False Promises:
Exploring the Citizenship Rights of the Khmer Krom in Cambodia
“We love them as citizens and we love them as Khmers love Khmers”*

Khieu Sopheak, spokesperson for the Ministry of Interior

False Promises:
Exploring the Citizenship Rights of the Khmer Krom in Cambodia
July 2011

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The content of this Report is the responsibility of CCHR and does not reflect the views of contributors unless otherwise stated.

Queries and Feedback

Should you have any questions or require any further information about this report, or if you would like to give any feedback, please e-mail CCHR at: info@cchrcambodia.org.

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<td>International Convention Relating to the Status of Stateless Persons</td>
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<td>“AI”</td>
<td>Amnesty International</td>
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<td>“ASEAN”</td>
<td>Association of South East Asian Nations</td>
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<td>“Cambodia”</td>
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<td>“CCHR”</td>
<td>Cambodian Center for Human Rights</td>
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<td>“CERD”</td>
<td>United Nations Committee for the Elimination of Racial Discrimination</td>
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<td>“Constitution”</td>
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<td>“ECRE”</td>
<td>European Council of Refugees and Exiles</td>
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<td>“HRW”</td>
<td>Human Rights Watch</td>
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<tr>
<td>“ICERD”</td>
<td>International Convention for the Elimination of Racial Discrimination</td>
</tr>
<tr>
<td>“ID”</td>
<td>Identification</td>
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<tr>
<td>“Kampuchea Krom”</td>
<td>The southern provinces of the Socialist Republic of Vietnam</td>
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<tr>
<td>“Khmer Krom”</td>
<td>People of Khmer ethnicity originating from Khmer Kampuchea Krom</td>
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<td>“KKKR”</td>
<td>Khmer Kampuchea Krom Community</td>
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<td>“NGO”</td>
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<td>Universal Declaration of Human Rights</td>
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<td>“UNHCR”</td>
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<td>“UNPO”</td>
<td>Unrepresented Nations and Peoples Organization</td>
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Executive Summary

This Report explores and analyzes the contradiction between the Royal Government of Cambodia’s (the “RGC”) public confirmation that the ethnic Khmer from Southern Vietnam (the “Khmer Krom”) are Cambodian citizens, and the practical difficulties faced by the Khmer Krom who try to access the benefits of their Cambodian citizenship by applying for citizens’ identification (“ID”) cards.

In Chapter 1 “Introduction”, the central topic is introduced and put into context by considering a case study. In December 2009, a group of Khmer Krom travelled to Cambodia to formalize their rights to Khmer citizenship. Each individual initiated the process by applying for citizens’ ID cards. However, in February 2010, their individual applications were refused on the basis that they could not provide evidence of a permanent address – a requirement of the Cambodian citizens’ ID card application process. At around the same time, senior members of the RGC made public declarations to the effect that the Khmer Krom are citizens of Cambodia without discrimination.

Chapter 2 “Background” examines the history of the Khmer Krom – the literal translation being “Cambodians of the South”. The Khmer Krom are ethnic Khmer from the southern provinces of Vietnam, the area surrounding the Mekong Delta. These provinces, once part of Cambodia, were first colonized by the French and then transferred to Vietnam in the 1940s. Despite Khmer Krom attempts to keep hold of their cultural and religious identity, the Vietnamese communist regime introduced measures to assimilate and vietnamize the Khmer Krom, eroding their indigenous norms and values. At the hands of the Vietnamese government, the Khmer Krom have been subjected to religious and cultural persecution with restrictions placed on the teaching of the Khmer language and Theravada Buddhism, a form of Buddhism practiced by Khmers. In addition to a history of land grabbing by the Vietnamese government over the Khmer Krom’s fertile Delta lands, the persecution has resulted in the Khmer Krom becoming an impoverished and marginalized part of Vietnamese society. Those in the Khmer Krom community who speak out against this persecution face arrest for engaging in activities that undermine Vietnam’s national unity policy. As a result of these restrictions and to escape direct persecution, many Khmer Krom leave Vietnam seeking a better life in neighboring countries, in particular Cambodia.

Chapter 3 “The Current Situation: Citizenship Promised but not Delivered” considers the problems experienced by the Khmer Krom when they leave Vietnam and seek to formalize their Cambodian citizenship or claim refugee status in a new country. When seeking refugee status, a person must show that he or she is outside of his or her country of nationality for fear of persecution. As such, many Khmer Krom leaving Vietnam claim refugee status on this basis. However, the RGC has repeatedly and publicly declared that the Khmer Krom are considered to be Cambodian nationals and citizens. As a result of these declarations, the Khmer Krom are unable to claim refugee status in Cambodia and must show that they fear persecution in Cambodia and Vietnam in order to be considered a refugee in any other country. In these circumstances, many Khmer Krom arrive in Cambodia and seek to formalize their citizenship by applying for national ID cards, which are required to access employment, education, land rights and welfare. However a number of obstacles exist which impede their application. Firstly, those individuals recently arrived in the country will struggle to satisfy some of the administrative criteria including the requirement to provide a permanent address in Cambodia. Further problems are faced when a Khmer Krom individual has to
show that he or she is a Khmer citizen (part of the legislative requirement) by proving Khmer ethnicity/parentage. Faced with paperwork that shows an individual’s birthplace as Vietnam, the police officials responsible for issuing the ID cards often treat the applicant as Vietnamese and deem them ineligible for a Cambodian ID card.

Unable to obtain the protection of Cambodia through the citizens’ ID cards or, alternatively, claim the protection and shelter afforded to refugees, many Khmer Krom change their family name to a Khmer name and their recorded place of birth to Cambodia in order to secure an ID card as a Cambodian-born Khmer. This procedure is not simply accepted but appears to be actively encouraged by the officials responsible for issuing ID cards. It is evident that the difficulties faced by the Khmer Krom in obtaining Cambodian ID cards are partly due to the lack of clarity that surrounds the application requirements. However, the RGC does not appear to be taking any steps to clarify the issue and ensure that the Khmer Krom are able to enjoy the citizenship that has been promised.

“Cambodia needs to resolve this issue once and for all...Khmer Krom arriving in Cambodia from Vietnam live in legal limbo...they are neither treated as citizens nor as refugees.”

Maggie Murphy, Program Director of the Unrepresented Nations and Peoples Organization (UNPO)

While it is beyond the scope of this Report to examine the reasons – political and social – for the treatment of Khmer Krom in Cambodia, Chapter 4 “Current Situation: Treatment of Politically Active Khmer Krom in Cambodia” outlines problems that politically active members of the Khmer Krom community in Cambodia – often Buddhist monks – face as a result of their activism. In recent years, the RGC has returned politically active Khmer Krom monks – who are citizens of Cambodia – to Vietnam, where they face persecution including imprisonment and defrocking for “anti-Vietnamese government activities” – often educating people on the Khmer Krom history and Khmer culture. Chapter 4 sets out these issues to the extent that they bear consequences for the applications by Khmer Krom individuals for refugee status, particularly in third countries, laying the groundwork for a more detailed analysis of their status under refugee law, human rights law and the law of statelessness in Chapter 6.

Chapter 5 “The Solution: Give Effect to Khmer Krom Citizenship/Nationality” contains the central and overriding recommendation of this Report, namely that the RGC should take steps to protect the rights of all Khmer Krom migrating to Cambodia. It is recommended that the RGC confirms the citizenship/nationality of the Khmer Krom by way of a directive at central government or ministerial level. Chapter 5 also outlines particular difficulties which Khmer Krom individuals face when they seek to secure ID cards – such as proving their ethnicity to an issuing authority that is suspicious of their position in the eyes of the Cambodian authorities and satisfying the permanent address requirement in order to secure an ID card, an impossibility for Khmer Krom newly arrived from Vietnam. Chapter 5 concludes by recommending that the RGC put in place a coherent framework specifically designed to facilitate Khmer Krom applications for ID cards and citizenship/nationality.

the event that an individual Khmer Krom applicant cannot satisfy the legal requirements to establish his/her Khmer ethnicity, it is recommended that the authorities make a decision – which should be subject to appeal – that the individual in question is treated as Vietnamese in order that he/she can seek protection in Cambodia as a refugee.

Chapter 6 “The Status of the Khmer Krom in international refugee law, the law on statelessness and human rights law” considers the situation of the Khmer Krom as it currently prevails and what their status is under refugee law, the law on statelessness and human rights law in the event that the RGC does not take any steps to resolve the situation. Khmer Krom are currently precluded, as a result of the RGC promise of citizenship/nationality, from availing of refugee protection in Cambodia as that protection cannot be given to an individual within the country of his/her nationality. Moreover, the RGC promise has affected the ability of the Khmer Krom to avail of international protection as refugees in third countries as those countries view the Khmer Krom as citizens/nationals of Cambodia and Vietnam as a result of the RGC promise. The practice in third countries of acting upon the RGC promise of citizenship/nationality to the Khmer Krom by sending refugee claimants to Cambodia is examined in refugee law. Furthermore, the status of the Khmer Krom in Cambodia is examined under the law relating to stateless persons. The Chapter includes a call upon the United Nations High Commissioner for Refugees (“UNHCR”) to examine the situation of the Khmer Krom in Cambodia and third countries and to make a determination as to their status in refugee law and the law relating to stateless persons. The Chapter concludes with an examination of the situation of the Khmer Krom under domestic and international human rights law.

At present, the reality for the Khmer Krom in Cambodia is bleak. Declared to be nationals and citizens of Cambodia but without the ability to enjoy the benefits that attach to that status, the Khmer Krom must chose to live without citizenship or agree to change their identity. The final Chapter “Conclusions & Recommendations” sets out the fundamental action that CCHR considers is required in order to address the problems facing the Khmer Krom in Cambodia: to confirm the citizenship/nationality of Khmer Krom and to put in place a coherent system to give effect to that citizenship/nationality. Chapter 7 goes on to make additional recommendations to the RGC and other organizations, including calling for an immediate stop to deportations of Khmer Krom to Vietnam and an end to the practice of changing family names and places of birth. The National Assembly, Senate and others are asked to refer the administrative requirement to provide proof of a permanent address to the Constitutional Council for review. Recommendations are also made to the UNHCR, the Association of South East Asian Nations (“ASEAN”) and the international community to provide encouragement and support to the RGC in making these changes.
1. Introduction

The 1951 Convention on Refugees (the “Refugee Convention”) provides that a person can be defined as a refugee if he/she is outside of his/her country of nationality due to a real fear of persecution. In December 2009, a group of Khmer Krom – ethnic Khmer living in the Mekong Delta region in the southern part of Vietnam – left Vietnam fearing persecution and sought asylum in Thailand. On the basis of a memo from the Cambodian office of the UNHCR which confirmed that the Khmer Krom had been declared citizens of Cambodia, the group was denied refugee status and sent to Cambodia on the grounds that they were not outside Cambodia for fear of persecution.

The False Promise

February 2010: UN Committee on the Elimination of Racial Discrimination (the “CERD”) Geneva:
A Cambodian delegation addresses the CERD, setting out the RGC’s position on the citizenship rights of the Khmer Krom, confirming that they are formally recognized as Cambodian citizens without discrimination.2

The Breach of Faith

February 2010: Phnom Penh:
A group of Khmer Krom arrive in Phnom Penh from Thailand seeking to formalize their rights to citizenship in Cambodia by applying for citizens’ ID cards. Their applications are refused on the grounds that they do not have proof of a permanent address in Cambodia. They return to Thailand to reapply for asylum on the basis that they cannot formalize their Cambodian citizenship and cannot be classified as refugees in Cambodia.

The Reality

Whilst the RGC has publicly declared the Khmer Krom as Cambodian citizens, in reality very few are recognized as citizens in practice and permitted to enjoy the rights attached to their promised citizenship. In the absence of a permanent address, recently arrived Khmer Krom individuals cannot satisfy the administrative requirements to obtain an ID card, which is required to unlock the rights that accompany citizenship/nationality in practice. Without an ID card a citizen/national cannot, for example, purchase land, secure employment or access education. In cases where Khmer Krom individuals are able to satisfy the administrative requirements, they often come up against further obstacles in the application process. In particular, the police officials responsible for issuing ID cards often consider the Khmer Krom to be Vietnamese due to the fact that they are born in Vietnam and have Vietnamized names. As a result, a practice has developed whereby Khmer Krom individuals agree to change their family names and their recorded places of birth in order to secure ID cards – in essence changing their birth categories from Khmer Krom to Cambodian-born Khmer. This practice is illegal, unconstitutional and ultimately contradicts the RGC’s declaration on the citizenship of Khmer Krom in Cambodia. Yet, this practice is not only accepted by the issuing officials but accepted and actively facilitated by those responsible for issuing ID cards.

