

DECISION No 1105/2011/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2011

on the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa and on setting up a mechanism for establishing this list

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 77(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) On the basis of Article 17(3)(a) of the Convention implementing the Schengen Agreement of 14 June 1985 ⁽²⁾, Decisions SCH/Com-ex (98)56 ⁽³⁾ and SCH/Com-ex (99)14 ⁽⁴⁾ established the Manual of travel documents entitling the holder to cross the external borders and which may be endorsed with a visa. Those Decisions should be adapted to the institutional and legal framework of the Union.
- (2) The list of travel documents issued by third countries should be monitored systematically to ensure that Member States' authorities dealing with the processing of visa applications and with border controls have accurate information at their disposal about the travel documents presented by third-country nationals. Exchanges of information between Member States on the travel documents issued and on Member States' recognition of those travel documents, and making the entire compilation available to the public, should be modernised and made more efficient.
- (3) The purpose of the list of travel documents is twofold: on the one hand, it allows border control authorities to verify whether a given travel document is recognised for the purpose of crossing the external borders as set out in point (a) of Article 5(1) of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) ⁽⁵⁾; on the other hand,

it allows consular staff to verify whether Member States recognise a given travel document for the purpose of affixing a visa sticker.

- (4) Under point (c) of Article 48(1) of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) ⁽⁶⁾ an exhaustive list of travel documents issued by the host country should be drawn up within local Schengen cooperation.
- (5) A mechanism should be established to ensure that the list of travel documents is constantly updated.
- (6) Considering the relevance of the security of the travel documents with regard to their possible recognition, the Commission, assisted by experts of the Member States, should provide a technical assessment, where appropriate.
- (7) Member States are and should remain competent for the recognition of travel documents for the purpose of allowing the holder to cross the external borders and affixing a visa sticker.
- (8) Member States should notify their position in relation to all travel documents and endeavour to harmonise their positions on the different types of travel documents. Since a Member State's failure to notify its position with regard to a travel document may cause problems to holders of that travel document, a mechanism should be established to place an obligation on Member States to state their position on the recognition and non-recognition of such documents. That mechanism should not preclude Member States from notifying a change in their position at any given moment.
- (9) An online database containing specimens of all travel documents should be established in the long term to facilitate the examination of a given travel document by border control authorities and consular staff. That database should be kept up to date in line with any changes to previously indicated recognition or non-recognition of a given travel document by Member States.
- (10) For information purposes, the Commission should draw up a non-exhaustive list of known fantasy and camouflage passports brought to its attention by the Member States. The fantasy and camouflage passports which are on the list should not be subject to recognition or non-recognition. They should not entitle their holders to cross the external borders and should not be endorsed with a visa.

⁽¹⁾ Position of the European Parliament of 6 July 2011 (not yet published in the Official Journal) and Decision of the Council of 23 September 2011.

⁽²⁾ OJ L 239, 22.9.2000, p. 19.

⁽³⁾ OJ L 239, 22.9.2000, p. 207.

⁽⁴⁾ OJ L 239, 22.9.2000, p. 298.

⁽⁵⁾ OJ L 105, 13.4.2006, p. 1.

⁽⁶⁾ OJ L 243, 15.9.2009, p. 1.

- (11) In order to ensure uniform conditions for compiling and updating the list of travel documents, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ⁽¹⁾.
- (12) The advisory procedure should be used for drawing up and updating the list of travel documents, given that those acts merely constitute the compilation of issued travel documents.
- (13) As regards Iceland and Norway, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen *acquis* ⁽²⁾, which fall within the area referred to in Article 1, points A, B and C, of Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of that Agreement ⁽³⁾.
- (14) As regards Switzerland, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ⁽⁴⁾, which fall within the area referred to in Article 1, points A, B and C, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC ⁽⁵⁾.
- (15) As regards Liechtenstein, this Decision constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol signed between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, which fall within the area referred to in Article 1, points A, B and C, of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU ⁽⁶⁾.
- (16) In accordance with Articles 1 and 2 of the Protocol (No 22) on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application. Given that this Decision builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of 6 months after the Council has decided on this Decision whether it will implement it in its national law.
- (17) This Decision constitutes a development of the provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen *acquis* ⁽⁷⁾; the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (18) This Decision constitutes a development of the provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* ⁽⁸⁾; Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.
- (19) As regards Cyprus, this Decision constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 3(2) of the 2003 Act of Accession.
- (20) This Decision constitutes an act building upon, or otherwise related to, the Schengen *acquis* within the meaning of Article 4(2) of the 2005 Act of Accession,

HAVE ADOPTED THIS DECISION:

Article 1

Subject matter and scope

1. This Decision establishes the list of travel documents which entitle the holder to cross the external borders and which may be endorsed with a visa (the list of travel documents) and a mechanism for compiling it.
2. This Decision applies to travel documents such as a national passport (ordinary, diplomatic, service/official or special passport), an emergency travel document, a refugee or stateless person's travel document, a travel document issued by international organisations, or a *laissez-passer*.
3. This Decision does not affect Member States' competence for the recognition of travel documents.

⁽¹⁾ OJ L 55, 28.2.2011, p. 13.

⁽²⁾ OJ L 176, 10.7.1999, p. 36.

