

Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report Universal Periodic Review:

KINGDOM OF CAMBODIA

I. BACKGROUND INFORMATION AND CURRENT CONDITIONS

The Kingdom of Cambodia (hereinafter Cambodia) became a State party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol (1951 Convention) in 1992. Cambodia is neither a party to the 1954 Convention relating to the Status of Stateless Persons (1954 Convention) nor to the 1961 Convention on the Reduction of Statelessness (1961 Convention). Cambodia has acceded to a number of human rights treaties, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture, the Convention on the Elimination of Discrimination against Women and the Convention on the Rights of the Child.

On 17 December 2009, Cambodia also adopted new refugee legislation in the form of the Sub-Decree #224 on The Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia. This followed the establishment in 2008 of the Refugee Office, a national institution within the Ministry of Interior's Department of Immigration.

The number of refugees in Cambodia is relatively small; at the end of 2012 there were 77 refugees and 24 asylum-seekers living in Cambodia. Data on the number of stateless persons living in Cambodia is not available.

II. ACHIEVEMENTS AND BEST PRACTICES

1. Adoption of Sub-Decree #224 in 2009

The adoption in late 2009 of Sub-Decree #224, a national law regulating the refugee status determination procedure in Cambodia, was an important development and Cambodia should be commended for its leadership in processing asylum applications. Sub-Decree #224 adopts a definition of a refugee that is generally in line with Article 1A (2) of the 1951 Refugee Convention. A number of concerns with the law are noted below however.

Since the adoption of Sub-Decree #224, Cambodia has registered 62 persons (39 cases) as asylum-seekers.

2. Documentation issued to all recognized refugees

Cambodia has taken an important step in issuing documentation to all recognized refugees in the form of a proclamation letter (the 'Prakas'). The letter serves as a statement to the authorities with whom refugees come into contact, confirming their refugee status and entitlement to remain in Cambodia. The Refugee Office of the Immigration Department also agreed to issue the letter of proclamation to refugees who were recognized as refugees under

UNHCR's Mandate in Cambodia prior to the handover of the status determination procedures to the Government. This recognition provides these refugees with equal recognition before the authorities and ensures their protection.

3. Birth registration

Sub-Decree on Civil Status #103 of December 2000 makes birth registration compulsory. After the adoption of this Sub-Decree, between 2000 and 2010, Cambodia massively increased the proportion of the population with birth certificates by undertaking a birth registration campaign in cooperation with international agencies.

Further, starting in 2011, with the assistance and intervention of the Refugee Office, local authorities have been issuing birth certificates to refugee and asylum-seeking children who were born in Cambodia. This has included retroactive birth-registration for children born several years prior to the adoption of the Sub-Decree #224, but would now fall under the refugee definition of Sub-Decree #224.

UNHCR also welcomes the multi-stakeholder comprehensive assessment of the Civil Registration and Vital Statistics system, which begun in 2012, and Cambodia's active participation at the Regional Workshop on Good Practices in Birth Registration jointly hosted by the ASEAN Intergovernmental Commission on Human Rights and UNHCR in December 2012.

Birth registration is essential in ensuring the right of every child to acquire a nationality, by forming an important form of proof of the link between the individual and the State and thereby serves to prevent statelessness. UNHCR echoes the comments of the Committee on the Rights of the Child, which welcomed "Sub-Decree on Civil Status No. 103 of December 2000 which makes birth registration compulsory and the significant achievements of the State party to ensure countrywide free birth registration."

4. Education

In terms of education, Cambodia has responded to individual requests to facilitate access to education for refugee and asylum-seeking children.

5. Working relationship with UNHCR

Cambodia has made great efforts to meet its obligations under Article 35 of the 1951 Refugee Convention, which requires cooperation and information sharing with UNHCR in the exercise of its mandate.² Specifically, the Cambodian authorities have provided UNHCR with statistical updates on refugees, asylum-seekers and other persons of concern, as well as providing UNHCR with full access to Cambodia's refugee status determination procedures, including access to interviews.

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¹ Committee on the Rights of the Child, 57th Session, 20 June 2011, CRC/C/KHM/CO/2, para. 36, available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.KHM.CO.2.doc

² Article 35 of the Refugee Convention, titled "Co-operation of the National Authorities with the United Nations", obliges State Parties in Article 35(1) to "undertake to co-operate with the [UNHCR] in the exercise of its functions, and ... in particular facilitate its duty of supervising the application of the provisions of [the] Convention." Article 35(2) states that State Parties must "undertake to provide [UNHCR] ... with information and statistical data concerning: (a) the condition of refugees, (b) the implementation of this Convention, and (c) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees."

