

Submission by the United Nations High Commissioner for Refugees
For the Office of the High Commissioner for Human Rights' Compilation Report
Universal Periodic Review: *Fourth Cycle, 46th Session*
VIET NAM

I. BACKGROUND INFORMATION

The State of the Socialist Republic of Vietnam ("Viet Nam") is not a party to the *1951 Convention relating to the Status of Refugees* nor its *1967 Protocol* (hereinafter jointly referred to as the 1951 Convention). In addition, Viet Nam is not a party to either the *1954 Convention relating to the Status of Stateless Persons* (the *1954 Convention*) or the *1961 Convention on the Reduction of Statelessness* (the *1961 Convention*). However, Viet Nam has ratified several international human rights instruments with relevance for the protection of refugees, asylum-seekers and stateless persons.¹

As of December 2022, the Government of Viet Nam reported that the number of registered stateless persons and persons of undetermined nationality was 26,811. This figure includes individuals in a range of situations, including those of undetermined nationality residing in border areas, women who in the past married foreign men and renounced their Vietnamese nationality to acquire the husband's nationality, but hitherto returned to Viet Nam following failed marriage migration, children of mixed marriage whose nationality is undetermined and others.

With respect to asylum, there were 19 recognized refugees in Viet Nam as of 30 June 2023. The refugees arrived in Viet Nam in 2022 after their boat, which was carrying over 300 individuals was found in distress in international waters. The boat was permitted to disembark in Viet Nam for safety. Since then, the Vietnamese authorities have provided the group with shelter and coordinated closely with UNHCR to address their basic needs. UNHCR commends the Vietnamese Government for this response and for allowing UNHCR access to the group for the purpose of assessing international protection needs. It is noted Viet Nam does not have a national legal framework or policy concerning the rights and obligations of asylum-seekers and refugees nor a system for adjudicating refugee status. In this context, UNHCR carries out refugee status determination under its mandate and facilitates durable solutions for the most vulnerable refugees.

UNHCR maintains a small, liaison-focused staffing presence in Viet Nam. UNHCR's primary engagement with Viet Nam is led by its Multi-Country Office in Thailand. In recent years, this has been focused on advocacy with Government officials on issues falling within UNHCR's mandate and the provision of support to Government ministries (Ministry of Justice and Ministry of Labour, Invalids and Social Affairs (MOLISA)) working on statelessness-related matters.

II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS

¹ Including: the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the CAT); the *International Covenant on Civil and Political Rights* (the ICCPR); the *International Covenant on Economic, Social and Cultural Rights* (the ICESCR); the *International Convention on the Elimination of All Forms of Racial Discrimination* (the CERD); the *Convention on the Elimination of All Forms of Discrimination against Women* (the CEDAW); the *Convention of the Rights of Persons with Disability* (the CRPD); and the *Convention on the Rights of the Child* (the CRC)

Linked to 3rd cycle UPR recommendation no. 38.289: “Continue its efforts to prevent and reduce statelessness through, among others, enabling reacquisition of Vietnamese nationality, and prevent children’s statelessness (Kenya)”

Viet Nam should be commended for its ongoing efforts to prevent and reduce statelessness. UNHCR welcomed the Prime Minister’s Decision No 402/QD-TTg on the Plan on the Implementation of the Global Compact for Safe, Orderly and Regular Migration (Prime Minister’s Decision No 402/QD-TTg). The Prime Minister’s Decision, *inter alia*, represents a commitment to undertake a range of activities to address statelessness in Viet Nam. It includes commitments to accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness* (collectively, hereinafter, the “Statelessness Conventions”) by 2025, to establish a statelessness determination procedure, and to strengthen access to civil registration, as well as wider commitments to improve the identification and reduction of statelessness and protect the rights of stateless persons. These commitments should provide a strong foundation for Viet Nam to make substantial progress in addressing statelessness and set a leading example in the region.

To support implementation of the Prime Minister’s Decision, UNHCR has worked closely with the Ministry of Justice in Viet Nam. This has included implementing training activities to build the capacity of officials involved with civil registration and nationality procedures, undertaking assessment missions to identify and address gaps in nationality procedures and, in 2021, arranging an international workshop on accession to the *1961 Convention on the Reduction of Statelessness*. Viet Nam’s efforts have recently contributed to a significant reduction in statelessness. At the end of 2021, Vietnam reported having 35,475 persons who were stateless or of undetermined nationality. This figure was reduced by 25% to 26,811 by the end of 2022 as a result of ongoing population survey activities and recognition of citizenship.