**Audience and Purpose of Report**

This Report explores the contradiction between the citizenship rights promised to the Khmer Krom by the RGC and the practical problems faced by them when seeking to enjoy these rights. It is not a report about the rights of the Khmer Krom over land in the Mekong Delta region of Vietnam, nor is it a report on the persecution of the Khmer Krom in Vietnam (although both of these things are touched upon). The ultimate goal of this Report is to provide an analysis of the legal status of the Khmer Krom in Cambodia, firstly, in terms of their Cambodian nationality/citizenship and, failing that, their status as stateless persons or refugees, with the overall objective of providing the greatest degree of protection and rights to all members of the Khmer Krom community in Cambodia. The intention of this Report is to identify any shortcomings within the current legal framework applicable to nationality and citizenship and its application to the Khmer Krom in Cambodia. This Report will be shared with the intended audience – the Ministry of Interior, the Vietnamese Embassy, UNHCR and other integral stakeholders – and will provide the basis for discussion and dialogue.

**Methodology**

This Report is based on research conducted in Cambodia between April and August 2010.

**Primary research**

Between the months of April and August 2010, CCHR and Ang Chanrith (prominent advocate for Khmer Krom rights and former Executive Director of the Khmer Kampuchea Krom Human Rights Association (“KKKHRA”)) visited Khmer Krom communities in Takeo, Kandal and Phnom Penh provinces in Cambodia to interview Khmer Krom individuals. Separate interviews were held with fourteen individuals in Kandal province and eleven individuals in Takeo province (three of these individuals informally represented a community of six families made up of twenty-four people). Interviews were held with six Khmer Krom monks in Phnom Penh. Information and statistics were also collected from the Khmer Krom community in Khosom Village (Chong Khsach), Banteay Dek Commune, Kien Svy District, Kandal Province. All interviews were conducted in the Khmer language. Discussions were held with individuals who had secured ID documents and those who had not.

During the course of these visits, it became clear that the practices of changing Khmer Krom family names to Cambodian ones, and real places of birth to Cambodian ones, were widespread. We are grateful to the couple who agreed to let us use their ID documents as evidence of this practice. It is, however, illegal to issue and/or obtain ID cards on the basis of falsified information. For this reason, notwithstanding the fact that all interviewees gave consent for their interviews and details to be published, CCHR has elected not to identify the interviewees.

**Secondary research**

A number of Cambodian and international organizations have previously considered issues affecting the Khmer Krom that are directly and indirectly related to the subject of this analysis. CCHR has reviewed press releases, articles, briefing notes and reports from these organizations. CCHR has also
regularly reviewed the websites of relevant organizations to ensure that any and all Khmer Krom-related developments were identified. These organizations include Human Rights Watch (“HRW”), Refugees International (“RI”), Amnesty International (“AI”), the Cambodian League for the Protection and Defense of Human Rights (“LICADHO”), Khmers Kampuchea Krom Federation (“KKKF”), KKKHRA, and the Khmer Krom Network (“KKN”).

CCHR has also used data, information and analysis from the UNHCR, the United Nations Development Programme (the “UNDP”), United Nations Human Rights Council, the United Nations Special Rapporteur on the situation of human rights in Cambodia, the Office of the United Nations High Commission for Human Rights (the “OHCHR”) in Cambodia and the CERD.

Press
Many of the events discussed in this Report have been reported in local and regional press. Accordingly, in the course of this research, a number of media sources have been used, including The Phnom Penh Post, The Cambodia Daily and Asia Times Online. Other media sources include Voice of America (“VOA”) News and Ki-Media, the online forum featuring news on contemporaneous Cambodian political and human rights issues.
2. Background

Map of the Mekong Delta/Kampuchea Krom Region

![Map of Cochin-China/Kampuchea Krom Region](image)

Figure 1: Map of Cochin-China/Kampuchea Krom

Geo-political history of Kampuchea Krom

“Lower Cambodia” (“Kampuchea Krom”) is made up of the 21 southernmost provinces of Vietnam, situated around the Mekong Delta region. It is considered to be the ancestral homeland of the ethnic Khmer. The Khmer people of Kampuchea Krom are the Khmer Krom, “Cambodians of the South.”

The ethnic Khmer claim over this land is subject to academic debate in terms of the exact period in which ethnic Khmers moved into the region. Some academics consider there to be sufficient

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archaeological evidence to show that it was the ethnic Khmer who originally settled these lands.\(^5\) Some rely on Chinese documentary evidence, which makes reference to the presence of the Khmer in the Mekong Delta in the 1\(^{\text{st}}\) Century BC.\(^6\) Although the exact timing of Khmer settlement in the region remains unclear, it is widely accepted that the Khmer Empire controlled the region between the 9\(^{\text{th}}\) and 13\(^{\text{th}}\) centuries.\(^7\)

Khmer rule of the Kampuchea Krom region continued well into the 17\(^{\text{th}}\) century.\(^9\) However, a steady increase in Vietnamese colonization resulting from a series of successful wars against Khmer kings meant that by the end of the 17\(^{\text{th}}\) century, much of the region was occupied (if not controlled) by the Vietnamese.\(^{10}\) As a result, the Khmer Krom remaining in the region became the minority.

Since the early conquests, the Khmer have never given up their claim to these territories.\(^{11}\) However, throughout the 19\(^{\text{th}}\) century, France expanded their colonial reach throughout South-East Asia, and the Khmer lost any remaining hold over the region. By the time the Franco-Annamite treaty was recognized in 1874,\(^{12}\) Kampuchea Krom had been swallowed up into France’s newly devised colony of Cochin-China (Fig.1).

Having already established a protectorate over Cambodia, the Union of French Indochina was formed in 1887 to include Cochin-China, Cambodia, the northern provinces of modern Vietnam and Laos (see Fig. 2). The nationalist, communist Vietnamese Vietminh fought the French through the 1940s, driving the colonists from the region with increasing degrees of success as the decade progressed. Whilst Cambodia had been successful in securing French recognition of the Khmer right

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10 The Nguyen institutionalization of control, a process that took more than two hundred years, eventually removing large portions of territory and tens of thousands of ethnic Khmer from Cambodian jurisdiction, Ibid, p. 95.


12 Formally recognizing the French occupation of Kas Tral (Phu Quoc Island),
to the provinces in Kampuchea Krom, in 1949 France transferred the Kampuchea Krom provinces to Vietnam without reference to Cambodia’s claim.\textsuperscript{13}

Having gained independence from France in 1954, Vietnam was divided into the Northern Communist Democratic Republic of Vietnam ("North Vietnam") and the State of Vietnam in the South which encompassed the provinces of Kampuchea Krom. Ngo Dinh Diem gained control of the State of Vietnam, transforming it into the Republic of Vietnam ("South Vietnam") and declaring himself President. Diem was overthrown and killed in a coup in 1963. A succession of military governments followed and the resulting instability left South Vietnam vulnerable to insurrection by communist Vietcong. A war ensued (the “Vietnam War”), with the United States of America joining South Vietnam to stop the Vietcong takeover. By 1975 the Vietcong and their communist allies from North Vietnam had succeeded, and North Vietnam and South Vietnam were re-united to form the Socialist Republic of Vietnam ("Vietnam").

\textit{Treatment of Khmer Krom in Vietnam since independence and unification}

Despite the change in control of the Kampuchea Krom region, the Khmer Krom people never lost their identity and continued to practice traditional Khmer culture, religion and education, although this became increasingly difficult following Vietnam’s independence from the French.

Ngo Dinh Diem’s government was authoritarian and repressive, implementing a policy to integrate the ethnic minorities into the “Vietnamese cultural sphere”\textsuperscript{14} by way of a “civilizing process”,\textsuperscript{15} making it increasingly difficult for the Khmer Krom to maintain their Khmer roots. One of the manifestations of this policy was a Decree of August 1956, which re-identified the ethnic Khmer of Kampuchea Krom as Vietnamese of Khmer origin.\textsuperscript{16} In addition, Khmer teaching establishments were systematically closed down or turned into Vietnamese institutions and the teaching of the Khmer language was restricted.\textsuperscript{17}

\textit{“In those days [the Vietnamese regime’s] strategy was not to kill, they eliminate our religion and the soul of us”}

Khmer Krom Monk who left Vietnam due to persecution\textsuperscript{18}

The Catholic NGO Dinh Diem also restricted the Khmer Krom’s freedom to practice their own religion, a form of Buddhism called Theravada Buddhism, considered to be the fundamental core of

\textsuperscript{13} Bora Thach (n.11) citing Reddi, V.M. (1970) \textit{A History of Cambodian Independence}, Tirupati: Sri Venhateswara University available at: \url{www.khmerkrom.org/node/33}: "Perhaps what affected the Cambodian nationalist feelings most was the transfer to Vietnam of the three western provinces of Cochinchina...which the Cambodian claimed as theirs on the basis of race, history, and population. Ever since the establishment of the French protectorate, Cambodia never ceased to remind France of its historical rights over these areas. In spite of these reminders, France...transferred them to Vietnam."


\textsuperscript{15} Ibid.

\textsuperscript{16} Vietnamese: “Nguoi Viet goc Mien”.


Khmer culture. The anti-Buddhist policy detrimentally affected the allocation of land, business favors and tax concessions to all Buddhists and, in particular, those practicing Khmer Buddhism.19

During the Vietnam War, the United States army recruited Khmer Krom soldiers to fight against the communist Vietcong; Khmer Krom units were used in the Central Intelligence Agency’s mobile Strike Force Command for reconnaissance missions, including tapping phones and planting acoustic sensors (information bugs).20 When the Vietnam War was over and Vietnam re-united, the Khmer Krom’s participation in these activities was interpreted by the communist government as anti-Vietnamese.

After the Vietnam War, Vietnam put in place a series of measures to collectivize commercial properties including farms and factories. This had a detrimental effect on the Khmer Krom, many of whom were economically reliant on the ownership of their own farmland. It has been suggested that, in so doing, Vietnam had the specific intention of taking over the fertile Khmer Krom lands of the Mekong Delta.21

During the latter years of the 1970s, the Khmer Krom also suffered at the hands of the Khmer Rouge along the border between Vietnam and Cambodia.22 As the Maoist regime of Pol Pot started to fall apart, its suspicion of Vietnam increased. The Khmer Krom were considered “Khmer bodies with Vietnamese minds”23 and the Khmer Rouge implemented a system of “Khmerization”, forcing ethnic minorities to change the elements that set them apart culturally from Cambodian-born Khmer.24 Those who did not agree to this change faced death and, in some situations, were not even offered the option. Orders were issued to the Khmer Rouge district leaders to screen, identify and destroy the Khmer Krom due to their perceived affiliation with Vietnam and Vietnamese networks.25 In one documented case from 1977, a large group of Khmer Krom in Pursat province were massacred en masse.26

When the Vietnamese entered Cambodia in 1979 to topple the regime of the Khmer Rouge, they enlisted fighters from the Khmer Krom community to assist with fighting along the border. On returning to their homes after the conflict, many Khmer Krom found that their land had been settled by Vietnamese and they were forcibly moved to smaller, less fertile plots.


Thach N. Thach, President of the KKF comments that in introducing these reforms the regime had “...their eyes on the farmlands of Khmer Krom people”, see: Guthrie, C. (2009) ‘Khmer Krom Hero Rises from the Delta’, Asia Times Online 6 June, available: http://www.atimes.com/atimes/Southeast_Asia/KF06Ae03.html [accessed 6 June 2011].


Mahdev Mohan (n. 23).

The result of these unsettled years for the Khmer Krom was an economic shift from farmer to laborer, and from employer to serf; the Khmer Krom lost the economic strength that previously supported their community’s ability to access fundamental rights, and they became a poor and marginalized minority. The reductions in religious and cultural freedoms left the minority struggling to hold on to their identity. In this period, the Khmer Krom grew to be distrusted by both the Vietnamese and Cambodian governments (and to a lesser extent the people); the former viewing them as anti-Vietnamese Khmer while the latter considered them to be Vietnamese spies.

**Current Situation for Khmer Krom in Vietnam**

The treatment of Khmer Krom in contemporary Cambodia continues to fall below international human rights standards. Examples of violations include religious persecution, cultural oppression and racial discrimination. It is the prevalence of such abuses that drives a large number of Khmer Krom to cross international borders to seek refuge status in neighboring countries, including Cambodia.

**Education/language**

From 1975 onwards, the Vietnamese government closed down all public schools (including those in temples) that taught the Khmer language. Whilst the teaching of the Khmer language is now permitted, it is highly restricted, with state authority required before any lessons can take place. Any Khmer language education is now almost entirely restricted to lessons provided by monks within their temples, meaning that girls are often excluded; as a result, 80% of Khmer Krom women

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27 Guthrie, C. (n. 21) citing Thach N. Thach: “...land-grabbing has succeeded and the majority of Khmer Krom are landless.”
29 Guthrie, C. (n. 21).
30 KKKF (n. 22) p. 231.
living in Cambodia are illiterate.  Being brought up in a Khmer-speaking family but unable to access Khmer language education means that many Khmer children end up illiterate in all languages. Unable to succeed in Vietnamese language schooling, the dropout rate amongst Khmer Krom children is high, with 56% of Khmer children dropping out before their education is completed. It is further estimated that 30% of those who fail to complete their education do so as a result of their inability to learn.