⁽³⁾ OJ L 176, 10.7.1999, p. 31.

⁽⁴⁾ OJ L 53, 27.2.2008, p. 52.

⁽⁵⁾ OJ L 53, 27.2.2008, p. 1.

⁽⁶⁾ OJ L 160, 18.6.2011, p. 19.

⁽⁷⁾ OJ L 131, 1.6.2000, p. 43.

⁽⁸⁾ OJ L 64, 7.3.2002, p. 20.

*Article 2***Compilation of the list of travel documents**

1. The Commission shall draw up the list of travel documents with the assistance of Member States on the basis of information gathered within local Schengen cooperation, as referred to in point (c) of Article 48(1) of Regulation (EC) No 810/2009.

2. The list of travel documents shall be drawn up in accordance with the advisory procedure referred to in Article 8(2).

*Article 3***Structure of the list of travel documents**

1. The list of travel documents shall be divided into three parts.

2. Part I shall consist of travel documents issued by the third countries and territorial entities listed in Annexes I and II to Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement ⁽¹⁾.

3. Part II shall consist of the following travel documents issued by Member States, including those issued by the Member States of the European Union which are not taking part in the adoption of this Decision and by the Member States of the European Union which do not yet apply the provisions of the Schengen *acquis* in full:

- (a) travel documents issued to third-country nationals;
- (b) travel documents issued to refugees under the United Nations Convention Relating to the Status of Refugees of 28 July 1951;
- (c) travel documents issued to stateless persons under the United Nations Convention relating to the Status of Stateless Persons of 28 September 1954;
- (d) travel documents issued to persons who do not hold the nationality of any country and who reside in a Member State;
- (e) travel documents issued by the United Kingdom to British citizens who are not nationals of the United Kingdom of Great Britain and Northern Ireland for the purposes of Union law.

4. Part III shall consist of travel documents issued by international organisations.

5. As a general rule, the listing of a given travel document applies to all series of that travel document that are still valid.

6. If a third country does not issue a particular type of travel document, this shall be indicated by entering 'not issued' in the list of travel documents.

*Article 4***Notification of recognition or non-recognition of listed travel documents**

1. Within 3 months after the communication of the list of travel documents, Member States shall notify to the Commission their position on recognition or non-recognition of the listed travel documents.

2. If a Member State fails to notify its position within the period referred to in paragraph 1, the travel document concerned shall be deemed to be recognised until that Member State's notification of its non-recognition.

3. Within the framework of the committee referred to in Article 8(1), Member States shall exchange information on the grounds for the recognition or non-recognition of specific travel documents with a view to reaching a harmonised position.

4. Member States shall notify the Commission of all changes to previously indicated recognition or non-recognition of a given travel document.

*Article 5***New travel documents issued**

1. Member States shall notify the Commission of new travel documents referred to in points (a) to (d) of Article 3(3).

2. Member States shall inform the Commission of new travel documents issued by third countries, Member States and international organisations referred to in Article 3(2), in point (e) of Article 3(3) and in Article 3(4). The Commission shall, in cooperation with the Member States, endeavour to collect specimens of new travel documents in order to share them.

3. The Commission shall update the list of travel documents in accordance with the notifications and information received and shall request Member States to notify their position on recognition or non-recognition in accordance with Article 4.

4. The updated list of travel documents shall be drawn up in accordance with the advisory procedure referred to in Article 8(2).

*Article 6***Information concerning known fantasy and camouflage passports**

The Commission shall also draw up and update a non-exhaustive list of known fantasy and camouflage passports on the basis of information received from the Member States.

*Article 7***Assessment of travel documents**

1. In order to assist the Member States in their technical assessment of travel documents, the Commission, assisted by experts of the Member States, may provide for a technical analysis of the travel documents, taking into account in particular the relevant International Civil Aviation Organization standards and recommendations.

⁽¹⁾ OJ L 81, 21.3.2001, p. 1.

2. Where relevant, the conditions and procedures for issuing travel documents may also be analysed within this framework.

3. The results of the assessments referred to in paragraphs 1 and 2 shall be communicated to the Member States.

Article 8

Committee procedure

1. The Commission shall be assisted by a committee (the Travel Document Committee). That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

Article 9

Publication of the lists

The Commission shall make the list of travel documents, including the notifications pursuant to Article 4, and the list referred to in Article 6, available to the Member States and the public via a constantly updated electronic publication.

Article 10

Repeals

Decisions SCH/Com-ex (98)56 and SCH/Com-ex (99)14 shall be repealed.

Article 11

Entry into force

1. This Decision shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

2. This Decision shall apply with effect from the date of its entry into force, except for Article 10, which shall apply with effect from the date of the first publication by the Commission of the list of travel documents.

Article 12

Addressees

This Decision is addressed to the Member States in accordance with the Treaties.

Done at Strasbourg, 25 October 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

M. DOWGIELEWICZ

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Vietnam to add information in new passports following non-recognition in some countries

Anh Kiet



Vietnam will add the place of birth on the remark page of the holder's passport.

HANOI Vietnam's Ministry of Public Security (MPS) said it has added information relating to citizen's birthplace in new passports that were issued on July 1, 2022 after facing non-recognition by few countries.

