

# AMNESTY INTERNATIONAL PUBLIC STATEMENT

24 July 2015  
Index: ASA 23/2157/2015

## **Cambodia: Refoulement and the Question of “Voluntariness”**

The Cambodia Daily reported on July 17 that 12 Montagnard asylum seekers had returned to Vietnam with the assistance of the Office of the UN High Commissioner for Refugees (UNHCR).

While the UNHCR has explained publicly that the individuals’ decision to return was “voluntary,” it added that it was the result of “difficulties” the group encountered in Cambodia.

In March, Amnesty International condemned the Cambodian authorities’ forcible returns of 45 Montagnards to Vietnam. Those forcible returns were carried out in violation of the principle of non-refoulement, the core tenet of refugee law and a legal obligation that Cambodia, as a party to the Refugee Convention, is bound to uphold.

The Refugee Convention’s principle of non-refoulement bars the return of asylum seekers or refugees “in any manner whatsoever to the frontiers of territories” where their life or freedom would be threatened.

Last week’s return is distinguishable from the cases of the 45; it did not involve physical force. However, the UNHCR Executive Committee has stated that “preventing asylum seekers from finding safety, or from obtaining access to procedures, negates their fundamental rights, and may amount to refoulement in breach of international law.”

International law prohibits “constructive” refoulement, which occurs when states use indirect means to carry out refoulement, i.e. without transferring them or physically forcing them to go to a place where their lives or freedoms are at risk.

The question of whether or not the return of the 12 to Vietnam constituted constructive refoulement depends largely on whether or not their decision to return was voluntary.

The UNHCR’s “Handbook on Voluntary Repatriation” deals with the issue of the repatriation of refugees; it explains that “voluntariness is the cornerstone of international protection with respect to the return of refugees.”

According to the UNHCR, “it follows directly from the principle of non-refoulement: the involuntary return of refugees would in practice amount to refoulement.” The handbook states that “a person retaining a well-founded fear of persecution is a refugee, and cannot be compelled to repatriate.”

In determining the question of “voluntariness,” the UNHCR explains that one must scrutinize objectively the refugees’ situation and that “one of the most important elements in the verification of voluntariness is the legal status of the refugees in the country of asylum.”

According to the UNHCR, a legally recognized refugee whose rights are protected and who chooses to return to his/her country of origin is more likely to be truly free in making that decision. Conversely, an individual whose rights are not recognized and who is subject to restrictions “may choose to return, but this is not an act of free will.”

In the case of the 12 Montagnard asylum seekers recently returned to Vietnam, their rights were not protected.

On the contrary, the Cambodian authorities failed to provide them with the very minimum entitlement owed to asylum seekers by law -- temporary refuge and the determination of their asylum claims as a first step toward giving content to the right to seek and enjoy asylum in another country, as provided by Article 14 of the Universal Declaration of Human Rights.

By not registering these individuals’ claims and not initiating the Refugee Status Determination procedure, Cambodia failed these individuals and violated its obligations under the Refugee Convention.

These individuals made their decisions to return while being barred entirely from ever accessing Cambodia's asylum and refugee regime. Put simply, they were alone and without legal status in Cambodia.

The UNHCR explains that in examining a decision to return to a country of origin, one should be "convinced that the positive pull-factors in the country of origin are an overriding element in the refugees' decision to return rather than possible push-factors in the host country."

In the case of the 12, we don't know if their decisions were truly voluntary, but the fact that they were ignored by Cambodia's refugee department and barred from ever being granted asylum in Cambodia raises serious questions about the voluntariness of their return.

Their decisions to return may not have been acts of free will and these individuals may have repatriated while retaining a well-founded fear of persecution.

The fact is that while Cambodia may not have physically returned these people to Vietnam -- as in previous cases -- the authorities did create conditions that may have compelled them to repatriate. This may have constituted constructive refoulement.

Opinion published by the *Cambodia Daily* newspaper on 24 July 2015,  
<https://www.cambodiadaily.com/opinion/for-montagnards-the-pressing-question-of-voluntariness-89327/>

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