The restriction on the use of Khmer language also applies outside education. Thach Setha, director of the Khmer Kampuchea Krom Community (“KKKC”) recently confirmed that he had been informed by Khmer Krom living in Vietnam that they had been warned against listening to or watching Cambodian broadcasts. “Vietnamese authorities have released a written prohibition ... banning all Khmer Krom from watching TV and listening to radio from Cambodia,” he said, adding that Vietnamese authorities were patrolling around Khmer Krom houses and some pagodas. Violators “can face a savage fine of up to 10 million dong” ($35 USD).

Culture/religion
The Vietnamese administration’s stance on Khmer Krom Buddhism was made clear when, in 2007, the Minister of Culture and Information described Theravada Buddhism as enforcing "backward" customs and habits that limit the group’s development. The Buddhist Church of Vietnam (which follows Mahayana Buddhism) maintains control over the Theravada temples both in terms of their maintenance/construction and internal administration. The wearing of traditional Khmer dress in temples has been restricted (and often banned) as being an act of separatism and control has been placed on the amount and content of festivals and ceremonies. The Khmer Krom monks also allege that Vietnam fails to properly account for the number of Theravada monks in Vietnam by issuing ID cards that do not identify the monks as Theravada (often not identifying them as monks at all). The effect of this practice being that the monks are robbed of an essential aspect of their identity and the international community is provided with an unrealistic picture of the Khmer Krom and Theravada Buddhist community in Vietnam.

Defenders of the Khmer Krom
In their submission to Vietnam’s 2008 Universal Periodic Review, HRW described Vietnam as a, “one party state that denies its citizens the freedom of speech, press, assembly and religion”. HRW

33 KKKF (n. 22), p.231: The Khmer Krom people live in rural areas and speak Khmer at home. When the children start school at the first grade, all the students in the class are expected to speak Vietnamese. As most Khmer Krom children cannot speak Vietnamese, they struggle immediately.
34 Guthrie, C. (n. 21).
36 Guthrie, C. (n. 21).
37 HRW (n.17): “Khmer Krom believe that the government’s suppression, modification, or co-optation of traditional Khmer religious and cultural practices, festivals, and ceremonies—which are often intrinsically linked to Khmer Buddhism or the Buddhist calendar—aims to forcefully assimilate Khmer Krom into mainstream Kinh society and culture and destroy Khmer culture.”
38 Some monks allege that they are cited as Vietnamese (not Khmer) workers or military men on their cards as well as being described as “non-religious” in the relevant sections, see Sommer, R. (n. 18).
went on to specifically cite the plight of the Khmer Krom, asking Vietnam to, “cease repression of...ethnic Khmer Buddhists in the Mekong Delta...”40

Despite Vietnam’s attempts to eliminate or dilute the culture of the Khmer Krom, it is those at the very heart and soul of that culture, the Theravada Buddhist monks, who often stand at the front line of the fight to retain the Khmer Krom identity.42 Many of them have been arrested and persecuted as a “threat to national integrity” for committing crimes that range from teaching the Khmer language, carrying Khmer language texts and travelling between temples without the proper permits.43 Of the monks interviewed for this Report, one confirmed that he had been persecuted in Kampuchea Krom for trying to establish a Khmer Krom human rights association, whilst another monk told of how he had been repressed by the Vietnamese authorities for leading land rights demonstrations. In a documentary film by Rebecca Sommer on the Khmer Krom in Vietnam,44 one monk tells the story of how he was caught by the Vietnamese police between temples and accused of trying to cross the border to Cambodia; following which he was arrested, imprisoned and disrobed.45 In August 2010, an appeal was launched to locate the whereabouts of Khmer Krom monk Thach Sophan who was alleged to have been disrobed and kidnapped by the Vietnamese authorities. It is thought that his disappearance was connected to his method of teaching young monks – encouraging them to travel and study abroad – and his broadcasting of international world

40 Ibid.
41 Picture courtesy of Rebecca Sommer, available at: http://www.rebeccasommer.org/.
43 KKKF (n. 22) p. 118.
44 Sommer, R. (n. 18).
45 In the tradition of Theravada Buddhism, a monk may only be disrobed by another monk on breaking his pledges.
news via satellite.\textsuperscript{46} He was sentenced by the Vietnamese authorities in September 2010 to a nine-month suspended sentence and remains under house arrest.\textsuperscript{47}

The protests are not just the preserve of the monks. In February 2008, police used dogs and electric batons to break up a land rights protest by ethnic Khmer farmers in An Giang Province. Several people were injured and two women were arrested on charges of public disorder.\textsuperscript{48} Similarly, in March 2010, land rights activist Huynh Ba was arrested and sentenced to jail for “abusing democratic rights.”\textsuperscript{49}

The economic and cultural restrictions placed on the Khmer Krom in Kampuchea Krom have resulted in a significant degree of migration into neighboring countries and further afield. The statistics on the Khmer Krom population and levels of migration vary widely. The 1999 Vietnamese Census recorded 1,055,174 Khmer Krom in Vietnam,\textsuperscript{50} and Cambodia recently declared that there are around 82,000 Khmer Krom in Cambodia.\textsuperscript{51} Alternative figures have the number of Khmer Krom in Vietnam at 7,000,000 and the population in Cambodia at around 1,200,000.\textsuperscript{52} The reasons for the discrepancies are not clear, albeit that the ratio of Khmer Krom in Vietnam to those in Cambodia remains similar (between 7-14\%) between the two sets of figures. Either way, it is a clear and damning indictment of the Vietnamese government that such a large proportion of the Khmer Krom population chooses to risk their freedom and accept the consequences of being caught by making their way across the border to find a better life elsewhere.\textsuperscript{53} This is a reflection of a government that has systematically marginalized an ethnic community through a series of economic and cultural resolutions, reducing the group to an isolated minority living on the sidelines of Vietnamese society.

\textsuperscript{46} Thach, N.T. (2010) \textit{Urgent Appeal for the Release of the former Abbott Khmer-Krom Mr, Thach Sophon} [press release], August 2010, available: \url{http://2.bp.blogspot.com/-8up7h6T0Kzc/TGzRvVDGcmI/AAAAAAAASVU/YpwstqNfvo/s1600/Appeal+for+the+release+of+Ve+ n+Thach+Sophon.png} [accessed 6 June 2011].


\textsuperscript{51} CERD/C/KHM/8-13/Add.1 “Written replies by the Kingdom of Cambodia concerning issues (CERD/C/KHM/Q8-13) formulated by CERD relating to Cambodia’s 8 to 13\textsuperscript{th} periodic reports” (17 February 2010).


\textsuperscript{53} Punishment would be prison being an enemy to nationality under the banner of “person who illegally emigrates to propagate activities against Vietnam”, see: HRW (n. 17).
3. The Current Situation: Citizenship Promised but not Delivered

Many Khmer Krom who are determined to exercise their freedom and leave Vietnam choose to cross the border to Cambodia looking for a new life in a country that shares their cultural and spiritual identity. They come to Cambodia seeking access to their rights as Khmer people, and to live under a Khmer king whom they see as their sovereign. However, unbeknownst to many who embark on the journey, Cambodia presents a completely new set of problems. Whilst the RGC has repeatedly and publicly declared that the Khmer Krom are considered to be Cambodian nationals and Cambodian citizens, the reality is that many Khmer Krom face insurmountable obstacles when they try to formalize this citizenship by applying for a citizens’ ID cards, which are required to access employment, education, land rights, welfare and generally to unlock the rights and benefits that are attached to citizenship/nationality. In order to be considered a refugee, a person must be outside of his/her country of nationality for fear of persecution. As a result of the RGC’s declaration, those Khmer Krom who leave Vietnam are less likely to be granted asylum and/or refugee status in Cambodia or a third country (for example Thailand) unless they can show a well founded fear of persecution in Vietnam and Cambodia. This chapter looks at the current situation of Khmer Krom in Cambodia in further detail.

“We love [Khmer Krom] as citizens and we love them as Khmers love Khmers”

Khieu Sopheak, spokesperson for the Ministry of Interior

The RGC’s Confirmation of Khmer Krom Citizenship Rights

The RGC has been vocal in recent years in its acceptance of individuals of Khmer Krom origin as Cambodian citizens. In 1992, former King Norodom Sihanouk made a public announcement that all Khmer Krom born in Vietnam but living in Cambodia should have the right to full Cambodian citizenship. The issue was raised again in 2005 after the UNHCR sought clarification from the RGC on the nationality of the Khmer Krom. In a letter from the RGC to the UNHCR in August 2005, it was confirmed that, “relating to Khmer Krom issues, the RGC considers that Khmer Krom are Khmer citizens. They can enter and exit Cambodia without visas”. In 2006 and 2007 the Minister for Foreign Affairs stated publicly that Khmer Krom in Cambodia can “...enjoy equal rights as the Cambodian citizen”. On 8 January 2010, The Phnom Penh Post reported that the Ministry of Interior’s spokesman, Khieu Sopheak, had affirmed that all Khmer

55 King Norodom Sihanouk (personal letter, 22 December 1992), see: HRW (n. 17).
56 UNHCR Phnom Penh office (letter to Thaich Gnhoun Yat of the KKHRA, 30 August 2005) makes reference to RGC (letter to UNHCR, 2 August 2005).
57 Deputy Prime Minister (letter no. 7725 to the Minister for Foreign Affairs, 21 November 2006), see: HRW (n. 17).
58 Hor Namhong (speech, February 2007).
Krom people have full rights to reside in Cambodia. As recently as 9 August 2010, Khieu Sopheak said that the Khmer Krom should “not be concerned”, declaring love for them as citizens.

**Refugee Status of Khmer Krom**

To be defined as a refugee under the Refugee Convention, a person must be outside of his/her country of nationality for fear of persecution. The RGC’s declaration that all Khmer Krom are Cambodian citizens has, therefore, detrimentally affected the ability of Khmer Krom individuals to successfully obtain asylum and/or refugee status in Cambodia and third countries. In the case of the twenty-four Khmer Krom who travelled from Vietnam to Thailand in late 2009, they were deported to Cambodia by the Thai government before the asylum process had been completed, when the UNHCR’s Thai office received confirmation from the UNHCR’s Cambodian office that the Khmer Krom had the benefit of Cambodian nationality. This meant that, in order to qualify for asylum/refugee status in Thailand, the Khmer Krom needed to show a well founded fear of persecution not just in Vietnam but also in Cambodia. The group was also unable to be classified as refugees in Cambodia as they were not considered to be “outside of their country of nationality”.

“*How can you have a permanent address [in Cambodia] when you lived in Vietnam?*”

Thach N Thach, Kampuchea Krom Federation

**Figure 5: Thach Soong – Khmer Krom Deportee**

**Khmer Krom in Cambodia**

**Applying for ID**

As directed by both Thai and Cambodian offices of the UNHCR, and in accordance with the RGC’s public position on the rights of ethnic Khmer Krom, the group of twenty-four applied for Cambodian ID cards. For all Khmer citizens, ID cards are the key which allows them access in practice to the rights and benefits which their citizenship/nationality guarantees them in principle. With the

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60 Vong Sokheng (n. 54).

61 LICADHO (2010) “Stateless Ethnic Minority Khmer Krom Face Difficult Future in Cambodia,” 23 Feb, available: [www.licadho-cambodia.org/articles/20100223/108/index.html](http://www.licadho-cambodia.org/articles/20100223/108/index.html) (accessed 6 June 2011): “The group, which includes seven women and nine children, travelled to Thailand from Vietnam in 2008 in order to seek asylum after they were threatened with imprisonment if they did not stop protesting the confiscation of their land by the government of Vietnam. The group claim that the Vietnamese authorities deleted their names from a residential list, confiscated their farmland and issued arrest warrants.”

62 Photo courtesy of Sovan Philong (December 2009), available at: [http://www.khmerkrom.net/km/node/4146](http://www.khmerkrom.net/km/node/4146).

63 Bun, T. and Wells, C. (n. 2) *The Phnom Penh Post*

64 Prakas No. 2473 on the Procedure and Conditions for Applying, Offering and Usage of Khmer Identification Cards (14 July 2007).
assistance of LICADHO, the group sent a request to the Ministry of Interior for citizenship documents: identification cards, birth certificates, family books and resident books. On 18 February 2010 police officials confirmed that the group’s application had been refused on the grounds that none of the members of the group had a permanent address in Cambodia as required by the Prakas (Proclamation) on Procedure and Conditions for Applying, Offering and Usage of Khmer Identification Cards (the “Prakas”).

“When I go to the Police to get an ID card they say that, as I am Khmer Krom, they need to wait for the directive from the Ministry of Interior or their supervisor, otherwise they cannot issue [it].”

Interview with KK male, aged 64 (Kandal Province, 6 June 2010)

The response from the authorities also noted that in order to obtain ID cards, the Khmer Krom individual must be able to present a birth certificate, a family book and, “any verdict from the court to recognize that he/she was born by parents with Khmer nationality”. In lieu of such a verdict, it is provided in the Prakas and a Sub-Decree that a Khmer Krom individual may present a “Royal Decree on the recognition of Khmer nationality” or “any evidence which shows that he/she was born by parents having Khmer nationality”.