The ministry will also consider adding this information to the redesigned passports, MPS Spokesman To An Xo said at the government's regular press meeting on August 3.



Spokesman of the MPS To An Xo speaks during the government's regular press meeting held on August 3. Photo: Pham Dong

To An Xo said in response to a question raised by local reporters following the fact that three European countries namely Germany, Spain, and the Czech Republic refused to grant visas to Vietnamese passport holders due to lack of birthplace.

The official argued that Vietnam's new passport complies with the country's laws and standards set by the International Civil Aviation Organization (ICAO), adding that "Many countries like Japan, South Korea, Switzerland, Mongolia, and Saudi Arabia also take citizens' place of birth out of their passports because this is not mandatory. Most countries still accept Vietnam's new passport. Only Germany, Spain, and the Czech Republic temporarily stopped recognizing it due to some technical issues," Xo said.

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He added that MPS and the Ministry of Foreign Affairs are working with the three nations to soon tackle the problems.

“Besides, to create favorable conditions for Vietnamese citizens to study, work, and travel abroad, the MPS will add holders’ place of birth on the remark page of their passports, and citizens can go to the local immigration office or Vietnam’s overseas representative agencies for this,” Xo noted.

The official stressed that MPS will coordinate with relevant agencies to add the place of birth on the personal information page of the redesigned passport.

The new passport, whose cover is blue-violet, consists of pages printed with the country’s famous landscapes and cultural heritage sites, ensuring technical safety and preventing counterfeiting.

The old passports which include the holders’ place of birth are still valid until expiration.

Last week, Germany was the first country to announce that they would not issue visas to Vietnamese holders of the new passports due to the place of birth omission.

On August 1, the Spanish Embassy in Vietnam temporarily suspended granting Schengen visas, short-term visas for tourism or business purposes, to holders of Vietnam’s new passport for the same reason.

The Czech Republic said on August 2 that it had stopped accepting the document, explaining that it does not meet the ICAO’s specifications.

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Finland suspends recognition of Vietnam's new passports

Finland on August 11 became the third country to reject Vietnam's new-style passports, following similar moves of Germany and the Czech Republic.

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The new Vietnamese passports with a navy blue cover. (Photo: VNA)

Hanoi (VNA) - Finland on August 11 became the third country to reject Vietnam's new-style passports, following similar moves of [Germany](#) and the [Czech Republic](#).

The new [Vietnamese passports](#) with a navy blue cover, issued from the beginning of July 1, 2022, do not contain information about the place of birth of the passport holder, "which is a requirement for personal identification and also for processing of Finnish visa/residence permit applications," the Embassy of Finland in Hanoi said in a statement.

Therefore, Finland has decided to temporarily suspend recognition of Vietnam's new passports.

"The Embassy of Finland will not receive applications for visa/residence permit of holders of the new passport until further notice from competent authorities of Finland. The Embassy will provide information in case of any changes," the announcement continued.

[Finland](#) will actively work with member states of the EU, Schengen and Vietnam to find solutions for the

matter, the embassy noted.

Earlier in July, Germany and the Czech Republic also took issue with the omission of the place of birth on the new passports, saying that would make it difficult for immigration authorities to properly verify the identity of the passport holders.

The UK and France however expressly stated that they would continue to accept Vietnam's new passports.

Spain, after an initial rejection, also accepted the new passports, but required visa applicants to present their valid Vietnamese identity card (which has place of birth information). The embassy warned that this visa will not allow entry into Schengen countries which don't accept the passports however.

The Ministry of Public Security, while insisting that the new passports comply with the International Civil Aviation Organisation (ICAO) technical standards, has relented by saying it would add the field for place of birth in the appendix of the passport for those who request it.

Explaining why the new passport doesn't contain information about the place of birth, Minister of Public Security To Lam said ICAO did not designate other information like the place of birth as mandatory. According to the Law on Exit and Entry of Vietnamese Citizens, information in passports also doesn't include the place of birth.

In the long term, the ministry could revise the design of the passport and add the place of birth on the main page./.

VNA

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Recognition of valid passports for travel abroad, the validity period of which has expired



At the request of the Government of the Republic of Moldova, Ukraine has agreed to recognize valid passports for travel abroad that have expired or will expire between January 1, 2020 and December 31, 2022. The decision is valid until June 30, 2023.

Therefore, passports for foreign travel falling under this category are automatically renewed without changing the expiration date and without the additional stamp of renewal of these passports.

In this way, holders of relevant passports will not have to fulfill additional formalities either with competent national authorities or with diplomatic and consular representations of the Republic of Moldova abroad.

The mentioned passports can be usually used for crossing the borders between two states and then for other actions, including those related to the right of residence or performing the formalities necessary to obtain such a right.

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Holder of Somali diplomatic passport

Holder of diplomatic passport

Sweden is recognizing Somali diplomatic passports, if biometric e-passport issued 2014 or later, since January 2020. No other Somali passports have been recognized. The Swedish Embassy in Nairobi is responsible for Schengen visa application from Somalia, but only for diplomatic passport holders and will handle and make decision. If your visa will be refused for any reason or you will be denied entry at the border to Schengen you will NOT be refunded of any travel expenses. The Embassy cannot give any support if the border Police has rejected entry and will deport you back to your country of origin. When you apply for a Schengen visa you normally need to pay a visa fee, submit a photo, fingerprints and submit supporting documents to your application. On this page you can read more about these requirements and if you may be exempted from them. The Swedish Embassy in Ethiopia will not handle any Schengen visa applications or reply to any emails concerning Schengen visas.