UNHCR commends Cambodia for implementing recommendation 90 of its first Universal Periodic Review.³

6. Nationality and Statelessness

The provisions of Cambodia's Law on Nationality (1996) appear to meet a number of key international standards with respect to the prevention and reduction of statelessness. For example, foundlings in Cambodia can acquire nationality; renunciation of nationality is not permitted, if it results in statelessness; and nationality cannot be revoked on the basis of a Cambodian national's long-term residency abroad. In addition, the provisions of the law comply with international standards in that they ensure gender equality with respect to the acquisition, change and retention of nationality.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: The principle of non-refoulement

On 19 December 2009, contrary to its obligations under international law, in particular Article 33 of the *1951 Refugee Convention*, Cambodia *refouled* 20 Uighur asylum-seekers. This group was forcibly deported to China just days after Cambodia adopted Sub-Decree #224 on 17 December 2009.

It is worth noting that the Committee Against Torture also expressed concern "[...]at the absence of any legal provisions that would explicitly prohibit the expulsion, refoulement or extradition of a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee is further concerned that numerous individuals have not been afforded the full protection provided for by article 3 of the Convention in cases of expulsion, return or deportation." The Committee recommended that "[t]he State party should [...] formulate and adopt legal provisions to implement article 3 of the Convention into its domestic law. Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment."

This concern was also expressed by the Committee on the Rights of the Child, which expressed concern over the "forced repatriation to China of twenty Uighur asylum-seekers, including two children in 2009 [...]" and urged Cambodia to "[...] uphold the principle of non-refoulement in accordance with international refugee and human rights law, including the Convention."

³ Human Rights Council, Report of the Working Group on the Universal Periodic Review, Cambodia, 13th Session, 04 January 2010, para. 82(90), stating "continue to cooperate with the United Nations and other international organizations to strengthen human rights in Cambodia (Lao People's Democratic Republic); elaborate an effective mechanism to facilitate cooperation with the relevant institutions of the United Nations (Hungary)," available at:

http://lib.ohchr.org/HRBodies/UPR/Documents/Session6/KH/A_HRC_13_4_KHM_E.pdf

⁴ Committee against Torture, 45th Session, 20 January 2011, CAT/C/KHM/CO/2, para.24, available at: http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.KHM.CO.2_en.pdf

⁶ Committee on the Rights of the Child, 57th Session, 20 June 2011, CRC/C/KHM/CO/2, para. 75, available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.KHM.CO.2.doc

Recommendation:

• Uphold the principle of *non-refoulement* in accordance with international refugee and human rights law, including the 1951 Refugee Convention.

Issue 2: Protection gaps in the national asylum system

While Sub-Decree #224 began the development of a legal framework for the protection of refugees and asylum-seekers, there are a number of limitations in this Sub-Decree and other areas of continued concern. Most notably, there are no forms of complementary protection contained within the Sub-Decree to protect refugees fleeing generalized violence and who do not meet the criteria under the refugee definition contained in the 1951 Convention, Furthermore, there is no provision that allows for refugees and asylum-seekers to appeal a negative decision on their asylum claim to an independent body.

Additionally, though under Sub-Decree #224 provides for clear timeframes for first instance decision-making, mandating authorities to provide a status decision within 90 days from the date of the refugee status determination interview, this provision has not been implemented. UNHCR has observed that there are asylum-seekers waiting for almost three years for a decision on their applications following interviews that were conducted in 2010 and 2011. The delays in processing asylum applications have left asylum-seekers in an especially vulnerable situation, particularly since the law does not expressly provide them with the right to work, which often results in asylum-seekers entering the illegal labour market and putting themselves at risk of exploitation.

Recommendations:

- Amend the national asylum law so as to incorporate complementary forms of protection and an independent appeal mechanism.
- Expedite decisions in respect to all remaining asylum applications, and work with UNHCR to implement the necessary measures so as to process applications within the timeframes stipulated under the national law.

Issue 3: Access to identity documentation

UNHCR regrets that to date refugees have not been provided with an identity or resident card. As mentioned above, refugees have been provided with "Prakas," which confirm their refugee status, but they still lack other official documentation. UNHCR commends Cambodia for having made a provision under Sub-Decree #224 for the issuance of resident cards and Convention Travel Documents to refugees. In spite of this provision, such documentation has not been issued. UNHCR welcomes recent indications by Cambodia that the authorities are working to address this serious problem.

