of Viet Nam whose asylum claims have been rejected by the Refugee Department but whom UNHCR has assessed as deserving refugee status continue to reside, with no freedom of movement, within the country. Besides the official statistics, there are other persons living in Cambodia who might be in need of international protection who have made themselves known to UNHCR but who are not acknowledged by the Government either because they have not yet completed the asylum registration process or because they have not formally applied for asylum for fear of being returned. Furthermore, an unknown number of stateless individuals and individuals at risk of statelessness reside in the country.

On September 26, 2014, the Governments of Cambodia and Australia reached an agreement to relocate refugees from Nauru to Cambodia, thus shifting Australia’s responsibility toward individuals who had sought the country’s protection to Cambodia, a country significantly less developed and less equipped to absorb those in need of international protection.² Of the seven individuals who relocated to Cambodia, four subsequently returned to their countries of origin. The three who remain in Cambodia feel

¹ Sub-Decree on Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia, ch. 1, art. 2, 17 December 2009,

<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4d81f0172&skip=0&query=Refugee&coi=KHM>

² Andrew and Renata Kaldor, Centre for International Refugee Law, UNSW, “Factsheet: Agreement between Australia and Cambodia for the relocation of refugees from Nauru to Cambodia”, January 2017, <http://www.kaldorcentre.unsw.edu.au/publication/cambodia-agreement>

deceived with regard to the rights and benefits they were promised to receive as refugees in Cambodia. National elections planned for July 2018 have prompted heightened political tensions and increased human rights abuses in Cambodia.³ In particular, ethnic Vietnamese in the country have become a point of political divide, leading to raids on Vietnamese communities (comprised of both migrants and refugees) and withdrawal of citizenship documents for an unknown number of ethnic Vietnamese. Consequently, these individuals must restart the naturalization process regardless of the number of years of residence in Cambodia.

Due to the small size of the population under its mandate and the fact that a national asylum system has been established in the country, UNHCR currently maintains a very minimal presence in Cambodia. Interventions are limited to advocacy with government officials on issues of concern to refugees, asylum-seekers, and stateless individuals residing within the country, including prevention of *refoulement* and support to refugee recognition, and provision of health insurance to asylum-seekers (refugee health insurance is currently funded by IOM with resources provided under the Nauru agreement). UNHCR also funds an implementing partner (Jesuit Refugee Service) to provide housing and assistance to a group of unrecognized asylum-seekers from the highlands of Viet Nam and provides cash assistance on a case by case basis to refugees with specific needs.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no. 118.59: “Continue with measures to guarantee the birth registration of children, with no discrimination against migrant children, and continue strengthening the legal framework for the procedures of acquisition of nationality.” (Argentina)

The state has instituted measures to strengthen birth registration, including the piloting of a mobile registration system and the use of technology to strengthen the program. Working in partnership with UNICEF, the General Department of Identification (GDI) has set up a pilot Interactive Voice Response System (IVR) platform using a combination of RapidPro and the cloud communication channels Twilio and Nexmo to help ensure that local authorities do not run out of stock of birth certificates and that newborn children can be registered quickly after birth – a vital protection method for children.⁴ The government is also partnering with Vital Strategies, a partner under the Bloomberg Philanthropies Data for Health initiative, to review its civil registration and vital statistics law. The government has involved stakeholders, including UNHCR, in providing technical input to the law review process. UNHCR commends Cambodia for the positive measures undertaken to ensure universal birth registration.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Birth Registration

Linked to 2nd cycle UPR recommendation no. 118.59: “Continue with measures that guarantee the birth registration of children, with no discrimination against migrant children, and continue strengthening the legal framework for the procedures of acquisition of nationality.” (Argentina)

³ Amnesty International, *Amnesty International Report 2017/2018 – Cambodia*, 22 February 2018, available at www.refworld.org/docid/5a993932a.html

⁴<http://unicefstories.org/2017/02/27/harnessing-mobile-technology-to-improve-birth-registration-systems-in-cambodia/>

Despite the measures noted above, existing law and practice restrict the issuance of birth registration to Khmers. In addition to the fact that national legislation does not clearly define who belongs to this category,⁵ the issuance of birth certificates for Khmers is further hindered by requirements such as registration in a family book and the possession of an address (residential). The documentation issued by authorities is designated as 'Khmer birth certificates' which may pose problems for persons who do not self-identify as Khmer.