In response to the news that the group had been denied ID cards, Maggie Murphy, Programme Director of the Unrepresented Nations and People’s Organization (“UNPO”), said that the decision to deny the ID cards was part of a broader pattern of discrimination against the Khmer Krom; “Khmer Krom from Vietnam should not have to fulfill impossible conditions such as proving they were born in Cambodia, nor being expected to have a permanent address.” Mrs Murphy called for Cambodia to resolve the issue of the treatment of the Khmer Krom once and for all to prevent the situation where

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65 LICADHO (n. 81).
66 Police officials are responsible for the issuing of ID cards. Article 1: Khmer citizens of both sexes who are 15 years old and over shall apply for an ID card from the communal Sangkat office or mobile office in their commune Sangkat. Article 2: Police Officers will examine the ID application form from applicants who have the following: birth certificates to certify Khmer nationality; residence book or family book; decision proclaiming the recognition of the legal naturalization or the request of Khmer nationality; or final judgments of the court which state that such persons were born from fathers or mothers who have Khmer nationality; or documents or evidence proving that the concerned persons were born from fathers or mothers who have Khmer nationality. Article 3: Each applicant shall complete the documents according to the sample approved by the Ministry of Interior and shall: report correctly the name registered; provide clear information conforming to the content of the request for an ID card; provide a thumb print; and pay the required fee. The applicant must also provide proof of all of the information that will appear on the ID card, including the applicant’s name and permanent address, see: Prakas No. 2473 (14 July 2007).
67 Chakrya, K.S. (2010) ‘Khmer Krom seeking help from UNHCR,’ The Phnom Penh Post, 4 Mar: “Thach Soong, who is representing the deportees, said they are asking the UNHCR to help solve a conundrum that has left the group’s legal status in limbo since the ethnic Khmer fled Vietnam only to be deported from Thailand last year. The government has refused to issue identity documents as long as the group has no fixed address. The deportees, in turn, say they can’t find jobs and rent homes without IDs.”
68 The proclamation does not state specifically that an applicant for an identity card must provide proof of a permanent address. Article 3 does, however, provide that the applicant must provide clear information conforming to the content of the identity card that they are applying for. Accordingly, the applicant must provide proof that they have an address to populate the address box on the identity card, see: Prakas No. 2473 (14 July 2007).
69 Sub-Decree 60 ANKRT/BK/ (12 June 2007).
70 Ibid.
Khmer Krom from Vietnam move to Cambodia and “live in legal limbo for significant stretches of time, as they are neither treated as citizens nor as refugees”.72

The standard experience

Whilst this group appeared to be readily identifiable as Khmer Krom,73 the primary reason that they could not secure citizenship documents was that they did not satisfy the administrative criteria set out in the legislative instruments for obtaining an ID card, in this case a permanent address. This is a common problem for Khmer Krom individuals who often arrive in Cambodia with little money and struggle to rent a property. In response to the police officials’ refusal to issue citizenship documents, this group returned to Thailand and it is not known whether they would have faced further obstacles in obtaining citizenship documentation if they had been able to satisfy the requirement for a permanent address. There are, however, a number of examples of individuals who do have sufficient documents to satisfy the administrative criteria, yet have still been refused ID cards by police officials.

All of the Khmer Krom individuals who were interviewed for this report and had applied for ID cards informed CCHR that they had been refused by police officials on numerous occasions. One individual who spoke to CCHR confirmed, “I have tried applying with the local authority four times now; each time they said no as they identified me as Vietnamese”.74 The people experiencing these problems have permanent addresses in Cambodia and Vietnamese ID cards and/or birth certificates identifying them as Vietnamese of Khmer ethnicity. Many also have Cambodian family books and residents books;75 in other words, they have all the documentary evidence required by law to obtain ID cards. Still, however, the police officials refuse to issue these documents because they do not consider that the Khmer Krom satisfy the requirements for Khmer citizenship/nationality.

―when I tried to get an ID card, the Local Authority required me to change my name and place of birth. The Police used a razor to scrape away my old place of birth and family name from my birth certificate/resident book and wrote in my new name and place of birth.‖

Interview with KK male, aged 39 (Kandal Province, 6 June 2010)

Prominent Khmer Krom rights activists and former Executive Director of KKKHRA, Ang Chanrith, explained that, in the majority of cases, the commune chiefs see the Khmer Krom as Khmer and are supportive of their applications for ID cards. However, they are nervous of pressing these

72 Ibid.
73 Through their Vietnamese identity cards and accumulative evidence such as their names, place of birth, language and parentage.
74 Interview with KK male, aged 51 (Kandal Province, 6 June 2010).
75 “Each family must hold a family book issued and certified by the local police, in which all its members, their dates of birth and their occupation are recorded. Any change of address must be notified to the police. Each family must also hold a residence book in which all living in the same household, including guests, are recorded.” Asian Human Rights Commission, (2008) ‘CAMBODIA: Village head disperses villagers; prevents Member of Parliament from meeting with them’, AHRC, 29 Feb, available: http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-041-2008 [accessed 6 June 2011].
applications with the police officials without support from the authorities at the district and provincial levels. In turn the district and provincial level officials are nervous of providing guidance to the police officials without specific approval from the Ministry of Interior that Khmer Krom are Khmer. Ang Chanrith explains, “the Ministry of Interior agree that the Khmer Krom are Khmer but cannot issue a Directive on ID cards as the Law does not provide for such a Directive”. It is evident that it is not simply a lack of permanent address that hinders a Khmer Krom’s application for an ID card. It is a fundamental confusion over the eligibility of Khmer Krom individuals, meaning that even those with all the paperwork to satisfy the ID card requirements, still struggle to obtain the documentation that is their right as a citizen.

The central issue appears to be that, whilst the RGC may consider Khmer Krom to be Khmer, the police officials responsible for issuing the identity documentation do not. A Khmer Krom individual when applying for an ID card will likely have a non-Cambodian (Vietnamized) name, speak with a distinct accent and have documentation that confirms his or her place of birth as Vietnam. Regardless of whether the police officials identify applicants as Khmer Krom, research by CCHR found that the overriding categorization of such applicants will be as Vietnamese. As such, an applicant will be unable to satisfy the ID card criteria. In not issuing ID cards to Khmer Krom individuals, the officials are misunderstanding the RGC’s declaration that Khmer Krom are citizens and, in any event, are failing to interpret the law correctly. In practical terms, by refusing to issue the ID cards, the police officials are effectively barring the Khmer Krom from the rights and benefits that are attached to citizenship/nationality.

Such failure may occur simply because the police officials are not sufficiently trained to properly comprehend the law applicable to citizenship ID cards and the effect of the RGC’s declaration on the status of Khmer Krom individuals as Cambodian nationals and citizens. Indeed, the role of police officials in issuing ID cards has previously been placed under scrutiny in entirely different circumstances. In 2007, The Phnom Penh Post ran an article on the administrative errors being made on ID cards and bribes being levied by the police for ID replacements. Son Chhay, a parliamentarian with the opposition Sam Rainsy Party, suggested that the Ministry of Interior should give this work to the commune councils as they knew and lived with the local applicants and were less likely to make mistakes.

The conclusion drawn from testimonials taken by CCHR in Kandal and Takeo provinces is that, in the absence of sufficient direction on the issue of individuals born in Vietnam of Khmer Krom parentage, police officials are refusing to issue ID cards on the basis of Khmer Krom identity alone. This is because the individuals are being considered as Vietnamese applicants as opposed to Khmer. Sok Sam Oeun, the director of the Cambodian Defenders Project, comments that, “it is for us inside Cambodia to demand from the Ministry of Interior and the government to issue a directive on its recognition of a Khmer citizen, regardless of whether they are from South Vietnam or any other countries, if such a person has no Cambodian ID, and they enter Cambodia by claiming that they are

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Khmer, what is required? Such clear directives are necessary for the lower level authorities to easily apply them.78

Changing identities from Khmer Krom to Khmer
Unable to satisfy police officials of their Khmer nationality, yet in need of ID cards to benefit from their citizenship, a practice has emerged whereby Khmer Krom change their family name to a Khmer name and their place of birth to Cambodia, in order that the officials may issue the ID cards to them on the basis that they are Cambodian Khmer. In doing so, the officials do not have to address the problems they have whilst issuing ID cards to Khmer Krom individuals.

In Khsom Village (known as “Chong Khsach”), Banteay Dek Commune, Kien Svay District, Kandal Province, there are twenty families, comprising one hundred and four people. Of these, the majority of those with ID cards had obtained them using this method; “I first applied in 1996 but I was not successful. I only got my ID card in 2010 after I agreed to change my family name and my place of birth. When I came to meet the Commune Police, I asked why they required me to change my identity; the Police Chief answered that he could not control me as I was born in Vietnam, he didn’t know where I was born as he did not know Vietnam and had never been there, so I needed to change

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79 Photograph courtesy of J Holliday June 2010.
my identity to say that I was born here [in Cambodia].”

This practice is not just accepted by the police officials, but often encouraged. In January 2010, around forty villagers from Chong Khsach were invited to apply using this method, “the local authority requested that I change my family name and place of birth; this was their order from their bosses…they sent the application with a list of 40 other applications from the Village. 30 people have received their cards now.”

CCHR has copies of ID cards from individuals who, whilst clearly identified as Khmer in their Vietnamese ID cards, were not granted Cambodian cards until they had changed their names and places of birth so as to be identified as Cambodian-born Khmer. Whilst this practice ultimately achieves the desired effect in securing the ID card for the applicant, it is illegal and ultimately leaves the individuals bereft of their original Khmer Krom identity.

The Khmer Krom identity is unique and easily identifiable; this is, in particular, due to the Vietnamization of family names, which make them specific to the Khmer Krom. In changing their family names these individuals are changing a unique aspect of their cultural identity, something that identifies their heritage as Khmer Krom and recognizes the history of their family and their Kampuchea Krom origins – “our name is perhaps our most central possession and...a signifier of [ones]elf.” Accordingly, a change in name (especially when such a change is forced) is an extremely significant step for a Khmer Krom individual which, as the research conducted by CCHR indicates, can have detrimental psychological effects on individuals, who can feel isolated and cut off from their familial and cultural links to Kampuchea Krom. As one interviewee noted, “I wanted to keep my Khmer Krom identity...now if I go back, I am Khmer not Khmer Krom...I have lost my identity”. This practice also has a detrimental effect on the community. By changing the Khmer Krom names, the identifiable Khmer Krom community in Cambodia is reduced, creating an unrealistic picture of the number of Khmer Krom in Cambodia. This discrepancy is arguably highlighted by the gulf between the statistics on Khmer Krom in Cambodia, with the KKKF asserting that there are around 1.2 million Khmer Krom in Cambodia and the RGC identifying only 82,000. In addition, the practice is in contravention of the Law on Nationality which criminalizes all who undertake to secure an ID card on the basis of false information.

The practice of changing identities is one that has been recognized and denounced by a number of commentators including the KKKF and the CERD. In systematically and repeatedly depriving Khmer
Krom individuals of their identity, the RGC is undermining the promise that the Khmer Krom will be treated as Khmer citizens without discrimination.

The choice: change identity or live without ID cards
The decision to give up their Khmer Krom identity is not taken lightly; many people will refuse and carry on living without an ID card in order to maintain their original identity. However, to live without an ID card in Cambodia will significantly and detrimentally affect your quality of life. ID cards are required in order to hold land title, borrow money, access healthcare and obtain a passport. Being able to present a national ID card helps build the trust required to find employment, trade or create business relations; it also makes access to services, such as mobile phones, cheaper.

In preparation for their examination of Cambodia’s compliance with the International Convention for the Elimination of Racial Discrimination (the “ICERD”), in February 2010, the CERD considered submissions from various Cambodian organizations and produced a list of questions for the Cambodian delegation. These included questions relating to the claim that 70% of Khmer Krom children across five regions of Cambodia cannot access education due to their parents’ lack of citizenship documentation. The report also questioned the RGC’s ability to guarantee the basic human rights of the Khmer Krom and the ability of the Khmer Krom to enjoy their rights in Cambodia without ID cards. In its response, the RGC failed to answer these questions.

“Before getting the ID card it was harder to communicate or work with other people because they did not trust or know me or trust my identity. In general people did not trust me as much as they would a Khmer born in Cambodia.”

Interview with KK male, aged 47 (Kandal Province, 6 June 2010)

In order to qualify for local social land concessions, an individual must show that he/she is a Cambodian national with legal capacity to own land. As such, the Khmer Krom often struggle to secure social land concessions or any other government welfare available to Cambodian citizens. Unable to hold titles to land, those without ID cards build their homes on state land, effectively squatting on land at the side of the road. For example, the village of Chong Khsach is home to a large Khmer Krom community and is built primarily on the side of a state road. In the event that the RGC decides to widen this road or sell the adjacent land, the entire village will be razed and the

June 2011: “[the Khmer Krom] are rarely granted identity papers, forced to change their names and asked to provide impossible documents such as Cambodian birth certificates”, Maggie Murphy, Programme Director of UNPO.