Without a resident card (or other forms of identity documentation such as a travel document) it is not possible to obtain a work permit. Other day-to-day transactions such as opening a bank account, obtaining a loan and purchasing a mobile phone sim-card are further complicated without the resident card.

UNHCR is further concerned that the provision for the issuance of Convention Travel Documents under the Sub-Decree has been implemented only twice and was the results of individual ad hoc requests. Currently, there is no procedure established for the routine

processing of a request for Convention Travel Documents and there is no formal implementation of the respective provisions in the Sub-Decree.

Recommendation:

• Establish procedures for the issuance of identity documents, including resident cards and Convention Travel Documents, to recognized refugees living in Cambodia.

Issue 4: Access to naturalization

In the Law on Nationality (1996), Article 7 sets out criteria which must be met in order for a non-national to naturalise as a Cambodian citizen. UNHCR welcomes that, in principle, this provision extends to refugees. However, under this law, seven years of legal residence is required to begin the naturalization process. The start of this seven year period begins when a residency card is issued. As noted above, refugees are not currently issued residency cards. Therefore refugees are, in practice, unable to apply for citizenship.

UNHCR is further concerned that Cambodia has not adopted a sub-decree setting out in law the formal procedures to follow for the naturalization process. Without such a sub-decree, there is ambiguity as to *inter alia* institutional responsibility, evidentiary requirements and timeframes for decision-making.

Recommendations:

- Adopt more inclusive procedures for naturalization, taking into account the fact that refugees are not currently provided with a resident cards per Sub-Decree #224.
- Adopt a legal instrument that formalizes the procedures for acquiring Cambodian nationality.

Issue 5: Access to birth registration

As noted above, Cambodia has made great strides in improving birth registration in the country, especially for refugee and asylum-seeking children. However, there are serious concerns over the ineligibility of children of irregular immigrants to have their birth registered and reports that the registration of the births of children with parents of Vietnamese origin can be refused. UNHCR is concerned that some children whose births are not registered are not being treated as Cambodian nationals despite their entitlement to nationality under the law.

We wish to note that birth registration is fundamental to the protection of children of concern to UNHCR and to the prevention of statelessness. 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. In 2012, the Human Rights Council adopted a resolution on birth registration and the right of everyone to recognition everywhere as a person before the law, calling upon "States to ensure free birth registration, including free or low-fee late birth registration, by means of universal, accessible, simple, expeditious and effective registration procedures without discrimination of any kind." Because birth registration legally establishes the place of birth, proof of age, and parental affiliation, it serves as important documentary

⁷ UN Human Rights Council Resolution A/HRC/RES/19/9, 3 April 2012, available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/19/9. The Human Rights Council adopted another resolution on this issue more recently at its 22nd session in March 2013; UN Human Rights Council Resolution A/HRC/RES/22/l.14/Rev.1, 19 March 2013, available at: http://daccess-dds-nv.un.org/doc/RESOLUTION/LTD/G13/123/89/PDF/G1312389.pdf?OpenElement

proof to acquire the parents' nationality or the nationality of the State in which the child is born. It also provides children with a degree of protection against child labour, illegal adoption, early marriage, sexual exploitation, and trafficking.⁸

UNHCR notes that the Committee on the Rights of the Child shared these concerns: "The Committee is [...] concerned that children of irregular immigrants are not eligible to receive birth registration, and that families of Vietnamese origin are often rejected when they try to obtain a birth certificate for their children." The Committee further urged Cambodia to "[...] guarantee free birth registration for all, regardless of their parent's legal status and origins.",10

Recommendation:

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

Issue 6: Prevention of Statelessness and Protection of Stateless Persons

Cambodia is neither a State party to either the 1954 Convention relating to the Status of Stateless Persons nor the 1961 Convention on the Reduction of Statelessness. Accession to the Statelessness Conventions would help to further establish a 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.

Recommendations:

Undertake a study of the domestic laws and practices with a view to future revision to better comply with the standards set out in the 1954 Convention and the 1961 Convention.

Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

⁸ UN High Commissioner for Refugees, Birth Registration: A Topic Proposed for an Executive Committee Conclusion on International Protection, 9 February 2010, EC/61/SC/CRP.5, para. 2, available at: http://www.unhcr.org/refworld/docid/4b97a3242.html.

⁹ Committee on the Rights of the Child, 57th Session, 20 June 2011, CRC/C/KHM/CO/2, para. 36, available at: http://www2.ohchr.org/english/bodies/crc/docs/co/CRC.C.KHM.CO.2.doc ¹⁰ Id.

