**Submission by the United Nations High Commissioner for Refugees**

**For the Office of the High Commissioner for Human Rights' Compilation Report –**

**Universal Periodic Review:**

# SOCIALIST REPUBLIC OF VIET NAM

## I. BACKGROUND INFORMATION

The Socialist Republic of Viet Nam (hereinafter Viet Nam) is a party to almost all core international human rights treaties. Viet Nam is not, however, a State party to the *1951 Convention relating the Status of Refugees* and its *1967 Protocol ("1951 Convention"),* the *1954 Convention relating to the Status of Stateless Persons* ("1954 Convention") nor the *1961 Convention on the Reduction of Statelessness* ("1961 Convention").

The Government of Viet Nam and UNHCR are working in partnership to address the protection needs of several populations of concern to UNHCR. At the end of 2010, UNHCR reported that there were 10,200 stateless persons and 1,928 refugees in Viet Nam. In cooperation with the Government UNHCR has been monitoring and facilitating the safe repatriation and reintegration of Montagnard returnees in the Central Highlands of Viet Nam. Viet Nam is also taking active and effective measures to resolve the vulnerability and lack of status for several stateless populations.

## II. ACHIEVEMENTS AND BEST PRACTICES

### *1. Local Integration for refugee populations*

UNHCR appreciates the work of Viet Nam to ensure that former Cambodian refugees who have already integrated into the society are able to acquire Vietnamese citizenship. As a result, by the end of 2012, all 2,357 persons (residing in four camps which were set up by UNHCR in the early 1980s) have been naturalized. Furthermore, 7,200 former Cambodian refugees who are currently living in Ho Chi Minh City are in the process of naturalization. UNHCR welcomes these achievements, which have been made possible through the use of a simplified naturalization procedure introduced by the revised Law on Vietnamese Nationality in 2008.

### *2. Birth Registration*

Persons are often at risk of statelessness, because they have difficulties proving they possess links to a State. Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such it serves as a key form of proof of whether a person has acquired nationality by birth or by descent. UNHCR echoes the observations of the Committee on the Rights of the Child, which welcomes "the significant increase of birth registration rates in recent years due to multiple legislative and administrative measures."[1]

In particular, UNHCR welcomes "Decree No.158 on Civil Status Registration and Management, 2005" which ensures that all children born in Viet Nam, regardless of their status, are entitled to have their births registered. It also allows for children born abroad to Vietnamese parents who return to Viet Nam, to have their births registered. The Decree is supplemented by the Civil Code and the Law on Protection, Care and Education for Children, as main legislative instrument, which was designed to comply with the Convention on the Rights of the Child. In addition, birth registration in Viet Nam is provided free of charge.[2]

UNHCR commends Viet Nam for its efforts to continue a national campaign on birth registration along with mobilizing the birth registration system, raising the awareness, and building capacity of the local justice officials on birth registration.[3]

### *3. Nationality and Statelessness*

UNHCR commends Viet Nam for codifying a definition of a "stateless person" in its 2008 Law on Vietnamese Nationality, which is generally consistent with the definition found in the *1954 Convention on the Status of Stateless Persons*. Viet Nam's adoption of a clear legal definition of statelessness is complemented by related provisions establishing that stateless persons and foreign nationals may apply for naturalization after completing at least five years of permanent residence in the country and fulfillment of prescribed conditions. Establishing a procedure for stateless persons to acquire nationality is a key step to reducing statelessness and may ensure that children and successive generations do not inherit statelessness as a condition of being born to stateless parents.

The Law on Vietnamese Nationality 2008 represents a historic accomplishment in terms of the reduction of statelessness. It also assures that subsequent generations of children born to former refugees from Cambodia can enjoy the right to a nationality and the protection that comes with it.

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1 Committee on the Rights of the Child, 60th session, 15 June 2012, CRC/C/VNM/CO/3-4, para.37, available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_VNM_CO_3-4.pdf

2 Directive 24/2007/CT-TTg of the Prime Minister on Fees for Public Services.

3 Presentation on "Birth Registration for Children in Viet Nam" by Mr. Dang Hoa Nam, Deputy Director of Department of Child Protection and Care, Ministry of Labour, Invalids and Social Affairs (MOLISA) in the Regional Workshop on Good Practices in Birth Registration jointly hosted by AICHR and UNHCR on 7 December 2012, Bangkok, Thailand.