Recommendations:

UNHCR recommends that the Government of Cambodia:

- (a) Enhance its efforts to guarantee the birth registration of all born within Cambodia by extending outreach registration efforts to minorities and hard to reach populations such as the border communities;
- (b) Strengthen its *Law on Nationality* to provide clear processes for the acquisition of nationality and remove the 'ethno-characterization' of citizenship from its nationality law; and
- (c) Accede to the *1954 Convention Relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.

Additional protection challenges

Issue 2: Recognition and fulfilment of rights of refugees

According to domestic legislation addressing refugees and asylum-seekers in Cambodia, "a refugee shall have the same rights and be subject to the same obligations as a legal immigrant foreigner..."⁶ Although the *Law on Immigration* is silent on specific rights provided within Cambodia to a legal immigrant, the relevant domestic law on refugees and asylum-seekers states that refugees have the right to a residence card, the right to work and operate a business, the right to sponsor a family member to immigrate to Cambodia, and the right to travel documents if he or she wishes to depart Cambodia.⁷ In addition, the domestic law stipulates that "a refugee shall comply with all obligations and enjoy all rights stipulated in the *1951 Convention* and the *1967 Protocol relating to the Status of Refugees*."⁸

Despite the relative clarity in the legal provisions, individuals who have been recognized as refugees in Cambodia do not have unfettered access to basic rights in the country. Refugees are not provided with residence cards but with refugee cards that, outside law enforcement, are generally unknown and unrecognized in Cambodia. Without residence cards, refugees have difficulties accessing the rights and benefits to which they are legally entitled, including employment, housing, land and property, a driver's license, communication, and banking services.

Refugees' freedom of movement is also hindered as they lack valid travel documents and hesitate moving or working in places outside the capital due to fears that rural local authorities, police, and communities do not have information or knowledge about their status and presence in the country.

⁵ Cambodia's national law makes a circular provision that is not definitive as to who a Khmer is. Article 2 of the 1996 law provides that 'A person of Khmer nationality/citizenship is a Khmer citizen'.

⁶ Sub-Decree 224 on Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia, ch. 5, article 15, 17 December 2009,\

<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=4d81f0172&skip=0&query=Refugee&coi=KHM>

⁷ Id., art. 15-18.

⁸ Id., art. 18.

Refugees face additional obstacles with regard to family reunification claims, although the right to apply for family reunification is explicitly mentioned in Cambodian law.⁹

Several refugees and asylum-seekers have married and had children with Cambodian citizens and resided for many years in the country. Despite a pathway to Cambodian citizenship under Article 5 of the *Nationality Law*, these individuals have been unable to access citizenship and the rights it confers.

Recommendations:

UNHCR recommends that the Government of Cambodia:

- (a) Take steps to implement national legislation governing refugee and asylum status by issuing refugees with Cambodian residence cards and valid travel documents, in addition to their refugee cards, and enable refugees' access to basic rights and services in accordance with national and international standards;
- (b) Provide Government bodies as well as communities at national and local level with information on the refugee status;
- (c) Ensure those refugees who have a pathway to Cambodian citizenship or to another permanent status within the country under the law are able to access that pathway in practice in accordance with the provisions of the *Nationality Law*; and
- (d) Respect and implement provisions for family reunification under the law and facilitate the entry into Cambodia of immediate family members who wish to join refugees within the country.

Issue 3: Improve the effectiveness of the asylum system

The asylum system does not currently operate efficiently, effectively, and in line with the country's obligations under both international and domestic law. There are concerns regarding the lack of transparency and discretionary decision-making relating to asylum claims. In some instances, asylum-seekers have been denied refugee recognition in Cambodia due to political considerations and alleged connection of parts of the government with counterparts in the country of origin, in spite of UNHCR having determined their need for international protection.

In addition, the government does not recognize individuals as asylum-seekers from the moment of first contact with national authorities, but rather after two separate interviews – one to collect basic data and one to provide counselling. As a result, some individuals remain in the country without asylum-seeking status for months and are unable to access rights and benefits in the country. Asylum-seekers entering the country without documentation or overstaying their visa are vulnerable to arrest and deportation. Furthermore, registered asylum-seekers undergo a lengthy and burdensome refugee status determination procedure that may take several years to complete, despite legal provisions requiring rapid assessment of refugee claims.

