Fact Sheet: Montagnard asylum seekers in the Kingdom of Cambodia

Snapshot: "Montagnard" is a term used to describe various minority groups living mainly in Viet Nam's high-lands. The majority of Montagnards follow the Christian religion and have suffered severe political and/or religious persecution by authorities in Viet Nam. Cambodia has repeatedly flouted its obligations under international law to protect Montagnards seeking asylum in Cambodia, leading to *refoulement* of Montagnard refugees to their home country where they are at risk of persecution and other human rights violations.

This fact sheet has been produced by CCHR, a non-aligned, independent, non-governmental organization ("NGO") that works to promote and protect democracy and respect for human rights – primarily civil and political rights – throughout Cambodia.

Background

The Montagnard People[1], also known as "the Degar"[2] are indigenous, ethnic minority groups in the Vietnamese northern and central highlands. The Montagnard people have long been targets of oppression and exclusion, in particular the Christian minorities that follow the evangelical Christian church or the Catholic church.[3] During the first and second Indochina wars, the Montagnards fought alongside France and the United States of America, which, along with disputes over land, contributes to the continuing persecution Montagnards face to this day.

After the nationalization of land in 1975,[4] many Montagnards were forced to give up their land to the Vietnamese authorities. These disputes escalated in the form of February 2001 protests involving thousands of Montagnard people who demanded minority lands back from the government and respect for their religious freedoms. The government answered with harsh political repression to stop the protests, arresting and injuring hundreds of peaceful protestors.[5] Further protests in April 2004 were also met with disproportionate force by Vietnamese security officials, and as a result many Montagnards tried to flee the country.[6] In 2013 the government started implementing legal mechanisms to ensure control over religious practices, leading refugee numbers from Viet Nam to Cambodia to increase drastically since 2013.[7] The UN Special Rapporteur on Freedom of Religion and Belief (the "UN Special Rapporteur") concluded following a 2014 visit to Viet Nam that "*autonomy and activities of independent religious or belief communities […] remain restricted and unsafe, with the rights to freedom of religion or belief of such communities grossly violated in the face of constant surveillance, intimidation, harassment and persecution*."[8] In Viet Nam in the first eight months of 2016 alone, at least nine Montagnards were convicted of "undermining

[1] French word meaning 'mountaineers' or 'mountain people.'

[2] Term used by the indigenous people themselves referring to the 'original people' of the central highlands of Vietnam http://bit.ly/2oHWjQ4

[3] Human Rights Watch, 'Persecuting "Evil Way" of Religion - Abuses against Montagnards in Vietnam', (26 June 2015) http://bit.ly/1Ldezbt ('Human Rights Watch 2015')

[4] A policy of confiscating the land of landlords and rich peasants and distributing it to poor and landless peasants and later organizing the rural population into collectives.

[5] Human Rights Watch 2015

[6] Human Rights Watch 2015

[7] Human Rights Watch 2015

[8] Report of the Special Rapporteur on freedom of religion or belief, Addendum: Mission to Viet Nam 21-31 July 2014 (30 January 2015) A/HRC/28/66/Add.2, summary, and para. 69.

national unity" and sentenced to between five and eleven years in prison, for participating in independent religious groups not approved by the government.[9]

Since the 2001 protests, at least 3,000 Montagnards have crossed the border to seek asylum in Cambodia.[10] To keep Montagnards from crossing the border, both the Vietnamese and the Cambodian governments have increased their numbers of personnel at the borders. Cambodian officials have characterized the ethnic minority group members as "illegal economic migrants" instead of asylum seekers or refugees and refused to acknowledge the risk of persecution and violation of human rights of Montagnards.[11] Most egregiously, in a number of cases Montagnard asylum seekers have been returned to Viet Nam, in violation of the fundamental legal principle of *non-refoulement* (*see below*). The Vietnamese government's restriction of access by those working on human rights – including by the UN Special Rapporteur - to Montagnard areas in Viet Nam, has hindered the ability to monitor their treatment after being repatriated,[12] and some asylum seekers have reported that other Montagnards returned from Cambodia to Viet Nam have faced persecution at the hands of the Vietnamese authorities.[13]