The provisions of Law on Vietnamese Nationality 2008 appear to meet a number of key international standards in respect of the prevention and reduction of statelessness. For example, the law aims to create conditions for children born in the territory to acquire a nationality and for stateless persons permanently residing in Viet Nam to acquire nationality (Article 8). The law provides that children who were born in Viet Nam to stateless parents with permanent residence in Viet Nam or children who were born in Viet Nam to a stateless mother with permanent residence and an unknown father acquire Vietnamese nationality (Article 17). Abandoned newborns and children found in Viet Nam whose parents are unknown also automatically acquire Vietnamese nationality (Article 18). Vietnamese women and men enjoy equal treatment as regards acquisition and retention of nationality as a result of marriage, termination of marriage or change of nationality of their spouse (Article 19).

Under the 2008 Law, there is a provision to facilitate naturalization for stateless persons who do not have adequate personal identification papers but have been residing in the Vietnamese territory for 20 years or more by the effective date of this Law (Article 22). This facilitated naturalization procedure has been applied in practice to resolve the protracted statelessness situation affecting thousands of former Cambodian refugees who have resided in Viet Nam for decades. By the end of 2011, more than 2,300 persons from this population had either naturalized or were in the process of becoming naturalized, and UNHCR anticipates that Vietnam will facilitate the naturalization of the remaining population in 2013.

In addition, the law provides that any person who has renounced Vietnamese nationality for the purpose of acquiring foreign nationality, but who fails to obtain that nationality can reacquire Vietnamese nationality (Article 23). In this respect, UNHCR commends Viet Nam for addressing statelessness among former Vietnamese women, who had renounced Vietnamese nationality in order to acquire foreign nationality of their husband, but failed to obtain the new nationality and became stateless. As of 2012, it was reported that 2,000 women who had returned to Viet Nam successfully reacquired Vietnamese nationality.

UNHCR welcomes the initiative of Viet Nam to undertake a survey of "stateless people who are unidentified to any nationality" in 2012. Based on the survey result, around 10,000 persons who have been residing in border provinces of Viet Nam for a long period of time were identified. UNHCR acknowledges Viet Nam's further commitment to addressing statelessness amongst this population by facilitating naturalization in accordance with Article 22 of the 2008 Law on Vietnamese Nationality.

## III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

### Issue 1: <u>Accession to the 1951 Refugee Convention and its 1967 Protocol</u>

Accession to the 1951 Refugee Convention and establishment of a national legal framework would provide a clearer basis for the Government of Viet Nam to provide refugees with international protection. This would formally recognize Viet Nam's solidarity towards refugees and underline the importance attached by Viet Nam to cooperate with the international

community in efforts to finding solutions for refugees. It would also allow the Government to deal with issues related to asylum in a structured manner, thus complementing Viet Nam's obligations under international human rights instruments, as well as provisions in its Constitution.

Accession to the *1951 Refugee Convention* and its *1967 Protocol* greatly facilitates UNHCR's task of mobilizing international support to address refugee situations that may arise in any country. UNHCR believes that it is necessary to broaden the base of State support for these international refugee instruments, ensuring that the protection provided to refugees is more universal in scope, and the burdens and responsibilities of governments more equitably distributed and consistently applied.

In this context, UNHCR welcomes the recommendations made by the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination (CERD) which both encouraged Viet Nam in 2012 to accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.[4] The CERD moreover recommended Viet Nam to "*establish national asylum legislation as well as procedures related to protection of refugees and asylum-seekers in line with international human rights standards.*"[5]

The only legal basis for the country's responsibility for providing refugees international protection is found in Article 82 of its Constitution, which states that "Foreign nationals who are persecuted for taking part in the struggle for freedom and national independence, for socialism, democracy and peace, or for engaging in scientific pursuits may be considered for granting of asylum by the Socialist Republic of Viet Nam." However, the Government does not have any national asylum system or status determination procedure in place. In recent years, asylum-seekers have contacted UNHCR in Viet Nam to seek protection. In the period of 1975-1980, when Viet Nam hosted hundreds of thousands of Cambodians in need of international protection, the Government did not invoke the constitutional provision, and instead they were recognized by UNHCR as refugees under its mandate.