Recommendations:

UNHCR recommends that the Government of Cambodia:

- (a) Ensure non-discriminatory access to a transparent national asylum procedure for all nationalities regardless of the circumstances surrounding their entry, length of stay, or previous reasons for entering Cambodia;
- (b) Take concrete measures to ensure compliance with domestic legislation and international standards by registering asylum-seekers immediately and guaranteeing a rapid assessment of all asylum claims;

⁹ Id., art. 17.

- (c) Take measures to effectively implement the *2009 Sub-Decree on the Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia*, particularly by ensuring asylum-seekers' rights to legal and interpretation services free of charge throughout and at each stage of the RSD, cessation, or cancellation of the refugee status process;¹⁰ and
- (d) Ensure immigration detention of asylum-seekers is used only exceptionally as a measure of last resort for the shortest duration possible after consideration of alternative measures and accompanied by legal safeguards in accordance with international standards.

Issue 4: Deportation and respect for the principle of non-refoulement

UNHCR is aware of two asylum-seekers who were held in immigration detention for up to six months in 2017, despite filing asylum requests with the government. The Cambodian government informed UNHCR that one of the two withdrew his asylum claim while in detention. He apparently did so not knowing the consequences of his decision, being improperly advised by the authorities and not being assisted with adequate interpretation during the counselling. Both persons were eventually deported in early 2018.

Recommendations:

UNHCR recommends that the Government of Cambodia:

- (a) Fulfil its *non-refoulement* obligations under international law, particularly as a party to the *1951 Refugee Convention*.

UNHCR

July, 2018

¹⁰ Id., ch. 4, art. 13.

ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

CAMBODIA

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to CAMBODIA.

I. Universal Periodic Review (Second Cycle – 2014)

Recommendation ¹¹	Recommending State/s	Position ¹²
Child exploitation		
118.26. Adopt and implement laws that prohibit all forms of ill-treatment of children and that protect them from forced labour, sexual exploitation and abuse.	Portugal	Supported
118.57. Continue to combat discrimination suffered by the children of marginalized and vulnerable groups and eradicate gender-based stereotypes. Along these lines, ensure the continuation of the Strategic Education Plan 2009–2013, to offer the same opportunities to all children and youth regardless of race, colour, sex, language, belief, religion, political beliefs, circumstances of birth and social conditions.	Colombia	Noted ¹³
118.69. Strengthen the measures to combat child labour and the exploitation of children.	Algeria	Supported
118.72. Combat the issues of rape and prostitution of minors by ensuring the full implementation of the laws criminalizing sexual abuse and exploitation.	Belgium	Supported
118.74. Improve its efforts on child protection systems, particularly children belonging to marginalized and disadvantaged groups.	Iran (Islamic Republic of)	Supported
Birth registration		
118.59. Continue with measures to guarantee the birth registration of children, with no discrimination against migrant children, and continue strengthening the legal framework for the procedures of acquisition of nationality.	Argentina	Supported
Protection from SGBV		
118.62. Take all the measures to prevent and combat violence and sexual abuse against women and children, including rape, by promoting an effective mechanism to receive and investigate complaints of sexual violence and offering the victims psychological and medical assistance.	Uruguay	Supported

¹¹ All recommendations made to Cambodia during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Cambodia" (27 March 2014), A/HRC/26/16, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/KHindex.aspx>.

¹² Cambodia's views and replies, in English, can be found in: *Addendum* (25 June 2014), A/HRC/26/16/Add.1, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/KHindex.aspx>.

¹³ **Addendum:** "These recommendations are contrary to the Constitution and laws of the Kingdom of Cambodia".

Victims of trafficking		
118.75. Continue efforts to combat trafficking in persons.	Uzbekistan	Supported
118.76. Redouble efforts to combat trafficking in persons, especially women and children.	Ecuador	Supported
118.77. Continue to take the necessary measures for effectively fighting human trafficking and child labour.	Germany	Supported
118.78. Continue making efforts to combat trafficking in persons, in particular children.	Nicaragua	Supported
Access to healthcare for people of concern		
118.155. Continue to pay attention to the right to health of the child, elderly people, the poor and other vulnerable groups.	China	Supported
118.157. Pursue, even consolidate policies and programmes facilitating access to health-care services for vulnerable persons.	Senegal	Supported

II. Treaty Bodies

Human Rights Committee

Concluding Observations, (27 April 2015), [CCPR/C/KHM/CO/2](#)

Racial discrimination

8. While the Committee notes the State party's assertion that Cambodia does not discriminate against anyone, it remains concerned about reports of discriminatory and violent acts perpetrated against ethnic Vietnamese persons (arts. 2, 26 and 27).

