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Cambodia: End refoulement of Montagnard asylum seekers

Following Cambodia's recent forced return of at least 45 indigenous minority Montagnards to Viet Nam, Amnesty International calls on the Cambodian authorities to immediately refrain from further violations of the principle of *non-refoulement*. The organization calls also on the government of Viet Nam to refrain from retaliations against those refouled, following reports that one Montagnard asylum seeker was detained and beaten by Vietnamese authorities upon his return and information received by Amnesty International that 36 of those refouled were detained overnight in Viet Nam.

The Office of the UN High Commissioner for Human Rights (UNOHCHR) in Cambodia has confirmed that a group of 36 Montagnards (a term used loosely to refer to members of different mostly Christian indigenous groups in Viet Nam's Central Highlands), all of whom are indigenous Jarai, have been forcibly returned by Cambodia to Viet Nam in recent days. The group were intercepted late in the evening of 25 February as they attempted to travel to Cambodia's capital Phnom Penh where they hoped to meet with UN agencies and seek asylum.

Klan Huoen, a Cambodian national, who is also indigenous Jarai and who had assisted the group in arranging transport to Phnom Penh, was arrested along with the 36 others and transported with them by Cambodian police to Viet Nam's Gia Lai province, without any judicial and administrative due process. There he was interrogated by Vietnamese police. After being held *incommunicado* in Viet Nam for a week – in Gai Lai province for two nights before being transported to another police station in Ho Chi Minh City – Klan Huoen was returned to Cambodia by Vietnamese authorities on 3 March. In the intervening period, his family reported him missing.

The 36 Montagnards are the third group to have been forcibly returned to Viet Nam in recent weeks, following the forcible returns earlier in February of a family of five, which included two children and a nine-month-old baby, and a group of four respectively. These refoulements have been confirmed by UNOHCHR.

Amnesty International understands that the group of 36 Montagnards were held overnight by police in Gia Lai province and then collected the following day by police from their respective home districts. Their situation beyond that point in time is unknown, although individuals on the Cambodian side of the border with contacts inside Viet Nam have told human rights workers that they have been released. It has been reported in Cambodian media that the father of the family of five forcibly returned earlier in February was detained by authorities for 12 days after his return and beaten.

Since October 2014, scores of Montagnards are known to have crossed the border between Viet Nam and Cambodia. In a welcome development, a group of 13 who are in Phnom Penh are undergoing the procedure for the granting of refugee status. Another group of 10 Montagnards are thought to be in Phnom Penh although the asylum process has not been initiated in their case. An additional group of 13 remain hiding in the jungle of Ratanakiri province on the Cambodian side of the border with Viet Nam. All of those who have crossed the border are believed to be indigenous Jarai.

Under the principle of *non-refoulement*, Cambodia is under the obligation not to return anyone, in any manner whatsoever, to a country where they would be at real risk of persecution or other serious human rights violations or abuses. Asylum seekers who have indicated a need for international protection but whose claim has not yet been finally determined are also protected from return under the principle of *non-refoulement*. Additionally, the principle of *non-refoulement* encompasses the right to procedural safeguards in case of transfer from the jurisdiction of a state, in particular the opportunity to challenge the transfer on the grounds that it would put the individual at real risk of serious human rights violations.

Amnesty International calls on Cambodia to fulfill its legal obligations including respecting the principle of *non-refoulement*, ensuring that asylum-seekers have access to Cambodian territory, and that all people seeking asylum in Cambodia have their claim processed promptly and fairly, in line with international law and standards. In this respect, Amnesty International is concerned by the requirement under Cambodian law that recommendations concerning the granting of asylum formulated by immigration officials have to be approved by the Minister of Interior, who has ultimate legal authority for granting refugee status. In order for Cambodia to fulfil its obligations towards asylum-seekers, refugees and others in need of international protection, any official or body making decisions on the granting of asylum should be independent from political or other influences and considerations.