**Recommendations:**
UNHCR recommends that the Government of Viet Nam:

- Accede to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*, and consider the passage of domestic refugee legislation and/or administrative policies, which will ensure that the country is in full compliance with international standards of treatment related to refugees, including the right to work.

[4] Committee on the Rights of the Child, 60th session, 15 June 2012, CRC/C/VNM/CO/3-4, para.79, available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_VNM_CO_3-4.pdf; and
UN Committee on the Elimination of Racial Discrimination, 80th Session, 9 March 2012, CERD/C/VNM/CO/10-14, para. 18, available at: http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.VNM.CO.10-14.pdf

[5] UN Committee on the Elimination of Racial Discrimination, 80th Session, 9 March 2012, CERD/C/VNM/CO/10-14, para. 18, available at: http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.VNM.CO.10-14.pdf

- Accept UNHCR's technical support in drafting national refugee legislation, capacity building for Government officials and assistance in the development of a national refugee status determination procedure.
- Accept UNHCR's training to relevant officials to integrate 'good practices' and international standards of asylum/refugee protection into operational guidelines and procedures.

**Issue 2: <u>Prevention of Statelessness and the Protection of Stateless Persons</u>**

Viet Nam is neither a State Party to the *1954 Convention relating to the Status of Stateless Persons* nor the *1961 Convention on the Reduction of Statelessness*. During the Universal Periodic Review (5th Session) in 2009, Viet Nam undertook to consider accession to the *1954 Convention*. Accession to the Statelessness Conventions would establish a stronger framework to prevent and reduce statelessness and avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment for stateless persons.

The *1954 Convention relating to the Status of Stateless Persons* ensures minimum standards of treatment for stateless persons in respect to a number of fundamental rights. These include, but are not limited to, the right to education, employment, housing and public relief. Importantly, the 1954 Convention also guarantees stateless persons a right to identity and travel documents and to administrative assistance.

The *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties that address the right to a nationality. An increase in the number of State parties to the two Statelessness Conventions is essential to strengthening international efforts to prevent and reduce statelessness and ensuring full enjoyment of a number of these rights.

UNHCR welcomes the recommendations made by the Committee on the Rights of the Child and the Committee on the Elimination of Racial Discrimination (CERD) following their review of Viet Nam in 2012, which both encouraged the Government to accede to the *1954 Convention relating to the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*.[6]

**Recommendations:**
UNHCR recommends that the Government of Viet Nam:

[6] Committee on the Rights of the Child, 60th session, 15 June 2012, CRC/C/VNM/CO/3-4, para.79, available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC_C_VNM_CO_3-4.pdf; and
UN Committee on the Elimination of Racial Discrimination, 80th Session, 9 March 2012, CERD/C/VNM/CO/10-14, para. 18, available at: http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.VNM.CO.10-14.pdf

- Accede to the *1954 Convention relating to the Status of Stateless Persons* as well as taking steps to further ensure that national legislation protects stateless persons in line with the provisions of Convention.
- Accede to the *1961 Convention on Reduction of Statelessness* taking into account that Viet Nam's Nationality Law complies with a significant number of the 1961 Convention obligations and other international law standards relating to the realization of the right to a nationality.

**Issue 3: <u>Access to Birth Registration</u>**

Birth registration helps to prevent statelessness by establishing a legal record of where a child was born and who his or her parents are. As such it serves as a key form of proof of whether a person has acquired nationality by birth or by descent. Failure to document a person's legal existence can prevent the effective enjoyment of a range of human rights, including access to education and health care.

As noted above, Viet Nam has taken steps to improve the rates of birth registration in the country. According to statistics of the General Statistic Office in 2011, birth registration of Vietnamese children under 5 reached over 95%. However, UNHCR is concerned that in practice, children in the Northern mountainous areas and in the Central Highlands, as well as street children in urban areas of Viet Nam are still often unable to have their birth registered.

Despite achievements and on-going efforts by Viet Nam more remains to be done to ensure a 100% birth registration rate.

**Recommendation:**

UNHCR recommends that the Government of Viet Nam:

- Continue to take steps to ensure that births of all children are registered without discrimination, including reviewing the current legislative framework and identifying any gaps that could be filled by the adoption of regional good practices.