50 CERD/C/KHM/Q8-13 “Questions from the rapporteur in connection with the consideration of the eighth to thirteenth periodic reports of Cambodia” (20 November 2009).


52 CERD/C/KHM/W/8-13/Add.1 “Written replies by the Kingdom of Cambodia concerning issues (CERD/C/KHM/Q8-13) formulated by CERD relating to Cambodia’s 8 to 13th periodic reports” (17 February 2010).

53 Sub Decree on Social Land Concessions No. 19 ANK/BK/March 2003, provides that transfers of private state land for social purposes to the poor who lack land for residential and/or agricultural purposes; Social Land Concessions are administered by the local commune.
inhabitants evicted. Without ID cards, these people have no recourse to seek compensation or alternative housing. In summary, people can survive without ID cards, but in doing so they live on the margins of society and commonly in significant poverty, a situation similar to that which motivated the Khmer Krom to leave Vietnam in the first place.
4. The Current Situation:
Treatment of Politically Active Khmer Krom in Cambodia

The situation of the Khmer Krom in Vietnam and Cambodia is the result of their membership of a particular social group. The previous chapter examined the difficulties which face members of that group when they arrive in Cambodia and noted how Khmer Krom individuals in Cambodia were precluded from achieving refugee status as a result of the promise of citizenship/nationality by the RGC. It is beyond the scope of this Report to offer any explanation as to the reasons for the treatment of the Khmer Krom in Cambodia or, for that matter, in Vietnam; however, Chapters 5 and 6 of the report do set out the situation of the Khmer Krom – in Cambodia as in third countries – with regard to their status as refugees. In this regard, it is important to consider additional difficulties encountered by politically active members of the Khmer Krom community as such difficulties have a bearing on one’s status under the international law relating to refugees.

Cambodia is a signatory to the Refugee Convention, which defines a refugee in Article 1 as a person who owing to “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”. As noted above, the treatment of the Khmer Krom in Cambodia and Vietnam is a result of their membership of that identifiable group. However, certain members of the Khmer Krom community in Cambodia – often Buddhist monks – encounter additional difficulties with the authorities in Cambodia as a result of their political activism.

In recent years, there have been examples of the RGC taking measures against Khmer Krom monks who are perceived as acting contrary to the Vietnamese government’s policy of unity of all ethnic, social and political groups in Vietnam. Cambodian authorities have threatened Khmer Krom monks in Phnom Penh, Banteay Meanchey and Kompong Speu provinces with expulsion from temples or

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94 Photo courtesy of LICADHO.
95 1951 Convention and Protocol relating to the Status of Refugees.
forcible repatriation to Vietnam on the basis of their meeting with Khmer Krom groups, distributing
Khmer Krom bulletins covering cultural, religious and political affairs, and participating in protests.96

In June 2007, the prominent Khmer Krom monk Tim Sakhorn was arrested and disrobed by
Cambodian authorities. Tim Sakhorn had lived in Cambodia since 1978 and was a naturalized citizen.
He was returned to Vietnam that year in contravention of international law and the right to not be
expelled from the country of your nationality.97 This was also in contravention of Cambodia’s Law on
Nationality which provides in Article 2 that any “Khmer citizen shall not be deprived of nationality,
exiled or extradited to any foreign country, unless upon there is mutual agreement”.98

Tim Sakhorn was active in the promotion of Khmer Krom rights and was vice president of the KKKF in
Phnom Penh. At the time of the arrest, Cambodia’s Great Supreme Patriarch Tep Vong said that Tim
Sakhorn was defrocked because he had undermined Cambodia-Vietnam relations.100 He was sentenced to
one year in prison under Article 87 of Vietnam’s Penal Code for undermining Vietnam’s national unity policy.101

In an interview in 2010, Tim Sakhorn stated, “I feel unsafe in Cambodia because I am an activist and when
you protest you risk your life.” In the same interview, Mr Tim spoke of Venerable Eang Sok Thoeun who, in 2007
was found dead in his temple, “[he] participated in a demonstration in front of the Vietnamese
Embassy in Phnom Penh in response to the injustices of the imprisonments [of Khmer Krom monks] in
Vietnam. The next morning he was found with his throat cut”.102

In its 2009 report on the treatment of the Khmer Krom in Vietnam,103 HRW listed memos from
Vietnamese government officials that highlight the cooperation between Cambodia and Vietnam on
the matter of the Khmer Krom. In an article by General Luu Phuoc Luong, deputy military
commander of Vietnam’s southwest region, the General blames “reactionary groups of the Khmer
KPC [Kampuchea] Krom” for trying to “destabilize us politically” and recommends “close cooperation
with the Cambodian government in order to nip anti-government activities in the bud.”104 Whilst

2011].
97 Article 9 “no one shall be subjected to arbitrary arrest, detention or exile”. United Nations General Assembly, Universal
Declaration of Human Rights (10 December 1948).
99 Sakura (2007) ‘Buddhist patriarch orders province monk chief to defrock Abbott Tim Sakhorn accused of hurting the
Cambodia-VN relationship’, Sralanh Khmer Newspaper, 1 Jul. (translated from Khmer by Socheata at KI Media), available:
Patriarch, is the highest ranking Buddhist monk in Cambodia is said to have close ties to the ruling Cambodian Peoples
[accessed 6 June 2011].
101 LICADHO (n. 61); Copy of the Petition to release Tim Sakhorn sent to UN and USA, available:
103 HRW (n.17).
unconfirmed, there is speculation as to whether this cooperation may explain the disappearance of two Khmer Krom monks from Cambodia in May and June 2010. In August 2010, Vietnam publicly praised the RGC for their cooperation in halting anti-Vietnamese government plots being developed against Vietnam by groups along the border with Cambodia, specifically the Khmer Krom. In so doing, Vietnam’s representative cited three recent arrests for anti-government leafletting in the border area, all of which resulted in convictions on charges of disinformation. Yont Tharo, Sam Rainsy Party parliamentarian and head of the Khmer Kampuchea-Krom Cultural Centre, stated that he considered the August 2010 convictions to be, “...at the behest of the Vietnamese government.” More recently, the RGC has announced that it will support Khmer Krom media outlets, e.g., magazines and radio, on the condition that they do not, “draw objections from the Vietnamese government or argue for the liberation of Khmer Krom land from Vietnam.”

The conclusion that Cambodian immigration policy is subject to political and executive prerogatives is further supported by the cases of the Chinese Uighurs and the Vietnamese Montagnards, both groups of refugees who fled persecution in their respective countries and sought asylum in Cambodia. In December 2009 a group of Uighurs was forcibly returned to China by the RGC, a move that came just before a public pledge of military aid from China. As for the Montagnards, they have been subjected to poor and often violent treatment on arrival in Cambodia, and have been returned to Vietnam where there is a real likelihood of persecution. The fact that the Khmer Krom are ethnic Khmer may be enough for some to dismiss outright an argument that a Cambodian government would be willing to tow a Hanoi line at the expense of fellow Khmers. However, were the RGC to put in place an immigration policy in keeping with their exclamations of support for the Khmer Krom, it would be likely to increase Khmer Krom immigration and severely undermine Hanoi’s efforts to maintain silence over their systematic mistreatment of one-tenth of its own population. Were the RGC to act in support of the Khmer Krom, such a step would likely politicize the situation and contribute to growing international calls for independence or autonomy for the Khmer Krom – a move that would be sure to attract the displeasure of Vietnam.

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110 Montagnards: Indigenous minority group from the central and northern highlands of Vietnam (Montagnard meaning ‘mountain dwellers’). The majority of Montagnards are Christians who claim to have been persecuted by the Vietnamese government and as a result seek refuge in Cambodia. Uighurs: Uighurs are a Muslim minority group from Xinjiang Province in western China. In July 2009, following protests in Xinjiang about the treatment of the Uighurs, a group of protestors fearing persecution arrived in Cambodia seeking refuge.


5. The Solution: Give Effect to Khmer Krom Citizenship/Nationality

There is clearly a contradiction between the public position of the RGC on the Khmer Krom right to Cambodian citizenship/nationality and the reality faced by those who seek to enjoy the rights of their citizenship by applying for ID cards. A Khmer Krom individual who comes to Cambodia to access the citizenship/nationality promised to him/her by the RGC and to live as a Khmer citizen will be treated in one of three ways; (1) he/she will secure nationality/citizenship without difficulty as well as the ID card that in practice unlocks the rights and associated benefits; (2) he/she will secure nationality/citizenship and an ID card but only when he/she agrees to change his/her family name from a Vietnamized Khmer Krom name to a more traditional Khmer name and the record of his/her birthplace; or (3) he/she will be denied an ID card and therefore the rights and benefits that go with citizenship/nationality, and consequently will be abandoned on the margins of Cambodian society.

“Citizenship is man’s basic right for it is nothing less than the right to have rights”

Chief Justice Earl Warren – USA – 1958

This situation is untenable. This chapter provides the Report’s central and overriding recommendation – that the RGC confirm the citizenship/nationality of the Khmer Krom. The chapter also examines difficulties that Khmer Krom face in practice when they try to secure citizenship/nationality in Cambodia. These difficulties include proving their Khmer ethnicity to an issuing authority that is unsure of their status with regard to Khmer citizenship/nationality and satisfying the permanent address requirement – an impossibility for Khmer Krom recently arrived from Vietnam – in order to secure an ID card that will unlock the benefits and rights that are attached to citizenship/nationality. The chapter concludes by setting out recommendations for a coherent framework that the RGC should put in place to ensure that Khmer Krom avoid the obstacles set out in this chapter and can access their Khmer citizenship/nationality.

Confirm the Khmer citizenship/nationality of the Khmer Krom

The central and overriding recommendation of this Report is for the RGC to put an immediate end to the uncertain situation that faces Khmer Krom who arrive in Cambodia by confirming their Khmer citizenship/nationality. A directive at central government or ministerial level confirming the Khmer citizenship/nationality of the Khmer Krom is essential in ensuring that the authorities responsible for issuing ID cards – the municipal police – give effect to the citizenship/nationality that has been promised to the Khmer Krom. Such a directive should make clear, in no uncertain terms, that the practice of encouraging Khmer Krom to change their names and the record of their birthplace is illegal and punishable by a term of imprisonment of between five and ten years as per Article 21 of
the Law on Nationality. In the opinion of CCHR such a measure is the very minimal measure required of the RGC to ensure that Khmer Krom are not left living on the edges of society in the interim period before more widespread measures, explained later in this chapter, are taken to conclusively resolve the situation of the Khmer Krom. It is hoped and expected that a directive at central government or ministerial level would suffice to ensure that Khmer Krom applications for ID cards are fully facilitated by the issuing authority and that no uncertainty would remain as to the citizenship/nationality of the Khmer Krom.

As noted above, CCHR views a directive confirming the Khmer citizenship/nationality of Khmer Krom as the very minimal step that the RGC should take when starting to address this situation. The following sections consider the challenges that are likely to remain even after such a directive is completed. These sections set out the law relating to citizenship/nationality and examine issues that arise in practice when Khmer Krom seek to secure citizenship/nationality. This analysis provides the basis for the concluding section of this chapter which recommends the creation of a coherent framework by the RGC to give effect to Khmer Krom citizenship/nationality and sets out CCHR’s suggestions on what such a framework should include. Before considering the difficulties that Khmer Krom face in giving effect to their citizenship/nationality, it is first necessary to consider the law relating to citizenship/nationality in Cambodia, in particular that which relates to the issuing of ID cards.

**The Law Relating to Citizenship and Nationality**

The determination of an individual’s nationality and citizenship, and the distribution of ID cards, is provided for and governed by various laws and regulations as set out below.

**Constitution**

Cambodia is subject to, and benefits from, a written constitution; the Constitution of the Kingdom of Cambodia (the “Constitution”). Article 31 of the Constitution provides that every Khmer citizen shall be equal before the law, enjoying the same rights and freedoms and fulfilling the same obligations regardless of race, color, sex, language, religious belief, political tendency, birth origin, social status, wealth or other status. Article 33 provides that Khmer citizens shall not be deprived of their nationality.

It is intended that, once deemed a Khmer citizen, an individual is protected by the Constitution from discrimination and deprivation of nationality notwithstanding their origin of birth. However, in order to determine whether an individual has the benefit of Khmer nationality, the Constitution refers to the provisions of the Law on Nationality.

**Law on Nationality**

The Law on Nationality sets out its objective in Article 1: to determine the Khmer nationality/citizenship of those persons who fulfill the relevant criteria and are living in Cambodia. Article 2 provides that “any person who has Khmer nationality/citizenship, is a Khmer citizen”.

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113 The Constitution of the Kingdom of Cambodia, Adopted by the Constitutional Assembly in Phnom Penh on 21 September 1993 at its 2nd Plenary session (as amended March 1999).