Under "Requirements" you will find a checklist for holders of Somali Diplomatic passports. The documents on the list should be submitted at the same time as the

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Visa Code EU/2019/1155, article 13 item 3. If your biometrics has been taken you may send a person with a written Power of attorney (that can identify him - or herself) to submit your application. **Submission in Somalia is not possible**, neither by post or by courier company to Nairobi. Your passport may also be collected by an authorized person.

High level delegations, invited by the Swedish Government, might be excused from biometrics in accordance to Visa Code EU/2019/1155, article 13 item 7 . Exemptions of biometrics will only be decided by the Embassy.

Somali nationals are subject to a mandatory consultation in accordance to Visa Code EU/2019/1155, article 22. This means that a technical consultation procedure will be initiated after submission of application for Schengen visa and may take up to 7 calendar days.

Notable, visa cases will be handled within 15 working days, or longer if motivated (in accordance with the visa code).

Last updated 01 Sep 2022, 6.56 PM

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POLITICS

Czech Republic refuses recognition of Vietnam’s new passports

The Czech Republic has declared to not recognise Vietnam’s new passports, becoming the third country, all in Europe, to do so.

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Vietnam's new passport design. (Photo: VNA)

Hanoi (VNA) – The Czech Republic has declared to not recognise Vietnam’s new passports, becoming the third country, all in Europe, to do so.

“Vietnam’s [new passports](#), which were issued from July 1, 2022 do not meet technical standards of the International Civil Aviation Organisation (ICAO),” the Czech Embassy in Vietnam said in a statement on its official website on August 2. “Therefore, the [Czech Republic](#) agrees with other European Union (EU) member countries to stop recognising its validity.”

The decision took effect from the time of notification, the embassy said, but did not specify the standards as prescribed by the ICAO that Vietnam’s new passports have not met.

The other two European countries rejecting Vietnam’s new passports are Germany and Spain.

In separate announcements, both Embassies of Germany and Spain in Vietnam said the reason for the non-recognition of the new navy blue-coloured passports because they do not have a place of birth (province/city)

listed.

This can make it difficult for the German side to identify the specific locality where Vietnamese citizens were born, especially in the case of minors where ID number has not been granted, the Embassy of Germany said on July 27.

It noted the Vietnamese holders of the new passports who have already received visas to Germany should refrain from travelling since they would be denied entry at the border.

The Embassy of Spain in Vietnam described the place of birth of passport holders as an important information for personal identification, which is also required for processing Schengen visa applications.

Current regulations do not allow the issuance of a Schengen visa to Vietnamese nationals holding the new passports, the embassy announced on August 1.

Currently, the Spanish authorities, in collaboration with other Schengen member states, are conducting technical analysis.

The Ministry of Foreign Affairs' Consular Department is working with the Ministry of Public Security's Vietnam Immigration Department to exchange information and seek solutions. The Consul Department has asked the German Embassy in Hanoi for cooperation to jointly find ways to facilitate Vietnamese nationals' entry in Germany, in line with the two countries' Strategic Partnership.

At the same time, the Embassy of Vietnam in [Germany](#) has said it stands ready to provide written confirmation on the [place of birth](#) that can be tagged along with the new passports./.

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Finland third EU country to suspend recognition of Việt Nam's new passports

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The embassy of Finland in Hà Nội said the reason for the non-recognition is due to the lack of place of birth on the new passports.



Helsinki City. — Photo DiscoveringFinland.com

HÀ NỘI — Finland on Thursday became the third country to reject Việt Nam's new-style passports, following similar moves from Germany and the Czech Republic.

The new Vietnamese passports with a navy blue cover, issued from the beginning of July 1, 2022, do not contain information of the place of birth of the passport holder (province/city), "which is a requirement for personal identification and also for processing of Finnish visa/residence permit applications," the Embassy of Finland in Hà Nội [said in a statement](#).

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“The Embassy of Finland will not receive applications for visa/residence permit of holders of the new passport until further notice from competent authorities of Finland. The Embassy will provide information in case of any changes,” the announcement continued.

Finland will actively work with member states of EU, Schengen and Việt Nam to find solutions for the matter, the embassy noted.

Earlier in July, Germany and the Czech Republic also took issues with the omission of place of birth on the new passports, saying that would make it difficult for immigration authorities to properly verify the identity of the passport holders.

The UK and France however expressly stated that they would continue to accept Việt Nam’s new passports.

Spain, after an initial rejection, also accepted the new passports, but required visa applicants to present their valid Vietnamese identity card (which has place of birth information). The embassy warned that this visa will not allow entry into Schengen countries which don't accept the passports however.

The Ministry of Public Security, while insisting that the new passports comply with International Civil Aviation Organisation (ICAO) technical standards, has relented by saying it would add the field for place of birth in the appendix of the passport for those who request it.