Human Rights Liaison Unit Division of International Protection UNHCR June 2013

ANNEX

Excerpts of Concluding Observations and Recommendations from UN Treaty Bodies

Universal Periodic Review:

CAMBODIA

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

Committee on the Rights of the Child

CRC/C/KHM/CO/2, 57th Session 20 June 2011

Data collection

- 18. The Committee commends the State party for the significant efforts made to develop databases, notably on child victims of trafficking and children in alternative care settings. The Committee is however concerned that insufficient data have been collected in some areas covered by the Convention, particularly on children with disabilities and that data collection mechanisms remain fragmented. The Committee is further concerned that there is insufficient coordination among the relevant ministries to ensure the setting up of a systematic and comprehensive disaggregated database covering all areas of the Convention.
- 19. The Committee encourages the State party to set up a comprehensive data collection system and to analyze data collected as a basis to assess progress achieved in the realization of child rights and to help design policies and programmes to implement the Convention. The data should be disaggregated by age, sex, geographic location, ethnicity and socio-economic background to facilitate the analysis on the situation of all children. The Committee encourages the State party to seek technical assistance from relevant international organizations, including UNICEF.

Best interests of the child

- 30. The Committee welcomes progress made to incorporate the general principle of the best interests of the child into domestic legislation. The Committee is however concerned about the lack of concrete information on how the best interests of the child are taken into consideration into policies and programmes of the State party.
- 31. The Committee urges the State party to strengthen its efforts to ensure that the principle of the best interests of the child is appropriately integrated and consistently applied in all legislative, administrative and judicial proceedings as well as in all policies, programmes and projects relevant to and with an impact on children. The legal reasoning of all judicial and administrative judgments and decisions should also be based on this principle.

Birth registration

36. The Committee welcomes the Sub-Decree on Civil Status No. 103 of December 2000 which makes birth registration compulsory and the significant achievements of the State party to ensure countrywide free birth registration. The Committee is however concerned that children of irregular immigrants are not eligible to receive birth registration, and that families

of Vietnamese origin are often rejected when they try to obtain a birth certificate for their children.

37. In the light of article 7 of the Convention, the Committee urges the State party to guarantee free birth registration for all, regardless of their parent's legal status and origins.

Follow-up to the United Nations Study on Violence against Children

- 42. The Committee encourages the State party to:
- a) Prioritize elimination of all forms of violence against children, including by ensuring implementation of the recommendations of the United Nations Study on violence against children, paying particular attention to gender;
- c) Cooperate with and seek technical assistance from the Special Representative of the Secretary General on violence against children, UNICEF, the Office of the High Commissioner for Human Rights (OHCHR) and the World Health Organization (WHO), and other relevant agencies, inter alia, ILO, UNESCO, UNHCR, UNODC, as well as NGO partners.

Sale and trafficking of children

73. The Committee welcomes the numerous measures taken by the State party to combat child trafficking, among them, the establishment of the Anti-Human Trafficking and Juvenile Departments at central and provincial levels and the creation of trafficking police units. The Committee is however concerned that a high number of women and children continue to be trafficked from, through and within the country for purposes of sexual exploitation and forced labour. The Committee also shares the concern expressed in 2009 by the Committee on Economic, Social and Cultural Rights (E/C.12/KHM/CO/1 para.26) about the low number of prosecutions and convictions of traffickers.

74. The Committee recommends that the State party intensify its efforts to combat sale and trafficking in human beings, especially women and children, for the purpose of sexual exploitation and forced labour, inter alia by prosecuting and convicting offenders, supporting programmes and information campaigns to prevent trafficking, providing mandatory training for law enforcement officials, prosecutors and judges on the anti-trafficking legislation and increasing the provision of medical, psychological and legal support for victims.

Refugee and asylum seekers

75. The committee, sharing the concern expressed notably by the Committee against Torture (CAT/C/KHM/CO/2 para. 24) on the forced repatriation to China of twenty Uighur asylum seekers, including two children in 2009, urges the State party to uphold the principle of non-refoulement in accordance with international refugee and human rights law, including the Convention.

Protection of witnesses and victims of crimes

78. The Committee also recommends that the State party ensure, through adequate legal provisions and regulations, that all children victims and/or witnesses of crimes, e.g. children victims of abuse, domestic violence, sexual and economic exploitation, abduction, and trafficking and witnesses of such crimes, are provided with the protection required by the Convention and that the State party take fully into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime (annexed to Economic and Social Council resolution 2005/20).

Children of Vietnamese origin

79. The Committee is concerned that children of Vietnamese origin are still not recognized as citizens which leads them to live in poor and segregated conditions without access to identity documents and makes them very vulnerable to trafficking and exploitation. The Committee is particularly concerned that due to their low socio economic status, one third of girls and young women of Vietnamese origin are reported to be sold into prostitution.