114 Ibid, Article 33: The Khmer nationality shall be determined by a law.

115 Preah Reach Kram NS/RKM/1096/30 Promulgated on 09 October 1996.
Article 4 sets out the criteria to determine Khmer nationality/citizenship by birth, stating that an individual “shall obtain Khmer nationality/citizenship regardless of the place of birth for:

- any legitimate child who is born from (sic) a parent (a mother or father) who has Khmer nationality/citizenship, or
- any illegitimate child who is born from (sic) and recognized by a parent (a mother or father) who has Khmer nationality, or
- any child who is not recognized by the mother and father (parents), when upon the court passed a judgment stating that such child was really born from (sic) a parent (or mother or father) who has Khmer nationality/citizenship”.

Sub-Decree on Khmer Nationality Identity Cards
In a sub-decree issued in 2007 (the “2007 Sub-Decree”), the RGC sets out the evidence that the authorities should consider when assessing whether a person fulfils the criteria stipulated in the Law on Nationality. In Article 5, the 2007 Sub-Decree provides that all individuals of Khmer nationality over 15 are obliged to apply for an ID card using the following:

- Birth certificates which prove that such a person is a Khmer citizen; or
- Family book which confirms his/her spouse is a Khmer national; or
- Judgments of the court which stated that such persons were born from fathers or mothers who have Khmer nationality; or
- Royal-Decree proclaiming the recognition of the application for Khmer nationality to the concerned persons; or
- The documents or evidence proving that the concerned persons were born from fathers or mothers who had Khmer Nationality.

The 2007 Sub-Decree replaced an earlier version issued in 1996. The 2007 Sub-Decree lowered the age of eligibility from 18 to 15, made the application for ID cards an obligation and removed the provision that the criteria could be satisfied on provision of “any document which could prove that such a person is a Khmer citizen.” Whilst the 2007 Sub-Decree has replaced the 1996 version, any ID cards issued under the 1996 provisions are still valid until their expiry. The last of these cards will expire in 2017.

Proving Khmer Citizenship/Nationality

Defining Khmer citizenship/nationality
The Law on Nationality provides that any person who has Khmer “nationality/citizenship” is a Khmer citizen. It is unhelpful and unfortunate that, in defining the terms “nationality/citizenship”, the legislation requires proof that a person is born of parents who are described using the same terms. In other words, to establish whether a person is Khmer, it is necessary to establish whether his or her parents are Khmer, with no further assistance provided with the definition. In the absence of such clarification it is reasonable to presume that if the RGC considers the Khmer Krom to be citizens without discrimination, then this classification should apply equally to the parents of the applicant,

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116 Emphasis added.
117 No. 60 ANKRT/BK/June 12, 2007.
118 No. 36 ANK/BK/July 26, 1996.
as it does to the applicant him/herself. In other words, if a Khmer Krom applicant is to be considered Khmer without discrimination, then his or her Khmer Krom parents should be considered Khmer. Accordingly, a Khmer Krom individual born in Vietnam to one or both Khmer Krom parents (i.e., Khmer Krom parents who are ethnically Khmer, whether Khmer or Khmer Krom, and therefore also Khmer citizens) should be “eligible to obtain Khmer nationality/citizenship” as per the Law on Nationality.

Figure 9: Khmer Krom woman in her home in Thal Babek Village, Rokar Krav Commune, Duav Keo District, Takeo Province

Birth certificates proving that a person is Khmer
In assessing whether a person fulfils the criteria stipulated in the Law on Nationality, i.e., that he or she is born to a parent who has Khmer nationality/citizenship, the competent authority can consider a birth certificate “proving that such person is Khmer”. There is no other clarification as to the level of proof required. As such, it is reasonable to imply that an individual can prove that he or she is Khmer if his or her birth certificate lists one or both of his or her parents as Khmer.

Given that the Law on Nationality specifically states that this requirement is “regardless of the place of birth”, it follows that if a person can present a birth certificate (notwithstanding that it is Vietnamese) that shows that he or she was born of parents or a parent defined as Khmer (notwithstanding that the applicant was born in Vietnam), he or she will satisfy the requirement in

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119 Photo courtesy of Chanrith Ang (Takeo Province, July 2010).
the 2007 Sub-Decree and will be eligible for an ID card (subject to his or her ability to satisfy the other administrative requirements).

Documents or evidence proving that the concerned persons were born of a father or mother who had Khmer Nationality

A Khmer Krom individual without a birth certificate may present any other document that proves that he or she was born of parents who are Khmer nationals or a parent who is a Khmer national. The Law on Nationality uses the terms “nationality” and “citizenship” interchangeably. As such, to prove “citizenship/nationality” by birth, an individual needs to show that his or her parents have Khmer “nationality/citizenship”. Again, it has to be presumed that the RGC, in making their declaration about Khmer Krom being Khmer citizens, intended it to follow that the children of a Khmer Krom citizen will have Khmer “nationality/citizenship”, and that this approach be applicable across the board. As such, it should be sufficient for a Khmer Krom individual to provide documentary evidence that one or both parents are Khmer Krom. This evidence could be provided by way of an applicant’s parent’s birth certificate or Vietnamese identity card (which would identify a Khmer Krom individual as Khmer). Another approach would be by reference to the applicant’s own Vietnamese identification documents, which may identify him or her as Khmer. In identifying an individual as being of Khmer ethnicity, the Vietnamese authorities would consider the individual’s Khmer parentage. Accordingly, presenting a Vietnamese ID card showing Khmer ethnicity should be sufficient to satisfy this documentary requirement.

Proving Khmer Nationality without Documents

It is unclear what evidence would be considered sufficient to prove Khmer citizenship/nationality in the absence of any documentary evidence. A Khmer Krom individual should, however, be given the opportunity to put together a case to support his/her claim of Khmer citizenship/nationality. It is accepted international practice, for example, that in the absence of any documentary evidence establishing nationality, a formal statement from an individual may be sufficient to satisfy a claim of nationality.\(^\text{120}\) This is especially the case where such statements are supported by evidence from others who can verify or support the applicant’s claim.

Due to the circumstances surrounding their irregular arrival in Cambodia, it is often the case that Khmer Krom individuals do not have documentary evidence of their identity. As such, in order to be able to fulfill its promise of citizenship for the Khmer Krom, the RGC needs to put in place a system for assessing the Khmer nationality of individuals in the absence of documentary proof. Evidence for the purposes of establishing nationality should reasonably include family name,\(^\text{121}\) place of birth, language/accent,\(^\text{122}\) supporting statements and witness evidence. Applications based on formal statements of nationality should be accepted to the extent that they are deemed sufficient by other international bodies. In cases of doubt, the assessing body should seek the assistance of the UNHCR in determining the strength of an application against international standards.

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\(^{120}\) The UNHCR for example will accept formal signed statements from individuals claiming a particular nationality in the absence of any other documentary evidence.

\(^{121}\) As referenced in Section 2, successive Vietnamese regimes changed family names in an effort to assimilate Khmer Krom into the ethnic Vietnamese population. As such, Khmer Krom family names are clearly identifiable; common Khmer Krom names include: Danh, Kien, Son, Kim, Chau, Thach.

\(^{122}\) Often the same evidence relied upon by the officials who are refusing to issue Cambodian ID cards to Khmer Krom individuals.
Permanent address requirement

Prakas on the issuing of ID cards

As outlined in Chapter 3, national ID cards are, in practice, the key for all Khmer citizens to unlock the rights and benefits attached to their citizenship/nationality. The Prakas on Issuing of Identity Cards\(^{124}\) (the “Prakas”) sets out the administrative requirements that need to be fulfilled before an individual can obtain an ID card. The intention of a Prakas is to provide more definition or detail with regard to the requirements of a sub-decree.

In Article 2, the Prakas specifies that the commune police officer can consider the following in assessing the application for an ID card:

- Birth Certificates to certify Khmer nationality;
- Residence book or Family Book;

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\(^{123}\) Photo courtesy of Chanrith Ang (Ang Giang Province, July 2010).

• Decision proclaiming the recognition of the legal naturalization or the request of Khmer nationality; or
• Final judgments of the court which states that such persons were born from fathers or mothers who have Khmer nationality; or
• Documents or evidence proving that the concerned persons were born from fathers or mothers who have Khmer nationality.

Central to this Report, however, is Article 3 of the Prakas, which requires that each applicant provide clear information conforming to the content of the Khmer ID card, i.e., the applicant is required to provide proof of the information to be included on the card itself, including a permanent address and his or her place of birth.

The Cambodian legal system is hierarchical in structure. This means that a lower law must conform to the higher law to which it refers, e.g., a prakas must conform to a sub-decree. In the event of conflict, the higher law has primacy. No law can contradict the Constitution. If a Khmer Krom individual is accepted by the RGC as a Khmer citizen, then he or she is protected by Article 33 of the Constitution, which states that “Khmer citizens shall not be deprived of their nationality”. Without an ID card, a Khmer national is unable to access education, employment, healthcare and other benefits inherent to citizenship. Ultimately, a person’s inability to obtain an ID card renders their nationality ineffective – in that they are unable to access any of the benefits or protection that nationality and citizenship provide. In the event that a Khmer Krom individual can provide sufficient proof of his or her Khmer nationality, but is denied his/her ID card due to his/her inability to provide proof of a permanent address, CCHR consider this denial to be a deprivation of nationality.

CCHR considers that this administrative requirement is standing in the way of Cambodian nationals and citizens successfully applying for citizens’ ID cards and being able to enjoy the benefits of their citizenship. Where there is an argument that a law does conflict with the Constitution, it can be referred to the Constitutional Council. Such referral can, as per Article 141 of the Constitution, be at the request of the King, the President of the Senate, the President of the National Assembly, the Prime Minister, one quarter of the senators, one tenth of the members of the National Assembly, or a Court. CCHR considers that the requirement in Article 3 of the Prakas that an applicant for an ID card must provide proof of permanent address should be considered by the Constitutional Council on the grounds of unconstitutionality.

**Conclusion**

While it is expected that a directive from central government or ministerial level will help to assuage the situation of Khmer Krom seeking to secure Khmer citizenship/nationality, it is the position of CCHR that the problems outlined in this chapter must be addressed through the creation of a coherent framework created to give effect to the citizenship of Khmer Krom. This framework should

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126 Article 50 (previously 131) Constitution: “This Constitution shall be the Supreme law of the Kingdom of Cambodia. Laws and decisions by the State Institutions shall have to be in strict conformity with the Constitution”.
127 Article 136 (previously Article 117), Constitution: the duty of the CC is to “safeguard respect of the Constitution, interpret the Constitution and laws adopted by the National Assembly and reviewed completely by the Senate”.
128 Prakas 2473 (n.127).
outline the steps that should be taken to establish Khmer ethnicity, including through the provision of the documentary evidence set out in the 2007 Sub-Decree on Khmer Nationality Identity Cards. The framework should also include a system for establishing Khmer ethnicity without documentary evidence. Such a system should take into account family name, place of birth, language/accent, supporting statements and witness evidence. As suggested above, applications based on formal statements of nationality should be accepted in line with standards set by international bodies and, in case of doubt, the issuing authority should seek assistance from the UNHCR in determining the strength of an application. Decisions of the Khmer citizenship/nationality of an individual should be subject to a right of appeal.

In the event that an individual cannot establish his/her Khmer ethnicity and a final decision is made to that effect, that person should be treated as Vietnamese. As the Refugee Convention provides that a person may avail of refugee status and the protection that attaches to that status if he/she is outside his/her country of nationality owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, a Khmer Krom individual in Cambodia who fails to satisfy the legal criteria to attain Khmer citizenship/nationality and who is declared to be Vietnamese, in the eyes of the Cambodian authorities, will be free to apply for refugee protection in Cambodia. It is hoped that the creation of a framework which facilitates to the greatest extent possible Khmer Krom applications for citizenship/nationality but which ultimately treats each Khmer Krom individual as either a citizen/national of Cambodia or Vietnam will prevent the current situation from prevailing whereby Khmer Krom are left with neither nationality and none of the protection and rights that attach to citizenship/nationality or to refugee status.
6. Current status of Khmer Krom in international refugee law, the law on statelessness and human rights law

The previous chapter set out the steps that CCHR views as essential in ensuring the situation of the Khmer Krom in Cambodia is resolved. These steps necessarily require specific action on the part of the RGC. This chapter will consider the situation of the Khmer Krom in Cambodia and in third countries, in the event that the RGC fails or refuses to put in place the necessary framework to facilitate Khmer Krom citizenship/nationality in Cambodia. This analysis will consider international refugee law and the law relating to stateless persons. The practice in third countries of sending Khmer Krom refugee claimants to Cambodia will be examined. Given the uncertainty that surrounds the situation of the Khmer Krom the chapter calls upon the UNHCR to review the situation of Khmer Krom in Cambodia and third countries and attempt to determine their status under refugee law and the law relating to stateless persons. The chapter concludes with an analysis of the situation of the Khmer Krom under domestic and international human rights law.

“Everyone has the right to a Nationality.”
UN Declaration on Human Rights - 1948

Status of Khmer Krom individuals in Cambodia and third countries under refugee law

Refugee status in International Law
The definition and criteria for the classification of refugees and stateless persons is provided for both in international law and the Refugee Convention.