[Explaining why](#) the new passport doesn't contain information about the place of birth, Minister of Public Security Tô Lâm said ICAO did not designate other information like the place of birth as mandatory. According to the Law on Exit and Entry of Vietnamese Citizens, information in passports also doesn't include the place of birth.

In the long term, the ministry could revise the design of the passport and add the place of birth on the main page.

So far, the ministry has granted 272,000 new passports. – VNS

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International law

April 2021

Report for Congress

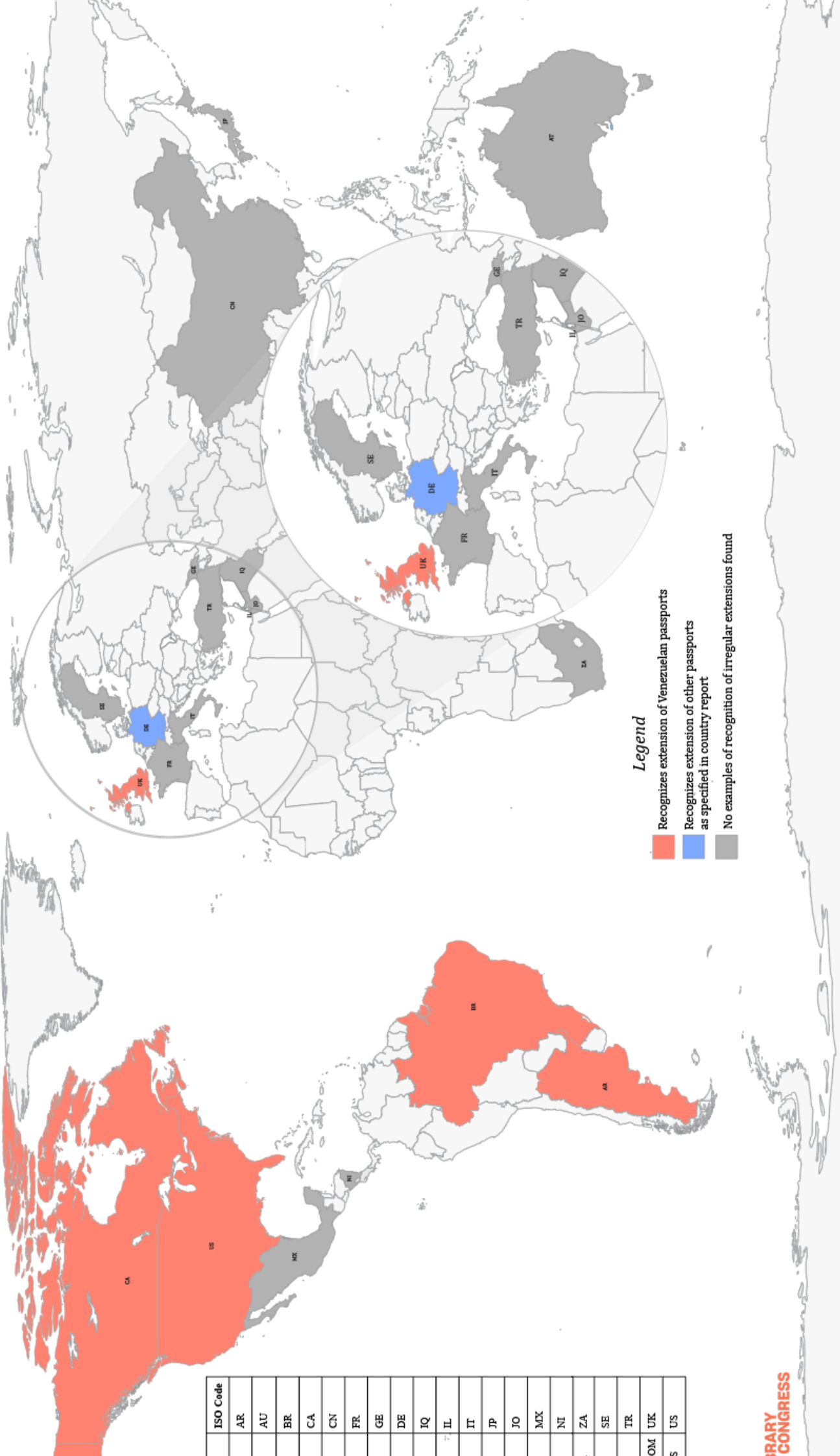
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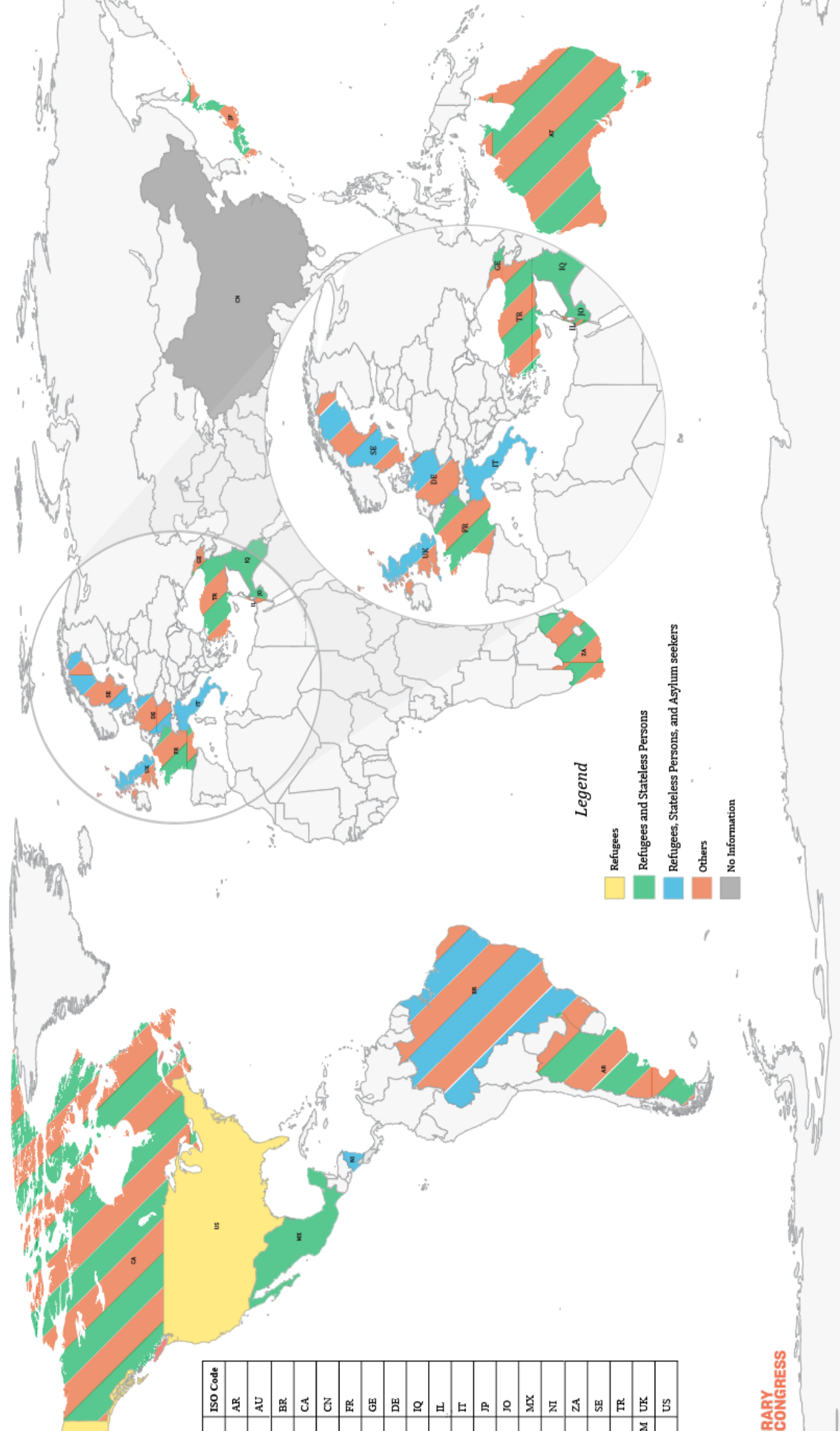
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Recognition of Irregular Passport Extensions



