

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

Viet Nam

I. BACKGROUND INFORMATION

The State of the Socialist Republic of Vietnam (“Viet Nam”) is not a party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the 1951 Convention). In addition, Viet Nam is not a party to either the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) or the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*). However, Viet Nam has ratified several international human rights instruments with relevance for the protection of refugees, asylum-seekers and stateless persons including: the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the *CAT*); the *International Covenant on Civil and Political Rights* (the *ICCPR*); the *International Covenant on Economic, Social and Cultural Rights* (the *ICESCR*); the *International Convention on the Elimination of All Forms of Racial Discrimination* (the *CERD*); the *Convention on the Elimination of All Forms of Discrimination against Women* (the *CEDAW*); the *Convention on the Rights of Persons with Disability* (the *CRPD*); and the *Convention on the Rights of the Child* (the *CRC*).

As of December 2017, the Government of Viet Nam reported that the number of registered stateless persons and persons of undetermined nationality increased to 29,522 from 11,000 at the end of 2016. This progress is due (in part) to activities undertaken by the government to address statelessness, including identification of stateless persons. Statistics indicate that there are 18,892 persons of undetermined nationality who reside in border areas and 10,630 persons who are stateless. The stateless persons includes former Cambodian refugees and women who in the past married foreign men and renounced their Vietnamese nationality to acquire the husband’s nationality, but hitherto returned to Viet Nam following failed marriage migration. With respect to the number of asylum requests, the Government indicated in its third periodic report to the UN Human Rights Committee that there have not been any asylum applications in Viet Nam since 2002 (CCPR/C/VNM/3).

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

Positive developments linked to 2nd cycle UPR recommendations

Linked to 2nd cycle UPR recommendation no.143.13: “Ratify CAT as soon as possible” (Poland, Switzerland) **and recommendation no. 143.14:** “Quickly ratify and implement CAT.” (United States of America)

UNHCR commends Viet Nam on ratifying the *CAT* on 28 November 2014. Viet Nam submitted the first report on *CAT* implementation in July 2017 (CAT/C/VNM/1). In addition,

Viet Nam is studying the possibility of joining other international instruments, including the *1951 Convention* and the *1954 Convention*.

Additional achievements and positive developments

Viet Nam should be congratulated for continuing to improve its civil registration system to allow individuals to be registered soon after birth. The *Law on Civil Status of Viet Nam* also affirms that Vietnamese citizens, stateless persons permanently residing in Viet Nam, or foreign citizens permanently residing in Viet Nam have the right to register their civil status, including the right to have their birth registered.

UNHCR welcomes the efforts undertaken by Viet Nam to implement the revised *Law on Vietnamese Nationality* and make progress towards facilitating the naturalization of former Cambodian refugees and reducing statelessness among women formerly married to foreigners (CEDAW/C/VNM/CO/7-8). The Government of Viet Nam, with the support of UNHCR, is reviewing the content and application of the current nationality law with a view to considering further legislative reform. The Government continues to implement a bilateral agreement and collaborate with its neighboring countries to realize the right to nationality and solve civil registration-related issues for stateless persons and persons of undetermined nationality who reside in the border areas. These ongoing efforts are significant contributions to ending statelessness in Viet Nam.

Regionally, Viet Nam is leading a project of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) on ‘promoting inclusion and sustainable development in building the ASEAN Community through ensuring the recognition of the legal identity of all women and children in ASEAN’. The project aims at contributing to the enhancement of the ACWC’s capacity in areas of legal identity, including through birth registration, issuing documentation and establishing nationality, and to promote the implementation of the relevant provisions in the *CEDAW* and *CRC*.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 2nd cycle UPR recommendations

Issue 1: Accession to the Refugee and Statelessness Conventions and development of asylum laws and procedures

Linked to 2nd cycle UPR recommendation no. 143.1: “Continue efforts to ratify international human rights instruments to which Viet Nam is not yet a party.” (Nicaragua, Albania, Azerbaijan, Niger)

Viet Nam is not a signatory to the *1951 Convention* or its *1967 Protocol*. Viet Nam’s domestic legal framework does not include laws or policies on refugees or asylum-seekers and the country has not put in place a refugee status determination procedure. Accession to the *1951 Convention* and its domestication would be a tangible proof of the country’s commitment to protect the rights of refugees as expressed during the adoption of the *New York Declaration for Refugees and Migrants* and the *Comprehensive Refugee Response Framework*.