Additionally, the organization calls on Cambodia to investigate the circumstances which resulted in Klan Huoen being transported by Cambodian police to Viet Nam and to provide him with full reparation for the violation suffered.

Cambodia's violation of the principle of *non-refoulement* with respect to the Montagnards is particularly concerning in light of the controversial agreement concluded with Australia in September 2014 to relocate refugees from Nauru to Cambodia. In February 2015, the International Organization for Migration announced that – at the request of Cambodia, Australia, and Nauru – it will “develop a programme aimed at facilitating the relocation and integration of refugees from Nauru to Cambodia”. Amnesty International considers the Australian deal with Cambodia to be deeply flawed and reiterates its call for it to be scrapped.

Background

Cambodia is a party to the 1951 Refugee Convention and its 1967 Protocol. However, Cambodia's recent track record on the respect, protection and promotion of the rights of refugees and asylum seekers is poor. In 2009, it received almost universal condemnation when it forcibly returned a group of 20 ethnic Uighur asylum seekers to the People's Republic of China. In February 2015, Ministry of Interior spokesperson General Khieu Sopheak was quoted by Cambodian media as saying that as “the constitution states that Cambodia is a neutral country, not allied with any league [...] taking refugee from any country [...] is against Cambodian constitutional law”.

In February 2001, thousands of Montagnards held protests in Viet Nam's Central Highlands against a litany of grievances including government confiscation of ancestral homelands, the loss of agricultural land to settlers from lowland Viet Nam, lack of freedom of worship, and the denial of other human rights. After a government crackdown following the protests, thousands of Montagnards fled Viet Nam to seek asylum in Cambodia.

In 2004, Vietnamese security forces put down further protests. Amnesty International documented the deaths of at least eight people. Hundreds more were reportedly wounded. Montagnards continued to flee Viet Nam for Cambodia and it was reported that hundreds, including children, were forcibly repatriated back to Viet Nam.

In January 2005, a tripartite agreement was concluded between the UN High Commissioner for Refugees (UNHCR), Cambodia, and Viet Nam governing the asylum claims of the high numbers of Montagnards who had fled Viet Nam to Cambodia. Under the agreement, UNHCR

had the authority to conduct Refugee Status Determination (RSD) for the Montagnards in Cambodia. Those deemed to be refugees were given the option to resettle to a third country, while those who were not considered to be refugees by UNHCR were repatriated to Viet Nam under a voluntary return programme in collaboration with Viet Nam.

The text of the agreement included a guarantee from Viet Nam that returning Montagnards would not be punished, discriminated against, or prosecuted, and provided for visits by UNHCR to returnees in Viet Nam.

In December 2009, the Cambodian Government issued the 224 Sub-decree on procedure for recognition as a refugee or providing asylum rights to foreigners in the Kingdom of Cambodia. Through this Sub-decree the Refugee Department, under the Ministry of Interior's Immigration Department, was given the sole jurisdiction to process asylum claims. Under the Sub-decree, recognition of refugee status is determined by Prakas – proclamations – of the Minister of Interior. The Sub-decree reiterates the principle of non-refoulement. Article 3 of the Sub-decree states that its provisions apply to all foreigners who wish to apply for refugee status or seek asylum in Cambodia.

Notes:

For background, see:

Cambodia: New deal with Australia signs away refugee rights, Press Release, Amnesty International, 25 September 2014, available at:
<https://www.amnesty.org/en/articles/news/2014/09/cambodia-new-deal-australia-signs-away-refugee-rights/>

Australia and Cambodia should scrap asylum seeker deal, Press Release, Amnesty International, 1 May 2014, available at:
<https://www.amnesty.org/en/articles/news/2014/05/australia-cambodia-scrap-asylum-seeker-deal/>

Cambodia: Refugee protection in crisis, Public Statement, Amnesty International, Index: ASA 23/003/2004, 20 May 2004

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