| ISO Code |
|----------|
| AR |
| AU |
| BR |
| CA |
| CN |
| FR |
| GE |
| DE |
| IQ |
| IL |
| IT |
| JP |
| JO |
| MX |
| NI |
| ZA |
| SE |
| TR |
| OM |
| S |
| US |

Government Issuance of Travel Documents to Foreigners



International Law

Elizabeth Boomer
International Law Consultant

SUMMARY From an international human rights law perspective, an individual has the right to leave any country, including his or her own, and to return to his or her country, with certain limitations. The United Nations Human Rights Committee has provided extensive guidance on the scope of this right. Further, states parties to the Refugee Convention and the Stateless Persons Convention should provide travel documents when appropriate. Finally, the International Civil Aviation Authority provides guidance for states to administer emergency travel documents in distressed or unpredicted situations.

I. Introduction

The right to leave one's country is enshrined in several widely ratified international human rights treaties, as well as in Article 13 of the Universal Declaration of Human Rights.¹ The relevant international treaties include:

- Article 12 of the International Covenant on Civil and Political Rights (ICCPR);²
- Article 8 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW);³
- Article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination;⁴ and
- Article 10 of the Convention on the Rights of the Child;⁵

The United Nations General Assembly and the United Nations High Commissioner for Refugees (UNHCR) have also reaffirmed "the right of everyone to leave any country, including his or her own, and to return to his or her own country as well as the obligation of States to receive back

¹ Universal Declaration of Human Rights, art. 13, G.A. Res. 217 A (III), U.N. Doc. A/RES/217(III) (Dec. 10, 1948), <https://perma.cc/PSA2-EK45>. There are also a significant number of regional treaties regarding freedom of movement, such as article 12 of the African Charter on Human and People's Rights, <https://perma.cc/RN6V-VPWV>, and article 22 of the American Convention on Human Rights, <https://perma.cc/9VZA-PCE2>.

² International Covenant on Civil and Political Rights (ICCPR), art. 12, 999 U.N.T.S. 171 (Dec. 16, 1966), <https://perma.cc/4VVJ-DF6N>.

³ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW), art. 8, G.A. Res. 45/158 (18 Dec. 1990), <https://perma.cc/W8X2-EXTJ>.