80. The Committee urges the State party to acknowledge that children of Vietnamese origin are subject to discrimination and to take all the necessary measures to address their situation and ensure that they have effective access to birth registration, identity documents, public education and health care services. The Committee also urges the State party to provide information in its next periodic report on the measures taken to end discrimination against children of Vietnamese origin and to prevent sexual exploitation and abuse of women and girls belonging to this community.

Committee against Torture

CAT/C/KHM/CO/2, 54th Session 20 January 2011

Positive Aspects

9. The Committee also welcomes the establishment, in 2008, of the Refugee Office within the Immigration Department of the Ministry of the Interior, with the objective of protecting refugees, who may include victims of torture or cruel, inhuman or degrading treatment as well as the adoption, on 17 December 2009, of the Sub-Decree on the Procedure of Determination of Refugee Status and the Right to Asylum for Aliens in the Kingdom of Cambodia, as the beginning of the development of a legal framework.

Human trafficking

22. The Committee welcomes the information provided by the delegation on measures taken to repatriate and protect persons subjected to trafficking, the adoption, in 2008, of anti-trafficking legislation and the Second National Plan on Human Trafficking and Sex Trafficking, 2006-2010, the activities of the Department of Anti-Human Trafficking and Juvenile Protection of the Ministry of Interior as well as other legislative, administrative and police measures to combat trafficking. However, the Committee notes with serious concern reports that a high number of women and children continue to be trafficked from, through and within the country for purposes of sexual exploitation and forced labour. The Committee is also concerned at the lack of statistics provided by the State party, including the number of complaints, investigations, prosecutions and convictions of perpetrators of trafficking, and the lack of information on practical measures adopted to prevent and combat such phenomena, including medical, social and rehabilitative measures. (arts. 1, 2, 4, 12 and 16)

The State party should intensify its efforts to prevent and combat trafficking in human beings, especially women and children, including by implementing the anti-trafficking legislation, providing protection for victims and ensuring their access to medical, social, rehabilitative and legal services, including counselling services, as appropriate. The State party should also create adequate conditions for victims to exercise their right to make complaints, conduct prompt, impartial and effective investigations into all allegations of trafficking and ensure that those who are found guilty of such crimes are punished with penalties appropriate to the nature of their crimes.

Refugees, non-refoulement

24. While welcoming the State party's adherence to the 1951 Convention relating to the Status of Refugees, the Committee expresses its concern at the lack of information on domestic legislation guaranteeing the rights of refugees and asylum-seeking persons, including unaccompanied children in need of international protection. It is also concerned at the absence of any legal provisions that would explicitly prohibit the expulsion, refoulement or extradition of a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee is further concerned that numerous individuals have not been afforded the full protection provided for by article 3 of the Convention in cases of expulsion, return or deportation. Such cases include the 674 Montagnard asylum-seekers who are no longer in the State party and the forcible repatriation of 20 Uighur asylum-seekers to China in December 2009, as well as the lack of information on any measures taken by the State party to follow-up on their status. (arts. 3, 12 and 13)

The State party should formulate and adopt domestic legislation guaranteeing the rights of refugees and asylum-seeking persons, including unaccompanied children in need of international protection. The State party should also formulate and adopt legal provisions to implement article 3 of the Convention into its domestic law. Under no circumstances should the State party expel, return or extradite a person to a State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture or ill-treatment. The Committee requests the State party to ensure appropriate follow-up with regard to the status of the 674 Montagnard and 20 Uighur asylum seekers and to provide the Committee with information as to these cases.

Committee on Economic, Social and Cultural Rights

E/C.12/KHM/CO/1, 42nd Session 12 June 2009

26. The Committee notes with serious concern the reports that an estimated 400 to 800 Cambodian women and children per month are trafficked to foreign countries for sex and that, notwithstanding the various legislative, administrative and policy measures adopted by the State party to combat trafficking, a high number of women and children continue to be trafficked from, through and within the country for purposes of sexual exploitation and forced labour. The Committee is particularly concerned about the low number of prosecutions and convictions of traffickers. (art. 10)

The Committee recommends that the State party intensify its efforts to combat trafficking in human beings, especially women and children, for purposes of sexual exploitation and forced labour, inter alia by prosecuting and convicting offenders of the law against trafficking, supporting programmes and information campaigns to prevent trafficking, providing mandatory training for law enforcement officials, prosecutors and judges on the anti-trafficking legislation and increasing the provision of medical, psychological and legal support for victims.