Cambodia is a signatory of the Refugee Convention, which defines a refugee in Article 1 as a person who has a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.” Article 33 prohibits the return (“refoulement”) of refugees to their country of origin, if the refugee’s life or freedom would be threatened “on account of his race, religion, nationality, membership of a particular social group or political opinion”.

Refugee status of Khmer Krom in Cambodia
As noted throughout this Report, the RGC’s declaration that the Khmer Krom are nationals of Cambodia has detrimentally affected the ability of the Khmer Krom to seek refugee status in Cambodia and in third countries. It is a requirement that allows no exception – that a person with a nationality who is seeking refugee status is outside the country of his or her nationality. The rationale underlying this rule is that international protection cannot come into play while a person is within the territorial jurisdiction of his or her home country.

129 1951 Convention and Protocol relating to the Status of Refugees.
Many Khmer Krom who have crossed into Cambodia in the past decade have done so on the basis that they are escaping persecution in Vietnam and claiming refugee status. However, since the RGC’s promise of nationality the Khmer Krom are not being treated by the Cambodian authorities as being outside of the country of their nationality when in Cambodia. As such, the Khmer Krom are precluded from being classified as refugees within Cambodia. In instances where they have failed to secure ID cards and access to the rights that citizenship/nationality bestows, there is, it seems, little that the Khmer Krom themselves can do to convince the Cambodian authorities to treat them as Vietnamese, for the purpose of obtaining refugee status. As noted in the previous chapter, CCHR recommends the creation of a framework that ultimately treats each Khmer Krom in Cambodia as either a citizen/national of Cambodia or Vietnam in order that such individuals can avail of the rights and protection that attach to citizenship/nationality or refugee status. In the event that no framework is created, there is reason to believe that Khmer Krom in Cambodia who fail to access their citizenship/nationality should be treated as stateless. This is examined in greater detail later in this chapter.

**Practice of treating of Khmer Krom as Citizens of Cambodia and Vietnam**

The episode outlined in Chapter 1, where Khmer Krom were sent from Thailand to Cambodia in February 2010, indicates it is common practice in some third states to treat Khmer Krom as Khmer citizens and to send them to Cambodia rather than to afford them protection as refugees fleeing persecution in Vietnam. This practice is the result of third countries acting upon the promise of citizenship/nationality that the RGC has made to the Khmer Krom and is based on the premise that national protection, wherever available, takes precedence over international protection. However, given that many Khmer Krom fail to secure ID cards and access to their citizenship/nationality, this practice should be examined further.

While Cambodian law does not distinguish between nationality and citizenship, this is not the case in the laws of all States and while the two words are often used interchangeably and as synonyms there is a generally agreed distinction between the two words. The term “nationality” is understood to refer to individual membership in a nation as a cultural, ethnic and historic community rather than a legal entity whereas the term “citizenship” refers to a certain legal relationship between an individual and a state which carries “a bundle of legal or moral rights and obligations or to individual and collective forms of participation in the public realm”. Applying this distinction, a Khmer Krom individual who arrives in Cambodia from Vietnam is a Khmer national but not a Khmer citizen. In other words, a Khmer Krom individual, while always a Khmer national owing to his/her membership of the Khmer cultural, ethnic and historic community, is not a citizen until the citizenship promised to him/her by the RGC has the effect in such a way – namely by securing an ID card – that he/she has access to the bundle of legal rights that are owed to Khmer citizens.

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The distinction between Khmer nationals and citizens is particularly relevant with regard to the legal position of the Khmer Krom and may impact upon the determination of their status under refugee law when they are in third countries. As noted above, Article 1 of the Refugee Convention defines a refugee as a person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality”. In their interpretation of Article 1, the European Council of Refugees and Exiles (“ECRE”) make a distinction in their respective interpretations of the separate references to nationality. Insofar as the first reference to nationality is concerned, the ECRE states that “the term should not be confined exclusively to the idea of citizenship. It should also include membership of a group determined by its cultural or linguistic identity, traditions or customs, common roots or its relationship with the population of another State”. The ECRE states that the second reference to the term nationality (“outside the country of his nationality”) on the other hand should be interpreted “as “citizen” of a country, as distinct from the wider sense of “nationality””.

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133 Photo courtesy of Chanrih Ang (Takeo Province, July 2010).
135 Ibid, para. 54.
136 Ibid, para. 63.
Applying this distinction to the case of the Khmer Krom, an individual would be considered a Khmer national for the purposes of persecution but not a Khmer national for the purposes of determining where he/she is “outside the country of his nationality”. The ECRE adds that “if a person has citizenship of more than one country then they must establish a well-founded fear of persecution for a Convention reason in relation to each country of citizenship”.\(^\text{137}\) As Khmer Krom are not citizens of Cambodia, or nationals for the purposes of determining whether they are outside that country, a Khmer Krom individual in a third country need not therefore show that he/she has a well founded fear of persecution in Vietnam and Cambodia, rather he/she need only establish that fear with respect to Vietnam.

To the foregoing, the ECRE adds that “before returning a rejected refugee claimant to a country of citizenship the asylum state must ensure that the rejected claimant in possession of the citizenship of that country and has meaningfully access to the rights which citizenship of that country bestows”.\(^\text{138}\) In other words, a third country which deems that a Khmer Krom individual who is seeking refugee status must establish that he has a well-founded fear of persecution in Cambodia and Vietnam, must ensure that that person is in possession of Khmer citizenship and has meaningful access to the rights that go with citizenship. In the event that the applicant in question finds himself in a third country without having been in Cambodia, he/she could not be said to have citizenship of Cambodia nor access to the rights that Khmer citizenship bestows. In such circumstances the third country should not send the applicant in question to Cambodia. In the event that the applicant has been to Cambodia and has tried and failed to secure an ID card allowing him/her access to the rights that Cambodia citizenship bestows, this argument is still strong.

**Establishing a well founded fear of persecution in Cambodia and Vietnam**

In the event that a third country demands that a Khmer Krom individual must establish a well-founded fear of persecution in Cambodia and Vietnam before being granted refugee status, it is worth considering the options open to that individual in order that he/she can secure refugee protection in that third country and avoid being sent to a life on the edges of Cambodian society. Whilst there is no definition of “persecution” in the Refugee Convention itself, it is widely understood to mean a threat to a person’s life or freedom – or other serious human rights violation – on account of race, religion, nationality, political opinion or membership of a particular social group.\(^\text{139}\) Discrimination alone will not necessarily amount to persecution. The UNHRC observes that differences in the treatment of various groups do exist in many societies to varying degrees and that such groups are not necessarily the victims of persecution. According to the UNHRC, it is only when discrimination would lead to “consequences of a substantially prejudicial nature” that a reasonable fear of persecution can be said to exist in a given case. This threshold is crossed where discrimination would give rise to, for example, serious restrictions on the right to earn a livelihood or to access normally available education facilities.\(^\text{140}\) As Khmer Krom who fail to secure an ID card in Cambodia are left to live on the margins of society, without access to employment, education and a whole host of other rights, this threshold may be satisfied in many cases.

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\(^{137}\) Ibid, para. 64.  
\(^{138}\) Ibid, para. 65.  
\(^{139}\) UNHCR Handbook (n.133)para. 51.  
\(^{140}\) Ibid, para. 54.
The focus on fear necessarily entails a degree of subjectivity since it will depend on the psychological make-up of an individual applicant. Where the likely discrimination itself is not of a serious character, it could still give rise to a reasonable fear of persecution if it produces, in the mind of the applicant, a feeling of apprehension and insecurity as far as his or her future is concerned. The claimed fear is necessarily stronger in instances where the person in question has already been the victim of discriminatory measures. As such, where discrimination alone may be insufficient to establish a reasonable fear of persecution, the cumulative effect of discrimination with feelings of apprehension and/or insecurity adds weight to the evidence that the individual has a real fear of persecution within Cambodia.

As the assessments for refugee status must be carried out on a case-by-case basis, it is impossible to say whether all Khmer Krom would be deemed as reasonably fearing persecution in Cambodia for the purpose of obtaining refugee status in a third country. Notwithstanding this, if an individual can show that he or she has been or would likely be refused access to basic human rights as the result of discrimination he/she may avoid himself/herself of refugee protection. In the event that the individual in question has already travelled to Cambodia and been denied an ID card and, as such, access to employment land and education, this requirement may be clearly established. Such an application would be strengthened in the event that a person could establish that he or she would feel insecure in Cambodia. This would be easily established by any applicant who is politically active in regard to Khmer Krom issues, as he/she would face the very real prospect of being arrested in Cambodia and/or returned to Vietnam by the RGC.

**Status of Khmer Krom individuals in Cambodia and third countries under the law relating to stateless persons**

**Statelessness in international law**

Unable to enjoy their nationality or the protection afforded by refugee status, it has been suggested that the Khmer Krom in Cambodia ought properly to be defined as stateless¹⁴¹ and be afforded the rights and protection that that status bestows.¹⁴² A stateless person is one who is not recognized as a citizen by any country.¹⁴³ RI, in its 2005 report on statelessness¹⁴⁴ and its 2009 progress report,¹⁴⁵ highlighted the difficulties experienced by the Khmer Krom in establishing their citizenship in Cambodia and identified the group as “stateless” on the basis that they have access to neither refugee protection nor citizenship.

Cambodia is not a signatory to the 1954 Convention Relating to the Status of Stateless Persons (the “1954 Convention”).¹⁴⁶ In any event, even if Cambodia is not bound by the provisions of the 1954

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¹⁴² Articles 12-32 of the Convention relating to the Status of Stateless persons sets out the rights that a state owes to stateless persons resident in its jurisdiction. These rights include access to education, access to the courts, access to paid employment, freedom of movement, freedom of association and certain rights with regard the ownership of property.


¹⁴⁴ Lynch, M (n.145)

¹⁴⁵ Southwick, K and Lynch, M. (n. 145)

Convention, it is the most logical place to look for an internationally accepted definition of “stateless persons”. According to the 1954 Convention, a stateless person is one who is “not considered as a national by any State under the operation of its law”. The definition of statelessness has been further broken down into those who are “de jure” and those who are “de facto” stateless. Whilst de jure statelessness refers to those individuals who fall under the primary definition, a person defined as de facto stateless (or stateless in fact), is one who is “unable to demonstrate that he/she is de jure stateless, yet he/she has no effective nationality and does not enjoy national protection”.

The difficulty comes when trying to understand what it is to have “no effective nationality” and to “not enjoy national protection”. Had the RGC not promised nationality to the Khmer Krom, they would likely be defined as de facto stateless on leaving Vietnam for fear of persecution (although in practical terms they would be considered asylum seekers and refugees), the risk of persecution being evidence that the individual no longer enjoyed the protection of their state. Since the RGC promised citizenship, however, determination of statelessness for the Khmer Krom becomes more complicated.

Statelessness of Khmer Krom in Cambodia

The UNHCR recently undertook an analysis of de facto statelessness, which may help in the assessment as to whether Khmer Krom individuals can be considered stateless in Cambodia. One of the conclusions drawn was that if a person is inside a country where he/she is considered a national, but is unable to enjoy his/her nationality (i.e., the rights and benefits that come with nationality), that in itself is not a sufficient basis on which to claim statelessness. The definition drawn by the UNHCR determines that statelessness is in fact judged on whether a person is able to enjoy his/her fundamental right to nationality; it is not sufficient to show that a person with nationality is unable to enjoy the benefits of his/her nationality. As such, the UNHCR concludes that an individual cannot be defined as stateless within his/her country of nationality. In Cambodia, not only are the Khmer Krom said to be considered nationals, there are individuals who have successfully formalized their nationality by successfully obtaining ID cards. Accordingly, on the current UN definition of statelessness, it is unlikely that all Khmer Krom could be deemed stateless in Cambodia. However, in the event that an individual applicant has failed to secure an ID card, it is arguable that he/she has been barred not only from accessing his/her rights attached to nationality but to his/her right to nationality. For such a person, the RGC promise of nationality to the Khmer Krom is meaningless and he/she could qualify to be considered stateless in Cambodia.

UNHCR Review of the Khmer Krom Situation in Cambodia

In the event that the RGC does nothing to resolve the situation of Khmer Krom in Cambodia, CCHR calls upon UNHCR to review the situation of Khmer Krom in Cambodia and third countries and to make a determination about their status under international refugee law and the law relating to stateless persons. Insofar as Khmer Krom who are seeking refugee status in third countries are concerned, CCHR recommends that UNHCR determines that Khmer Krom should not be treated as citizens of Cambodia and Vietnam, rather they should be viewed only as citizens of Vietnam. In this regard, CCHR urges UNHCR to inform third countries not to return Khmer Krom refugee claimants to

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147 Ibid. Article 1 Paragraph 1.
149 Ibid.
Cambodia but to examine their applicants for refugee status on the basis of a well-founded fear of persecution in Vietnam.

UNHCR stated in a recent Strategy Note that, “in some circumstances it may be necessary that UNHCR assesses whether or not a person is stateless. As in refugee status determination, UNHCR can assess, whether to the Office’s knowledge, a person is stateless or possesses a specific nationality.”