Within the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), Viet Nam has played a leading role in promoting the conclusions of the regional study, “Legal identity of all women and children in ASEAN”² under the ACWC-UNHCR cooperative project, “Promoting inclusion and sustainable development in building the ASEAN community through ensuring the recognition of the legal identity of all women and children in ASEAN.” The project aims at contributing to the enhancement of the ACWC’s capacity in areas of legal identity, including through birth registration, issuing documentation and establishing nationality, and to promote the implementation of the relevant provisions in the *CEDAW* and *CRC*. UNHCR has worked closely with MOLISA on this work, including with respect conducting the abovementioned study, promoting its findings and recommendations, and arranging workshops with ASEAN Member States.

III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Challenges linked to outstanding 3rd cycle UPR recommendations

Issue 1: Accession to the 1951 Convention and the Statelessness Conventions and development of related domestic procedures

Linked to 3rd cycle UPR recommendation no. 38.9 “Continue efforts to adhere to international human rights instruments to which it is not party, including... the Convention relating to the Status of Stateless Persons (Honduras)”

² ASEAN, MOLISA, UNHCR, Legal Identity of All Women and Children in ASEAN, a Regional Synthesis, 13 November 2020, available at: <https://asean.org/book/legal-identity-of-all-women-and-children-in-asean-a-regional-synthesis/>

Despite positive steps on statelessness, Viet Nam is not signatory to the Statelessness Conventions. As noted above, Viet Nam has committed to acceding to the Statelessness Conventions by 2025, as outlined in the Prime Minister's Decision No 402/QD-TTg. This would significantly complement Viet Nam's wider commitments under the Prime Minister's Decision to strengthen its domestic response to statelessness in a manner that aligns with international standards, including to review national legislation to ensure that safeguards are in place to prevent statelessness, develop a statelessness determination procedure and strengthen the legal framework to protect persons identified as stateless. Further, accession to the Conventions would demonstrate leadership with respect to the prevention and reduction of statelessness in the region.

Viet Nam is also not a signatory to the *1951 Convention relating to the Status of Refugees*. Further, Viet Nam's domestic legal framework does not include laws or policies on refugees or asylum-seekers and the country has not put in place a refugee status determination procedure. Accession to the *1951 Convention* and its domestication would tangibly illustrate the country's commitment to protect the rights of refugees as evidenced by their support for the adoption of the Global Compact on Refugees.

Recommendations:

UNHCR recommends that the Government of Viet Nam:

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

Additional protection challenges

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

Despite commitments to review Vietnamese nationality law to ensure access to nationality for certain groups affected by statelessness, including as part of the Prime Minister's Decision No 402/QD-TTg, some longstanding gaps remain. The *2008 Law on Vietnamese Nationality* does not afford sufficient protection against the risk of statelessness, particularly among children. Particular protection gaps arise from the fact that this instrument does not recognize dual nationality.³ This becomes problematic for children with at least one parent who is a foreign national. Parents must express their agreement in writing on selecting the Vietnamese nationality at the moment of registration of the child's birth. If the child is born abroad where either parent is a Vietnamese citizen and the parents do not reach agreement on conferring the Vietnamese nationality onto the child, then the child is at risk of becoming stateless.

³ Order No. 22/2008/L-CTN of 28 November 2008, on the promulgation of The *Law on Vietnamese Nationality*, available here: <http://www.refworld.org/docid/4ac49b132.html>. Article 4 of the *Law on Vietnamese Nationality* stipulates: "The State of the Socialist Republic of Vietnam recognizes that Vietnamese citizens have a single nationality, Vietnamese nationality, unless it is otherwise provided for by this Law."

The nationality law contains a provision that allows children born in Viet Nam to stateless parents (both) or to a stateless mother and an unknown father to have Vietnamese nationality.⁴ While positive, this provision does not encompass cases where the stateless parents or stateless mother do not have a permanent residence in Viet Nam and/ or where foreign national parents cannot confer nationality on the children. This increases the risk of children born in such circumstances becoming stateless. It could be particularly problematic where the parents are stateless asylum-seekers or refugees.

The law also has a provision that provides an opportunity for naturalization of stateless persons who do not have adequate personal identification papers but have been permanently residing in Viet Nam.⁵ The law, however, introduces a 20-year residence requirement for the acquisition of nationality. This is considered to be too burdensome and to undermine the Government's efforts to effectively and efficiently reduce statelessness.

Recommendations:

UNHCR recommends that the Government of Viet Nam:

- a) Continue efforts to analyze the legal framework and implement reforms to guarantee the right to a nationality and to provide safeguards to prevent statelessness from occurring.
- b) Continue collaborating with UNHCR to enhance Viet Nam's technical capacity to identify and protect stateless persons; and to reduce and prevent statelessness.

UNHCR
October 2023

⁴ Art. 17, *Law on Vietnamese Nationality* (2008).

⁵ Art. 22, *Law on Vietnamese Nationality* (2008)