⁴ International Convention on the Elimination of All Forms of Racial Discrimination, art. 5, G.A. Res. 2106 (XX) (21 Dec. 1965), <https://perma.cc/YKA6-GEXX>.

⁵ Convention on the Rights of the Child, art. 10, G.A. Res. 44/25 (20 Nov. 1989), <https://perma.cc/3CH7-LL3Q>.

their own nationals, including the facilitation thereof.”⁶ In addition, the Human Rights Committee (HRC) has had several opportunities to clarify the right to leave, including in General Comment No. 27 regarding Article 12 of the ICCPR,⁷ and through its case law discussed below.

In addition to the international human rights treaties providing for a right to leave, two treaties specifically aim to provide travel documents to those who may be at risk of losing their nationality, citizenship, and/or ability to travel:

- Article 28 of the Refugee Convention⁸
- Article 28 of the Stateless Persons Convention⁹

Finally, the International Civil Aviation Authority (ICAO) issues guidance on emergency travel documents for travelers in distressed or unpredicted situations.

II. ICCPR Article 12¹⁰

Article 12 of the ICCPR provides:

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

The HRC has provided detailed principles to states regarding freedom of movement in General Comment No. 27 (1999). As Article 12 is not one of the non-derogable rights of the ICCPR, Article 12(3) allows states to restrict the right to leave when the restriction is (1) provided by law, (2)

⁶ Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in Which They Live, art. 5, G.A. Res. 40/144 (Dec. 13, 1985), <https://perma.cc/FSE5-JSN3>; U.N.H.C.R., Executive Committee, Conclusion on the Return of Persons Found Not to Be in Need of International Protection, Doc. No. 96 (LIV) (2003), <https://perma.cc/8WSF-JC4Q>.

⁷ UN Human Rights Committee (HRC), CCPR General Comment No. 27: Article 12 (Freedom of Movement), 2 November 1999, CCPR/C/21/Rev.1/Add.9, <https://perma.cc/NW27-BHA3>.

⁸ Convention Relating to the Status of Refugees, 189 U.N.T.S. 137 (July 28, 1951) (Refugee Convention), <https://perma.cc/MT36-QXU3>.

⁹ Convention Relating to the Status of Stateless Persons, 360 U.N.T.S. 117 (Sept. 28, 1954) (Stateless Persons Convention), <https://perma.cc/4AVW-FJJG>.

¹⁰ This section focuses on Article 12 of the ICCPR because the other applicable human rights treaties have either not directly dealt with the right to leave or do not have a treaty body-based complaint mechanism, although their subject matter has been addressed by the Human Rights Committee. See OHCHR, *23 Frequently Asked Questions about Treaty Body Complaints Procedures*, <https://perma.cc/QFU5-4XMH>.

necessary for the protection of the purposes listed, and (3) consistent with all other rights recognized in the Covenant.¹¹

Individuals who consider that their right to a travel document per Article 12 of the ICCPR has been violated can bring a complaint to the HRC, if the offending state has ratified the Optional Protocol to the ICCPR (First Optional Protocol).¹² Article 1 of the First Optional Protocol provides:

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the Committee if it concerns a State Party to the Covenant which is not a Party to the present Protocol.

The HRC has found a violation of Article 12(2) ICCPR for (1) refusing a passport without justification,¹³ (2) the confiscation of a passport where a family member is accused of a political crime,¹⁴ and (3) when the restriction on travel is neither necessary nor proportionate.¹⁵

In its General Comment 15, the HRC has also held that ICCPR rights must be extended to “all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves under the territory or subject to the jurisdiction of the State Party.”¹⁶

III. Convention Travel Documents

The language of the 1951 Refugee Convention and the 1954 Stateless Persons Convention regarding providing travel documents to refugees and stateless persons is nearly identical.

¹¹ C. Harvey and R. P. Barnidge, Jr., *The Right to Leave One's Own Country Under International Law*, *Global Commission on International Migration* (2005), <https://perma.cc/8JD7-S92Y>.

¹² Optional Protocol to the International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 U.N.T.S. 171 (First Optional Protocol), <https://perma.cc/96ZY-2X76>. The First Optional Protocol has been ratified by 116 states.

¹³ Human Rights Committee Communication No. 1107/2002 (2004), <https://perma.cc/Z8VK-HMP2>.

¹⁴ Human Rights Committee Communication No. 1143/2002 (2007), <https://perma.cc/RBX2-PGPY>.

¹⁵ Human Rights Committee Communication No. 1585/2007 (2009), <https://perma.cc/FS23-CLHS>.

¹⁶ CCPR General Comment No. 15: The Position of Aliens Under the Covenant (1986), <https://perma.cc/U6QH-BQYA>.

A. 1951 Refugee Convention and 1967 Protocol¹⁷

Article 28 of the 1951 Refugee Convention¹⁸ provides:

The Contracting States shall issue to refugees lawfully staying in their territory travel documents for the purpose of travel outside their territory unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other refugee in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to refugees in their territory who are unable to obtain a travel document from the country of their lawful residence.