Viet Nam is also not signatory to the *1954 Convention Relating to the Status of Stateless Persons* or the *1961 Convention on the Prevention and Reduction of Statelessness*. Its ongoing review of its citizenship law provides an opportunity for the state to bring the law into compliance with international standards. Viet Nam is already providing leadership on prevention and reduction of statelessness in the region.

Recommendations:

UNHCR recommends that the Government of Viet Nam:

- (a) Accede to the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*;
- (b) Accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*;
- (c) Establish domestic refugee legislation and administrative policies that will ensure the country is in full compliance with international standards of treatment and protection of refugees; and
- (d) Accept UNHCR's technical support in drafting national refugee legislation and developing a national refugee status determination procedure.

Additional protection challenges

Issue 2: Reform of the nationality law to more effectively prevent and reduce statelessness

The *2008 Law on Vietnamese Nationality* does not afford sufficient protection against the risk of statelessness, particularly among children. Particular protection gaps arise from the fact that this instrument does not recognize dual nationality.¹ This becomes problematic for children whose either parent is a foreign national. Parents must express their agreement in writing on selecting the Vietnamese nationality at the moment of registration of the child's birth. If the child is born abroad where either parent is a Vietnamese citizen and the parents do not reach agreement on conferring the Vietnamese nationality onto the child, then the child is at risk of becoming stateless.

The nationality law contains a provision that allows children born in Viet Nam to stateless parents (both) or to a stateless mother and an unknown father to have Vietnamese nationality.² While positive, this provision does not encompass cases where the stateless parents or stateless mother do not have a permanent residence in Viet Nam and/ or where the foreign national parents cannot confer nationality on the children. This could be particularly problematic where the parents are stateless asylum seekers or refugees.

The law also has a provision that provides an opportunity for stateless persons who do not have adequate personal identification papers, but have been permanently residing in Vietnam to naturalize.³ However, the 20-year residence requirement is too burdensome, and may not effectively contribute to the Government's efforts to reduce statelessness.

Recommendations

UNHCR recommends that Viet Nam:

- (a) Undertake a thorough analysis of its legal framework to identify provisions that lead to statelessness, with a view to implementing reforms to guarantee the right to a

¹ Order No. 22/2008/L-CTN of 28 November 2008, on the promulgation of The *Law on Vietnamese Nationality*, available here: <http://www.refworld.org/docid/4ac49b132.html>. Article 4 of the *Law on Vietnamese Nationality* stipulates: "The State of the Socialist Republic of Vietnam recognizes that Vietnamese citizens have a single nationality, Vietnamese nationality, unless it is otherwise provided for by this Law."

² The *Law on Vietnamese Nationality* (2008) stipulates in Article 17:

"1. A child born in the Vietnamese territory whose parents, at the time of his/her birth, are both stateless persons with a permanent residence in Vietnam has Vietnamese nationality.

2. A child born in the Vietnamese territory whose mother, at the time of his/her birth, is a stateless person with a permanent residence in Vietnam and whose father is unknown, has Vietnamese nationality."

³ Article 22, the *Law on Vietnamese Nationality* (2008) stipulates: "Stateless persons who do not have adequate personal identification papers but have been stably residing in the Vietnamese territory for 20 years or more by the effective date of this Law and obey Vietnam's Constitution and laws will be permitted for naturalization in Vietnam under the order, procedures and dossiers specified by the Government."

nationality, and to provide safeguards to prevent statelessness occurring amongst children;

- (b) Continue resolving cases of statelessness on its territory in cooperation with UNHCR through improved and expedited systems of registration and processing; and
- (c) Continue collaborating with UNHCR to enhance Vietnam's technical capacity to identify and protect stateless persons; and to reduce and prevent statelessness.

UNHCR
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ANNEX

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review and Concluding Observations from UN Treaty Bodies

VIET NAM

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations and UN Treaty Monitoring Bodies' Concluding Observations relating to issues of interest and persons of concern to UNHCR with regards to VIET NAM.

I. Universal Periodic Review (Second Cycle – 2014)

Recommendation ⁴	Recommending State/s	Position ⁵
Ratification of international instruments		
143.13. Ratify CAT as soon as possible.	Poland, Switzerland	Supported
143.14. Quickly ratify and implement CAT.	United States of America	Supported
Trafficking in persons		
143.122. Pursue efforts to combat human trafficking, especially of women.	Yemen	Supported
143.123. Continue to be actively engaged in regional human rights bodies, particularly those concerning the promotion and protection of the rights of women and combating trafficking in persons.	Philippines	Supported
143.124. Undertake measures targeted at vulnerable groups, particularly children, in order to prevent trafficking in human beings for labour and sexual exploitation.	Republic of Moldova	Supported
143.125. Intensify action against child prostitution, child trafficking and the use of children in the sex trade, in accordance with the 2011–2015 action plan against prostitution.	Mexico	Supported
143.126. Enhance support for the reintegration of victims of trafficking, especially women and children.	India	Supported
Minority Protection		
143.211. Undertake awareness-raising campaigns to change the mind-set regarding persons belonging to ethnic minorities, and remedy the lack of a legislative framework designed to guarantee non-discrimination.	Congo	Supported
143.214. Respect the rights of ethnic and religious minorities and take the necessary measures to prevent and halt persecution, forced eviction and confiscation of their property.	Mexico	Supported