The State party should strengthen its efforts to combat racist attacks against ethnic Vietnamese persons. The State party should also consider developing a national action plan against racial discrimination.

Gender-based violence

10. While noting the State party's efforts to combat violence against women at the legislative and policy levels, the Committee is concerned about the low number of prosecutions and convictions for gender-based violence. The Committee regrets the lack of information provided by the State party regarding reparations granted to victims of sexual violence crimes committed during the Khmer Rouge regime, as well as the lack of information on the evaluation of the results of the National Action Plan to Prevent Violence against Women (2009–2012) (arts. 3 and 7).

The State party should ensure that cases of domestic and sexual violence are thoroughly investigated, perpetrators are prosecuted and victims are adequately compensated. It should also provide mandatory training on the prosecution of cases of gender-based violence for law enforcement and judicial officers and facilitate victims' access to justice.

Arbitrary arrest and detention

16. The Committee is concerned about reports of arbitrary arrest and detention of homeless people, beggars, people who use drugs, children in street situations and sex workers in "social affairs", youth rehabilitation and drug rehabilitation centres. It is particularly concerned about allegations of torture, ill-treatment and other abuses committed by staff working at these institutions (arts. 7, 9 and 10).

The State party should take all measures necessary to put an end to the arbitrary arrest and detention of homeless people, beggars, people who use drugs, children in street situations and sex workers. All instances of torture and ill-treatment should be investigated and, if substantiated, the perpetrators should be prosecuted and punished.

Trafficking in human beings

18. While noting the efforts made by the State party to combat human trafficking, the Committee is concerned about the reportedly low number of investigations and convictions and the lack of authoritative data on cases of human trafficking (art. 8).

The State party should intensify and better coordinate its efforts to combat trafficking in persons and should also consider establishing a central, authoritative agency responsible for combating human trafficking, by systematically and vigorously investigating and prosecuting perpetrators. In addition, the State party should guarantee adequate protection, reparation and compensation to victims, including rehabilitation.

Statelessness

27. The Committee is concerned about the situation of Khmer Krom and ethnic Vietnamese people who have been residing in Cambodia for generations and who have been left stateless or lack Cambodian identity documents. The Committee is also concerned about the insufficient safeguards to ensure that children born in Cambodia who would otherwise be stateless acquire Cambodian nationality and have access to identity documents (arts. 2, 24 and 26).

The State party should take all measures necessary to ensure the full enjoyment of Covenant rights by all residents, including stateless persons. It should also facilitate access to identification documentation. In addition, the State party should guarantee the right of stateless children who were born in the territory of Cambodia to stateless parents to acquire a nationality.

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography

Concluding Observations, (26 February 2015), [CRC/C/OPAC/KHM/CO/1](#)

Measures adopted to prevent offences prohibited under the Optional Protocol

16. While noting that some measures have been taken in order to prevent offences under the Optional Protocol, including the establishment of village and commune safety policies, as well as the development of a subdecree and code of conduct on child protection and the establishment of a national committee on child protection, the Committee deeply regrets that preventive measures regarding offences prohibited by the Optional Protocol remain inadequate and fragmentary. It is concerned about:

- (a) The underlying root causes and contributing factors that lead to the vulnerability of children to the offences under the Optional Protocol, such as poverty and unemployment, which are not sufficiently addressed;
- (b) The inadequate mechanisms in place to detect, identify and monitor children at particular risk of becoming victims of the offences under the Optional Protocol, especially children in street situations, migrant and unaccompanied children, as well as children who are left behind when their parents migrate to work;
- (c) The low rates of birth registration in the State party, a factor that facilitates the commission of offences under the Optional Protocol;
- (d) The extent and prevalence of sexual exploitation of children, in particular in entertainment venues;

- (e) The limited measures taken by the State party to prevent the exploitation of children in forced labour, especially in domestic work and hazardous labour, such as in the informal manufacturing, mining, agricultural and services sectors;
- (f) The lack of information provided by the State party on measures taken to protect children from unlawful adoptions, as well as delays in enacting sub-decrees under the Law on Intercountry Adoption;
- (g) Insufficient measures to tackle the engagement of children in pornography, which is widely available online through information and communication technologies, as well as the involvement of large numbers of children in prostitution.