**Human Rights Liaison Unit**
**Division of International Protection**
**UNHCR**
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**Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies and Reports from Special Procedures**

**Universal Periodic Review:**

# Viet Nam

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and Special Procedures' reports relating to issues of interest and persons of concern to UNHCR with regards to Viet Nam.

## I. Treaty Bodies

**Committee on the Rights of the Child**
CRC/C/VNM//CO/3-4, 60th Session
15 June 2012

**Birth Registration**
37. The Committee is aware of the significant increase of birth registration rates in recent years due to multiple legislative and administrative measures adopted by the State party. These include the legal recognition of the right to birth registration in the 2004 Law on Protection, Care and Education of Children, as well as the abolishment of the birth registration fee as of 2007. However, the Committee expresses its concern at the persisting geographical and ethnic disparities in birth registration rates whereby the lowest rate remains in the two poorest regions, the North West and Central Highlands. The Committee is further concerned that parents, particularly in remote areas, are not always aware of birth registration requirements and of the importance attached to birth registration.
38. **The Committee, recalling its previous recommendation (CRC/C/15/Add.200, 2003 para. 32), recommends that the State party continue and strengthen its efforts to secure the registration at birth of all children, giving particular attention to children living in rural and mountainous areas, and undertake awareness-raising campaigns on the right of all children to be registered at birth, regardless of social and ethnic background and the resident status of parents.**

**Sexual exploitation and trafficking**
70. The Committee welcomes the various legislation and administrative measures taken with a view to combating child commercial sexual exploitation and trafficking. However, it remains concerned about the rise in child prostitution; the rise in the number of cases of child trafficking including, but not only, for prostitution purposes; and the increasing number of children involved in commercial sexual activity, mainly due to poverty related reasons. The Committee is further concerned that children who are sexually exploited are likely to be treated as criminals by the police; the lack of specific child-friendly reporting procedures; and that some provisions in the Penal Code (including articles 254 to 256 related to child prostitution) refer to children as those below the age of 16 years only.
71. **The Committee strongly recommends that the State party:**

**(a) Increase efforts to combat child prostitution and trafficking, including by adequately implementing the 2011-2015 Action Plan against prostitution, and the 2011-2015 Action Plan against human trafficking;**
**(b) Develop and implement a strategy for the prevention of child sexual exploitation and abuse, focusing on vulnerable groups of children, including street children and children of poor or near poor families;**
**(c) Amend and disseminate administrative and criminal laws to ensure that child sex workers are treated as victims and not as criminals; develop child- friendly reporting procedures and ensure that child victims are aware of these procedures and can access them; and develop rehabilitation and reintegration programs for child victim of sexual exploitation and trafficking, as well as confidential counselling services;**
**(d) Fully harmonize national legislation with the Optional Protocol on the sale of children, child prostitution and child trafficking in order to explicitly criminalize all acts listed in article 3 of the Optional Protocol when committed against all persons below 18, in line with the Committee's recommendation (CRC/C/OPSC/VNM/CO/1, 2006 para 11(a)); and**
**(e) Consider ratifying the United Nations Convention against Transnational Organized Crime and its Supplementing Protocol on Prevention, Suppression and Punishment of trafficking in persons, especially women and children**

79. **The Committee recommends that the State party ratify the core United Nations human rights treaties and the Optional Protocols thereto to which it is not yet a party, in particular, the Optional Protocol to the Convention on the Rights of the Child on a Communication Procedure, the International Convention For the Protection of All Persons from Enforced Disappearance, the Convention on the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, the 1954 Convention relating to the status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. In addition the State party is recommended to ratify the International Labour Organization Convention No. 189 on Decent Work for Domestic Workers (2011).**

**Committee on the Elimination of Racial Discrimination**
CERD/C/VNM/CO/10-14, 80th Session
9 March 2012

18. The Committee is concerned about the lack of legal provision for protection to refugees or asylum seekers as well as reports about the forced repatriation, in collaboration with the governments of neighbouring countries, of members of indigenous peoples and of ethnic minorities seeking refuge. The Committee notes with regret article 91 of the Criminal Code that criminalises for "fleeing abroad or defecting to stay overseas with a view to opposing the people's administration", which is incompatible with article 68 of the Vietnamese Constitution and article 5 of the Convention. (art. 5(d)).
**The Committee recommends that the State party review the current refugee policy with a view to better protecting the right of members of indigenous peoples and of ethnic**

