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PEOPLE SERVING PEOPLE FOUNDATION



Joint statement, 24 September 2015

Cambodia must stop *refoulement* of Montagnard asylum seekers to Viet Nam

We, the below signed civil society organizations are concerned about the possible *refoulement* by the Cambodian government of more than 100 Montagnard asylum seekers to Viet Nam and call on Cambodia not to take such action. Instead, Cambodia should uphold its legal obligations under the Refugee Convention and international human rights law and initiate Refugee Status Determination procedures for all individuals currently seeking asylum in the country.

There are currently at least 100 Montagnards – a term used loosely to refer to members of various minority groups in Viet Nam's Central Highlands – seeking asylum in Cambodia. Some Montagnards practice forms of Christianity banned by the Vietnamese government, and those seeking asylum in Cambodia are claiming religious and other persecution. After recognising 13 Montagnards as refugees in March 2015, the Cambodian authorities have refused to register the asylum claims of at least 100 more.

On 12 September, General Khieu Sopheak, a spokesperson for the Ministry of Interior, was quoted in *The Cambodia Daily* stating that the authorities had requested the UN refugee agency, UNHCR, to resettle the 13 individuals whose refugee status has been recognised to a third country and had sought assistance from UNHCR

in repatriating the remaining individuals to Viet Nam. According to Khieu Sopheak, if these individuals are not repatriated by early November 2015, the Cambodian authorities will forcibly return them.

As a party to the Refugee Convention, Cambodia is under a legal obligation to register all individuals seeking asylum in the country and to evaluate their asylum claims through prompt and effective Refugee Status Determination procedures. This would be a first step towards giving content to the right to seek and to enjoy asylum in another country, as provided for by Article 14 of the Universal Declaration of Human Rights.

The principle of *non-refoulement* is a cornerstone of refugee and human rights law. Under refugee law, it bars the return of anyone in any manner whatsoever to a place where they would be at real risk of persecution or other serious human rights violations. Under international human rights law, it bars the transfer of persons to places where they would be at risk of serious human rights violations, irrespective of the reasons for such violations. For instance, under Article 3 of the UN Convention against Torture, to which Cambodia is a party, states may not return a person to another territory where there are substantial grounds for believing the person would be subject to torture.

In February 2015, at least 45 Montagnards were forcibly returned by Cambodia to Viet Nam in violation of the principle of *non-refoulement*, in a move that was roundly condemned by human rights groups.¹ In the intervening period, at least 12 Montagnards have returned to Viet Nam with assistance from UNHCR after the Cambodian authorities refused to register their asylum claims.²

Human Rights Watch recently documented religious persecution of Christian Montagnards by the authorities of Viet Nam, including “arbitrary arrest, detention, torture, and other cruel, inhuman, or degrading treatment”.³ Vietnamese media reports establish that the government maintains its determination to suppress what it deems “evil way” religious practices.

The individuals currently seeking asylum in Cambodia face a high possibility of retaliation by the Vietnamese authorities if they are forcibly returned by Cambodia to Viet Nam.

Cambodia’s request to UNHCR for assistance to resettle the 13 recognised refugees to a third country indicates the country’s failure to understand their legal obligations to recognised refugees under the Refugee Convention. Resettlement is a durable solution that should be pursued if it is the best available option

for refugees in a specific case. It should not be used by states parties to circumvent their obligations under the Refugee Convention. Until resettlement is possible or if it is not the best available solution in the case of the 13, Cambodia must honour its obligations to these individuals by upholding the panoply of rights owed to refugees as outlined in the Convention.

Cambodia's treatment of Montagnard refugees and asylum seekers stands in stark contrast to the efforts being made to accommodate four refugees previously sent to Cambodia from Nauru Island under a \$40 million AUD agreement with Australia, which itself violates the Refugee Convention.⁴ On 14 September, two days after his comments outlining the plans to illegally *refouler* the Montagnard asylum seekers to Viet Nam, General Khieu Sopheak announced that officials from the Ministry of Interior were being sent to Nauru to interview four more refugees – one Burmese and three Iranian nationals – whom he said have agreed to relocate to Cambodia as part of the deal.

It is time for Cambodia to cease its flagrant abuse of the Refugee Convention and international human rights law, including the Convention against Torture. We call on Cambodia to immediately initiate Refugee Status Procedures for Montagnards seeking asylum in the country and to fully uphold the rights of the 13 Montagnards already recognised as refugees. We also call on Viet Nam to cease the persecution of Montagnards.

Amnesty International

Boat People SOS

Civil Rights Defenders

Coalition to Abolish Modern-day Slavery In Asia (CAMSA)

Christian Solidarity Worldwide

Human Rights Watch

International Commission of Jurists

International Federation for Human Rights (FIDH)

People Serving People Foundation (PSPF)

Vietnam Committee on Human Rights

World Organisation Against Torture (OMCT)

¹ See for example, Amnesty International, 'Cambodia: End refoulement of Montagnard asylum seekers', 4 March 2015, available at <https://www.amnesty.org/en/documents/asa23/1126/2015/en/>.

² See, 'UN Helps 12 Montagnards Return to Vietnam', *The Cambodia Daily*, 17 July 2015, available at <https://www.cambodiadaily.com/news/un-helps-12-montagnards-return-to-vietnam-88695/>.

³ Human Rights Watch, 'Persecuting "Evil Way" Religion: Abuses against Montagnards in Vietnam', 26 June 2015, available at <https://www.hrw.org/report/2015/06/26/persecuting-evil-way-religion/abuses-against-montagnards-vietnam>.

⁴ See Amnesty International, 'Cambodia: New deal with Australia signs away refugee rights', 25 September 2014, available at <https://www.amnesty.org/en/latest/news/2014/09/cambodia-new-deal-australia-signs-away-refugee-rights/>.