B. 1954 Stateless Persons Convention¹⁹

Article 28 of the 1954 Stateless Persons Convention provides:

The Contracting States shall issue to stateless persons lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require, and the provisions of the Schedule to this Convention shall apply with respect to such documents. The Contracting States may issue such a travel document to any other stateless person in their territory; they shall in particular give sympathetic consideration to the issue of such a travel document to stateless persons in their territory who are unable to obtain a travel document from the country of their lawful residence.

IV. International Civil Aviation Organization

The International Civil Aviation Organization (ICAO) is a specialized agency of the United Nations that is funded and directed by the 193 member states that are signatory to the Chicago Convention.²⁰ ICAO issues guidance material for use by Issuing Authorities of Emergency Travel Documents (ETDs) for “travellers needing to travel urgently in distressed or unpredicted situations where it is not possible to issue a standard full-validity passport.”²¹ These situations include emergency situations for the individual traveler, emergency situations abroad (e.g. a

¹⁷ Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267 (Jan. 31, 1967),

<https://perma.cc/M9BK-C2JE>. The Protocol removed the temporal and geographic restrictions of the 1951 Refugee Convention. The United States, Venezuela and Cape Verde are parties to the Protocol but not the 1951 Refugee Convention.

¹⁸ For historical background, see *The Refugee Convention, 1951: The Travaux Préparatoires Analysed with a Commentary by Dr. Paul Weis* 152-195 (1990), <https://perma.cc/8KJ8-YQ2A>.

¹⁹ For commentary, see *UNHCR Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons* (2014), <https://perma.cc/V2WZ-WYCY>.

²⁰ International Civil Aviation Organization (ICAO), Convention on Civil Aviation (“Chicago Convention”), 7 December 1944, (1994) 15 U.N.T.S. 295, <https://perma.cc/XLN2-CU22>.

²¹ ICAO, Doc 9303 Machine Readable Travel Documents, Part 8: Emergency Travel Documents (pp. 370-391 of the PDF) (8th ed.), <https://perma.cc/K5DQ-229K>.

conflict or natural disaster) resulting in a need to travel home, or in cases of deportation, removal or repatriation. In these circumstances, the guidance provides an exemption for ETDs from the ICAO minimum standards for MRTDs.²² ICAO notes there are no global standards or recommended practices for the issuance of ETDs and that the International Committee of the Red Cross (ICRC) also supplies travel documents.²³ The ICRC travel documents are part of the provision of humanitarian aid, and are issued for one-way journeys as a last resort.²⁴ As of 2019, UNHCR noted that 26 percent of States Parties to the 1951 Refugee Convention and/or its Protocol do not issue any travel documents to refugees and 48 percent of States Parties to the 1954 Stateless Persons Convention do not issue any travel documents to stateless persons.²⁵

²² Id. (p. 377 of the PDF).


²³ Id.

²⁴ Id. See also UNHCR, *Guide for Issuing Machine Readable Convention Travel Documents for Refugees and Stateless Persons*, jointly published by UNHCR and the ICAO (2017), <https://perma.cc/L99K-5XHU>.

²⁵ UNHCR, *2019 Compliance Update: Machine-Readable Convention Travel Documents for Refugees and Stateless Persons*, <https://perma.cc/3J6Y-CCYV>.

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Rise of X: Governments Eye New Approaches for Trans and Nonbinary Travelers

August 17, 2022 FEATURE | By C.L. Quinan

In April 2022, the United States joined a growing list of countries that allow for a third gender option (“X”) in passports. This policy also allows transgender applicants to self-select their gender as “male” or “female” and removes the requirement to provide medical documentation if their gender does not match other identification documents. The change also effectively permits any U.S. citizen (not only those who are nonbinary, intersex, or gender-nonconforming) to opt out of sharing their gender by choosing an X.

When it comes to state recognition of sex/gender, there historically have been only two possibilities to choose from: male and female. Partially in response to the expansion of transgender rights, however, a global shift to embracing a third option (alternatively called “X,” “other,” “unspecified,” or “third gender”) has increasingly taken place over the past decade. Australia was the first country to adopt the X marker for transgender and intersex individuals on a wider scale in 2011, after a single instance of an X passport issuance in 2003. A number of other countries (Bangladesh, Canada, Denmark Iceland, India, Malta, Nepal, New Zealand, and Pakistan) followed suit by introducing third gender and nonbinary possibilities, of which the X marker in the sex/gender field has become the most common. Courts in Austria, Germany, and the Netherlands have also paved the way for a third option outside the male-female binary. (In Germany, this decision sought to address intersex individuals in specific.) Although it remains to be seen if this option will be extended to all trans and nonbinary individuals desiring an X, these judicial decisions will likely have reverberations throughout the European Union and internationally.

Even as more countries are adopting the X option, uptake for this gender marker remains relatively low, in part because some trans and nonbinary individuals are concerned about their safety while traveling with an unspecified marker. Given that most countries’ visa applications and many airline systems offer only binary options for identifying sex/gender, the X inevitably leads to incongruity between documents, which can provoke security responses. For many, this has inhibited possibilities for economic- and religious-based travel and migration. And border management systems and agencies have yet to evolve, with the X remaining unknown to many border control agents and passport screeners. Similarly, not all security technologies and computer systems have been updated to include a third gender option.

This article examines the introduction of the X marker, the impacts of gender markers on transgender and nonbinary travelers and migrants, and the evolving policy landscape ahead.