II. Treaty Bodies

Committee on the Elimination of Discrimination against Women

Concluding observations, (29 July 2015) [CEDAW/C/VNM/CO/7-8](#)

⁴ All recommendations made to Viet Nam during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of Viet Nam" (2 April 2014), A/HRC/26/6, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/VNIndex.aspx>.

⁵ Viet Nam's views and replies, in English, can be found in: *Addendum* (20 June 2014), A/HRC/26/6/Add.1, available at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/VNIndex.aspx>.

Trafficking and exploitation of prostitution

20. The Committee welcomes the various efforts made by the State party to combat trafficking in women and girls. However, it notes with concern at:

- (a) The fact that State party remains a source country for internal and cross-border trafficking in women and children for purposes of sexual and labour exploitation as well as fraudulent internationally brokered marriage;
- (b) The increase in the number of trafficked girls and reports of trafficking in new born babies;
- (c) The very low conviction rates under the Anti-Trafficking Law;
- (d) Stigmatization and administrative penalties imposed on women and girls in prostitution; and
- (e) The lack of effective national mechanisms for the referral of victims of trafficking to rehabilitation and reintegration assistance.

21. The Committee recommends that the State party:

- (a) **Carry out a study to investigate the scope, extent and root causes of trafficking in women and girls for sexual and labour exploitation, both within the country and abroad, including through the systematic collection and analysis of data on sexual and labour exploitation of women and girls;**
- (b) **Take effective measures to eliminate the root causes of trafficking and prostitution, including poverty, in order to eliminate vulnerability of women and girls to such exploitation;**
- (c) **Review the Law on Administrative Violations Sanctions (2012) and the Law on Administrative Penalties (2012), with a view to decriminalizing women in prostitution;**
- (d) **Take measures to prevent and eliminate child prostitution and to ensure that perpetrators of child prostitution are prosecuted and adequately punished and that girls in prostitution are not treated as offenders but as victims;**
- (e) **Develop effective referral mechanisms and ensure that victims of trafficking are swiftly identified, fully informed of available services and their entitlements, and adequately protected and supported, including through rehabilitation and social reintegration;**
- (f) **Raise awareness among women at risk of trafficking and protect them by regulating and inspecting fraudulent internationally brokered marriages and strengthening bilateral cooperation to reduce vulnerabilities of women married to foreign nationals;**
- (g) **Enhance international, regional and bilateral cooperation to prevent trafficking and harmonize legal procedures aimed at the prosecution and punishment of traffickers.**

Refugee, asylum-seeking and stateless women

38. The Committee welcomes that the State party facilitated the naturalization of former Cambodian refugees received in 1975-1980, including many women. It also welcomes the significant reduction of stateless women under the Law on Vietnamese Nationality, as amended in 2014. However, the Committee is concerned that:

- (a) There is no procedure in place for granting asylum or determining refugee status despite the constitutional guarantee of the right to asylum;
- (b) There are 800 stateless women who lost their Vietnamese nationality in failed attempts to obtain another nationality.

39. In line with its general recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, the Committee recommends that the State party:

- (a) **Adopt legislation and effective procedures for granting asylum and refugee status and to provide protection on grounds of gender-based persecution,;**
- (b) **Continue facilitating the reduction of statelessness, in particular the reacquisition of Vietnamese nationality by women who became stateless by renouncing their Vietnamese nationality;**
- (c) **Expedite its accession to the 1951 Convention Relating to the Status of Refugees and the 1967 Additional Protocol, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

Committee on Economic, Social and Cultural Rights

Concluding observations, (15 December 2014), [E/C.12/VNM/CO/2-4](#)

Stateless children

26. The Committee is concerned that children of returned marriage immigrants whose legal status is not resolved remain stateless, and thus cannot enrol in schools or receive other social services (art. 10).

The Committee recommends that the State party recognize and register children of marriage immigrants who are currently stateless, and ensure that they receive the necessary education, health care and other social services.