17. With reference to its previous concluding observations on child labour (CRC/C/KHM/CO/2-3, para. 68) and sexual exploitation and abuse (para. 72), the Committee recommends that the State party:

- (a) Adopt a comprehensive and targeted approach that addresses the relevant root causes and risk factors of offences under the Optional Protocol, including poverty, unemployment and seasonal employment, and that targets children in the most vulnerable situations who are at risk of becoming victims of the offences under the Optional Protocol;
- (b) Pursue its efforts to ensure birth registration of all children, as recommended in other concluding observations of the Committee (CRC/C/KHM/CO/2-3, para. 37 and CRC/C/OPAC/KHM/CO/1, para. 14);
- (c) Strengthen the enforcement of existing laws as well as administrative measures, social policies and programmes aimed at prevention and increase the number of labour inspections, including with a view to protecting children working in the informal sector, in hazardous work places and in entertainment venues;
- (d) Ensure that all cases of adoption are in full conformity with the Optional Protocol and with the principles and provisions of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, by adopting pending implementing decrees to the Law on Intercountry Adoption, by developing and implementing a programme to prevent illegal adoptions and by regulating the licensing and monitoring of agencies, as well as the fees they charge for their various services;
- (e) Implement targeted campaigns and specialized educational programmes to combat child pornography and child prostitution, to address the risks associated with the Internet by providing education on Internet safety to children, and to tackle the issue of demand for children for purposes of sexual exploitation.

Optional Protocol to the convention on the Rights of the Child on the involvement of children in armed conflict

Concluding Observations, (23 February 2015), [CRC/C/OPSC/KHM/CO/1](#)

Age verification procedures

14. While noting the efforts the State party has conducted nationwide to ensure birth registration, the Committee remains concerned about:

- (a) The low level of birth registration, in particular in remote areas and villages and among children in street situations;
- (b) Impediments that prevent the effective implementation of the birth registration campaign, such as a 30-day time limit to register a child after his/her birth, sanctions for late registration and the requirement of an address;
- (c) Gaps in the implementation of existing recruitment procedures in armed forces and in military schools, due to the lack of measures in place to detect forged documents, which may have an impact on the effectiveness of age verification procedures.

15. The Committee calls on the State party to:

- (a) Continue and strengthen its efforts to ensure the birth registration of all children, including through mobile units, as a measure to prevent the recruitment of children, including children living in remote areas and villages and children in street situations, as recommended by the Committee in its previous concluding observations (CRC/C/KHM/CO/2-3, para. 37);
- (b) Remove all impediments with a view to facilitating universal access to birth registration procedures;
- (c) Ensure that existing recruitment procedures are strictly adhered to by all military and police institutions that recruit professional or contracted personnel and by all military schools, and establish measures to detect the use of forged documents by persons under the age of 18.

Measures adopted to protect the rights of child victims

22. The Committee regrets the lack of information about mechanisms in place to identify children who may have been recruited or used in hostilities abroad, particularly among asylum seeking, refugee, migrant and unaccompanied children present within its jurisdiction.

23. The Committee recommends that the State party put in place mechanisms and procedures to ensure the full protection of asylum seeking, refugee, migrant and unaccompanied children under the State party's jurisdiction, by identifying at an early stage children who may have been involved in armed conflict and ensuring that personnel responsible for such identification are trained on children's rights, child protection and child-friendly interviewing skills. The Committee further recommends that the State party ensure that such children are provided with adequate assistance for their physical and psychological recovery and their social reintegration.

III. Special Procedures Mandate Holders

Report of the Special Rapporteur on the situation of human rights in Cambodia

Addendum: Mission to Cambodia (05 September 2016) [A/HRC/33/62](#)

Conclusions and recommendations

61. The Special Rapporteur recommends that the Government of Cambodia:

- (g) Strengthen judicial mechanisms protecting victims of domestic violence and trafficking, intensifying efforts to train judicial officers and law enforcement officials on the law on the prevention of domestic violence to ensure effective prosecutions rather than recourse to mediation; and ensure that mediation and informal mechanisms are used only for non-criminal cases;
- (h) Train more women to work with victims of violence and trafficking, and develop safe locations for women who are victims of violence and trafficking and programmes to ensure recovery and reintegration into society;
- (i) Apply the relevant provisions of the Criminal Code when women are depicted in a graphic manner, in particular victims of sexual assault and violence;