**minorities seeking refuge or asylum, and establish national asylum legislation as well as procedures related to protection of refugees and asylum-seekers in line with international human rights standards. Furthermore, the Committee encourages the State party to consider acceding to the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.**

## II. Special Procedures

**Report of the independent expert on the question of human rights and extreme poverty, Magdalena Sepúlveda Carmona**
Addendum: Mission to Viet Nam
Human Rights Council, 17th Session
A/HRC/17/34/Add.1, 9 May 2011

**Ethnic minorities**

20. The independent expert is particularly concerned about the situation of ethnic minorities in Viet Nam. Although the Government has made considerable efforts and poverty reduction has taken place across all population groups, the situation of ethnic minorities remains critical. While in 1990 only 18 per cent of those living in poverty belonged to ethnic minorities, by 2008 ethnic minorities accounted for almost 56 per cent of this group. While this drastic increase is partly attributable to the upward readjustment of the poverty line, it is nevertheless indicative of the extremely vulnerable situation of ethnic minorities.

21. In Viet Nam there are officially 54 ethnic groups. The majority group, known as the Kinh, represents 85.7 per cent of the population. The main obstacles for minorities are the difficult geographical location and language barriers. Seventy-five per cent of the minority population of Viet Nam lives in rural and remote areas, mainly in the Northern Mountains and the Central Highlands, with poor infrastructure and limited access to health care, education and other Government services. While Vietnamese is the official language in Viet Nam, many minority communities do not interact in Vietnamese and speak their ethnic languages.

22. Recent studies show that the most glaring disparities in income, employment, health coverage, education and access to other Government services have formed along ethnic lines. While overall trends in poverty reduction remain positive, the income gap between the Kinh and the Hoa (which has a relatively large population in comparison with other ethnic groups) and other ethnic minorities is still significant and increasing. In 2008, while Kinh and Hoa households experienced a poverty rate of only 9 per cent, ethnic minorities averaged a 50.3 per cent poverty rate, with rates of over 80 per cent within some groups. The rate of poverty reduction among the ethnic minorities in Viet Nam has also been relatively slower by some margin.

**Internal migrants**

54. While poverty is particularly prevalent in rural Viet Nam, urban areas are facing new challenges, with signs showing an increase in urban poverty. According to recent census data, in the period 2004-2009, roughly 6.6 million people migrated internally in Viet Nam, most of them to growing urban areas. However, official statistics only partially reflect the reality; estimates indicate that the number of migrants left "uncounted" by the census could be up to 16 million. It has been reported that more than 60 per cent of internal migrants work without a formal contract, and thus have no access to social insurance or health insurance. Migrants also frequently work extra hours and have substantially lower earnings than other city residents, with women even more likely to have no contract and to be in the lowest paid group. In addition, internal migrants are less likely to have savings and more than half report unstable income. The dire housing situation of many migrants has been exacerbated by the recent increase in urban living expenses, which has not been matched by an equivalent increase in wages. Although migrants are more susceptible to health risks due to the prevalence of unhygienic and unsafe housing, the likelihood of using a health facility when sick is 19 per cent lower for internal migrants because of a lack of health insurance and low income.

57. It is clear that migrants from rural to urban areas will continue to play a central role in the rapid economic growth of Viet Nam, and their rights and those of their families, especially their rights to an adequate standard of living, education, health and housing, must be guaranteed. The lack of accurate information about urban migrants and of adequate services to respond to this new reality risks exposing an increasingly large group to poverty.

58. The independent expert therefore urges the Government to further assess the situation of all migrants or temporary residents and adopt appropriate measures to immediately remove administrative barriers that render their access to social services difficult. Moreover, if the estimates of uncounted temporary residents are accurate, it is also clear that a speedy expansion of social services in urban areas is required.

**Report of the independent expert on minority issues, Gay McDougall**
Addendum: Mission to Viet Nam
Human Rights Council, 16th Session
A/HRC/16/45/Add.2, 24 January 2011

**97. Persistent allegations of arbitrary detention and mistreatment of detainees, including those from ethnic and religious minorities, are serious concerns that require responses and assurances from the Government that due process and the rule of law are consistently applied in line with international standards and enforced at the national and provincial levels. All those in detention for activities that would, under international standards, constitute the peaceful exercise of their rights should be released immediately.**