CCHR therefore calls on UNHCR to consider the situation of Khmer Krom in Cambodia and to make a determination that, in the event that a Khmer Krom individual is refused an ID card, he/she will be treated as stateless and afforded the rights and protection which that status bestows. While UNHCR has previously stated that the denial of rights attached to nationality, as opposed to the denial of the right to nationality itself, does not equal statelessness, CCHR opines that a refusal of an ID card amounts to a denial of the right to nationality. CCHR also puts forward the following arguments in support of our contention that Khmer Krom in Cambodia who are denied an ID card should be treated as stateless:

**Protection of state**

In assessing an individual’s nationality, the natural link between the person and the state must be considered. Such consideration would cover the assessment of an individual’s ability to access diplomatic protection from the state of purported nationality. However, if an individual is within one of the states in which he/she has citizenship he/she cannot avail of the diplomatic protection of the other state in which he/she has citizenship. It therefore does not assist in the analysis of the statelessness, or otherwise, of a Khmer Krom individual to conclude that he/she would be denied – as is likely the case – diplomatic protection by the Cambodian embassy in Vietnam. The fact, however, that the RGC has returned Khmer Krom individuals to Vietnam in spite of their real fear of persecution, adds weight to the argument that the Khmer Krom enjoy no diplomatic or state protection from Cambodia.

**Operation by law v. Operation under law**

Article 1(1) of the 1954 Convention defines *de jure* persons as those people who are not considered as nationals of any country “under operation of its law”. The term “operation under law” refers to the work of the law in practice and should be distinguished from the term “operation by law” which refers to the way that a law is written. Ultimately, whether a person or group of people are to be considered nationals will depend as much on the legal mechanisms in place that confer automatic nationality as it will on the operation of the state’s law in practice (which will generally reflect the state’s view of the nationality). As such, nationality can be determined by considering how the law is applied and by the customary practices employed by the state. As such, whilst the law may confer automatic nationality on the Khmer Krom without discrimination, in practice the Khmer Krom are often precluded from their nationality by operation of the law. In the event that the RGC does nothing to address the situation of Khmer Krom in Cambodia, the UNHCR should conclude that

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152 Hague Convention on Certain Questions Relating to the Conflict of Nationality Law, League of Nations, Treaty Series, vol. 179, p. 89, No. 4137, 13 April 1930, provides in Article 4 that “A State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses”. The Hague Convention is available at [http://www.unhcr.org/refworld/publisher,LON,,,3ae6b3b00,0.html](http://www.unhcr.org/refworld/publisher,LON,,,3ae6b3b00,0.html) [accessed 7 June 2011].

individuals who have failed to secure an ID card and give effect to their rights as citizens in Cambodia are stateless.

**Situation of the Khmer Krom under Human Rights Law**

Given the deference that international refugee law and the law on statelessness affords to domestic jurisdictions, there is no specific obligation on the part of the RGC under these regimes to take steps to alleviate the current plight of the Khmer Krom in Cambodia who find themselves in a state of legal limbo as a result of the RGC’s failure to give practical effect to its promise of citizenship/nationality. The current situation of the Khmer Krom does, however, amount to a violation on the part of the RGC on a whole host of human rights obligations under domestic and international law.

**Situation of the Khmer Krom in domestic Human Rights Law**

Article 33 of the Constitution provides that “Khmer citizens shall not be deprived of their nationality”. While the recent review of the law on statelessness by the UNHCR held that a deprivation of the rights attached to nationality does not, in and of itself, amount to a deprivation of nationality *per se*, it remains arguable that the failure of the RGC to give effect to the promise of citizenship/nationality to the Khmer Krom amounts to a violation of Article 33. It is the position of CCHR that without an ID card, an individual’s nationality is rendered redundant as he/she is precluded from accessing the most basic rights and benefits – such as the rights to health, education, work and the right to own land. At any rate, the Constitution expressly guarantees all Khmer citizens a whole host of human rights which are denied to the Khmer Krom on a systematic basis, including the right to vote (Article 34), the right to work (Article 36), the right to own property (Article 44) and the right to education (Article 48). Moreover, the Constitution provides that Cambodia will “recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights, women’s and children’s rights”. This provision extends to all rights set out in the treaties and conventions on human rights to which Cambodia is a party, including those that are not otherwise expressly provided for in the Constitution.

**Situation of the Khmer Krom in international Human Rights Law**

As outlined in the previous subsection, the prevailing situation of the Khmer Krom in Cambodia constitutes violations of a whole host of rights guaranteed to the Khmer Krom by domestic and international laws. In addition to the rights guaranteed by the Universal Declaration of Human Rights (the “UDHR”) and the International Covenants on Civil and Political Rights, and Economic, Social and Cultural Rights, the RGC is in violation of the ICERD, which Cambodia acceded to in 1983. Accordingly, the RGC is legally bound to ensure the elimination of racial discrimination in all forms and, in particular, to ensure that all minority groups (including the Khmer Krom) are able to enjoy human rights on the same basis as the Khmer majority.

Racial discrimination is defined in the ICERD as including “any exclusion, restriction [...] based on descent or national, or ethnic origin, which has the purpose or effect of nullifying or impairing the enjoyment or exercise of human rights”. The mere fact that officials are changing the place of birth

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and names of a specific and identifiable group of people is clear evidence of discrimination on the basis of Khmer Krom descent.

In February 2010, the Permanent Representative for Cambodia to the United Nations Office in Geneva (the “UNOG”) presented a report to the CERD on the situation relating to racial discrimination in Cambodia. The CERD expressed concern for the situation of the Khmer Krom. In response, the Cambodian delegation made an effort to play down the circumstances surrounding Khmer Krom access to citizenship by stating that “in principle, Khmer Krom are recognized as Cambodian citizens without any discrimination.” Notwithstanding the position of the delegation, the issue of the obstacles faced by Khmer Krom in reality were brought to the CERD’s attention, and the CERD directed the delegation to seize the issue and address the citizenship of the Khmer Krom in Cambodia as the RGC had stated that the Khmer Krom were Cambodian.

In the absence of any action on the part of the RGC to address the problems faced by the Khmer Krom, CCHR recommends that its continued discrimination against the Khmer Krom be referred to the CERD. CCHR equally calls upon the OHCHR, ASEAN and the international community to condemn the ongoing plight of the Khmer Krom and to exert diplomatic pressure on the RGC to take the necessary steps to ensure that their rights under domestic and international law are given practical effect.

155 Created to monitor the implementation of the ICERD by its state parties; considering periodic reviews and accepting individual complaints.
156 Headed by Sun Suon, Permanent Representative of Cambodia to the UNOG, and including other members of the Permanent Mission of Cambodia to the UNOG.
157 Bun, T., and Wells, C. (n. 2).
7. Conclusions & Recommendations

In leaving Vietnam and coming to Cambodia, the Khmer Krom are seeking a place where they are free to practice their Khmer culture, education and religion. The RGC publicly accepted the Khmer Krom as citizens without discrimination and so they come, imagining that they will have access to nationality/citizenship, and from that the basis to earn money, educate their children and create a life for their families in the mainstream of Khmer society. In practice, however, the majority face difficulties accessing the benefits of their promised Cambodian nationality. Furthermore, the RGC’s declaration of equal citizenship of the Khmer Krom operates to the effect that the Khmer Krom are not eligible for refugee status in Cambodia or third countries, unless they can establish a fear of persecution in both Cambodia and Vietnam. Unable to obtain ID cards and enjoy the benefits of their citizenship/nationality and, in the absence of protection from the UNHCR, most are left with little option but to agree to change their identity in order to secure ID cards. Despite the grandiose statements of the RGC to the contrary, and in violation of the constitutional guarantee of nationality, it is clear that a Khmer Krom individual is not afforded the same treatment that is given to a Khmer born in Cambodia and that the RGC is repeatedly and systematically breaking its promise of nationality and citizenship for the Khmer Krom.

In order to address the problems facing the Khmer Krom in Cambodia, the RGC should confirm the legal status of the Khmer Krom as nationals of Cambodia by way of a central government or ministerial level directive. It is further recommended that the RGC put in place a coherent framework that facilitates Khmer Krom applications for ID cards and citizenship/nationality which removes the requirement for the Khmer Krom to provide proof of a permanent address and further clarifies that if a person can prove Khmer nationality (through Khmer Krom ethnicity/parentage) he or she should be eligible for his or her citizens’ ID cards, notwithstanding his or her place of birth. The framework recommended would include a procedure for processing applications without documentary evidence. Of fundamental importance to the recommended framework is that a determination – which should be subject to appeal – is made in every case so that a Khmer Krom individual is treated either as Khmer, and his/her citizenship/nationality given full effect, or as Vietnamese, in order that he/she can avail of refugee protection. In the event that the RGC does nothing, the United Nations – in particular, the UNHCR – should take responsibility for considering the situation of the Khmer Krom in Cambodia and third countries under refugee law and the law on stateless persons. Cohesive and formal action should also be taken by the international community and ASEAN to urge the RGC to stop the continued human rights abuses against the Khmer Krom and to clarify their status as Cambodian nationals.

CCHR makes the following recommendations to the RGC, the UNHCR, ASEAN, the international community and the Cambodian people:

Recommendations to the RGC:

- Formally confirm that the Khmer Krom should be treated as Cambodian nationals;
• End the practice of returning individuals of Khmer Krom origin to Vietnam, in violation of the UDHR, the Refugee Convention and the Law on Nationality;

• Clarify that the Law on Nationality applies to Khmer Krom by issuing ministerial guidance confirming that if an individual of Khmer Krom origin can show Khmer nationality (by way of Khmer Krom ethnicity/parentage), he or she is eligible for permanent ID documentation;

• Clearly set out the evidence that will be considered in the assessment of Khmer nationality including documentary and non-documentary evidence, in accordance with international practice;

• Establish a procedure to allow Khmer Krom individuals to apply for ID cards and to give effect to their nationality/citizenship without documentary evidence;

• Order that a determination on the status of each Khmer Krom individual is established with each individual being treated as either Khmer or Vietnamese;

• Establish a system of appeal for individual applicants against any refusal of citizenship/nationality;

• Refer the requirement of a permanent address for the purposes of obtaining an ID card to the Constitutional Council in order that the arbitrary denial of nationality to the Khmer Krom (by way of the requirement that applicants provide proof of a permanent address) be stopped. This recommendation is made to the RGC and to all parties empowered by Article 141 of the Constitution to send laws to the Constitutional Council;

• Immediately discontinue the illegal practice of changing identities as a method of securing identification documentation;

• Create a civilian body responsible for the administration and issuing of ID cards which would be better placed to deal with the complexity of the eligibility requirements and better trained as to the assessment of Khmer nationality;

• Publicly remind Vietnam of its duties towards the Khmer Krom; and

• Improve the situation for the Khmer Krom in Cambodia before the next CERD report.

**Recommendations to the UN Resident Coordinator for Cambodia**

• Create a UN working group to address the difficulties facing the Khmer Krom in Cambodia.
Recommendations to the UNHCR:

- Publicly denounce the apparent cooperation between Cambodia and Vietnam in relation to the forcible deportation of Khmer Krom to Vietnam;
- Call for the RGC to address the problems facing the Khmer Krom in Cambodia;
- Issue a statement publicizing the practice of changing identities and call on the international community to apply pressure on the RGC to end this practice immediately;
- Independently consider the status of Khmer Krom in Cambodia and third countries under refugee law and the law on stateless persons; and
- Call on third countries not to treat Khmer Krom refugee claimants as Cambodian.

Recommendations to ASEAN

- Issue a statement condemning the treatment of the Khmer Krom in Vietnam and Cambodia;
- Put pressure on the RGC to comply with national, regional and international obligations as regards the treatment of its citizens;
- Call on the RGC to clarify the law as applicable to Khmer Krom, confirming that if an individual of Khmer Krom origin can show Khmer nationality (by way of Khmer Krom ethnicity/parentage), he or she is eligible for citizens’ ID documentation;
- Publicly denounce the practice of changing identities; and
- Draw on the experience of other ASEAN countries and provide guidance and support to the RGC so that they may quickly and effectively address the problems facing the Khmer Krom in Cambodia.

Recommendations to the international community:

- Publicly condemn the forced deportation of Khmer Krom from Cambodia to Vietnam;
- Put pressure on the RGC to address the problems facing the Khmer Krom in Cambodia; and
- Urge the RGC to stop immediately the practice of changing Khmer Krom identities.

Recommendations to the Cambodian Public

- Recognize the rights of the Khmer Krom as citizens of Cambodia without discrimination.
This Report will be made public and sent to the following:

- The RGC;
- ASEAN;
- Key foreign embassies in Phnom Penh, including the Vietnamese Embassy;
- The UNDP – Phnom Penh office;
- The UNHCR – Phnom Penh office;
- The OHCHR – Phnom Penh office.

Cambodian Center for Human Rights
Phnom Penh, Cambodia
July 2011
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