In 2014, 13 Montagnard asylum seekers from Viet Nam spent more than seven weeks hiding in the jungle in Ratanakiri for fear of arrest and deportation by the Cambodian authorities. In 2015 Cambodian authorities prevented representatives from the United Nations ("UN") from accessing the asylum seekers, and are reported to have threatened local villagers and human rights organizations who might have been helping them.[14] In a joint statement, the Office of the UN High Commissioner for Human Rights and the Office of the UN High Commissioner for Refugees ("UNHCR") expressed concern that "*there are substantial grounds for believing that the Montagnards may be in danger of being subjected to human rights violations if they are returned to their country of origin, Viet Nam.*"[15] The 13 Montagnards were eventually granted asylum and, following the RGC's welcome decision to extend the deadline for all Montagnard refugees and unregistered asylum seekers to leave Cambodia by three months, in order to allow UNHCR to find resettlement options for the 13,[16] they left for the Philippines to await resettlement in a third country.[17]

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[9] See Human Rights Watch, 'World Report 2017', Viet Nam chapter http://bit.ly/2oafjv6

[10] UNHCR Livelihoods project http://bit.ly/2oWEgsK

[11] Khuon Narim and George Wright, 'Montagnards Not Refugees, Ministry Says', *The Cambodia Daily* (11 February, 2016) http://bit.ly/2q3vRCi

[12] Human Rights Watch 2015

[13] George Wright and Aun Pheap, 'Returning Montagnards Criticize UN, Government', *The Cambodia Daily* (25 April 2017) http://bit.ly/2pjAlGU

[14] Aun Pheap and Colin Meyn, "UN Hamstrung in Ratanakkiri as More Montagnards Arrive" *The Cambodia Daily* (20 February 2015) http://bit.ly/2pIrqzZ

[15] UN News Centre, "Cambodia: 'Substantial grounds' to believe Montagnards may be in danger, UN warns" (19 December 2014) http://bit.ly/2pFtPIf

[16] Phak Seangly and Alice Cuddy, 'Deportation delayed for VN asylum seekers', *The Phnom Penh Post* (21 October 2015) http://bit.ly/1RV6Osy

[17] Erin Handley, "Montagnard refugees set their course for Philippines" *The Phnom Penh Post* (27 May 2016) http://bit.ly/2oSpeCD

Legal Framework

The right to seek asylum

The Universal Declaration of Human Rights ("UDHR"), Article 14, protects the right of every individual to seek and to enjoy asylum in another country, and both the UDHR and the **International Covenant on Civil and Political Rights ("ICCPR")**, to which Cambodia is a party, guarantee the right of all individuals to leave any country, including their own.[18] The rights guaranteed by international human rights law ("IHRL") protect all persons subject to Cambodia's jurisdiction regardless of their immigration status, including refugees and asylum seekers.

The **1951 Refugee Convention**,[19] to which Cambodia is a party, defines a refugee as: a person who "*owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country […].*"

Often those who have fled their country to seek asylum abroad have crossed the border illegally; however, the Refugee Convention explicitly prohibits states from imposing penalties on asylum seekers whose entry to or presence on their territory was unauthorized.[20] All asylum seekers, even those present in Cambodia unlawfully, have the right to freedom of religion,[21] property rights,[22] the right to primary education,[23] and the right to access to the courts.[24] Any restrictions placed on their movement (such as curfews, reporting requirements, or designated residences) must be "necessary"[25] and comply with IHRL; UNHCR has stated that "the detention of asylum-seekers should be a measure of last resort, with liberty being the default position."[26] When imposed, detention must be in accordance with the law and justified by a legitimate purpose, and conditions of detention must be humane and dignified.[27] Once their asylum claim is being processed and they are lawfully present, asylum seekers also have the right to self-employment,[28] and to choose their place of residence and move freely within the state's territory, subject to any regulations applicable to aliens generally.[29]

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[18] Article 11, ICCPR; Article 13, UDHR.

[19] 1951 UN Convention relating to the status of refugees (Geneva Convention) and the 1967 Protocol relating to the status of refugees http://bit.ly/2ah31bH (the "Refugee Convention")

[20] Article 31(1), 1951 Refugee Convention

[21] Article 4, 1951 Refugee Convention

[22] Article 13, 1951 Refugee Convention

[23] Article 22, 1951 Refugee Convention

[24] Article 16(1), 1951 Refugee Convention

[25] Article 31(2), 1951 Refugee Convention

[26] UNHCR, "Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention," Guideline 2 http://bit.ly/1lpfUQv

[27] Ibid., Guidelines 3, 4 and 6.

[28] Article 18, 1951 Refugee Convention

[29] Article 26, 1951 Refugee Convention

Non-refoulement

"*Non-refoulement*" – or the prohibition of expulsion or return – is a fundamental principle of international refugee law. The principle, set out in the 1951 Refugee Convention and its 1967 Protocol, prohibits States from returning individuals in any manner whatsoever to countries or territories in which their lives or freedom may be threatened.[30] This obligation applies whether or not the individual has yet been granted refugee status.[31] The expansion of IHRL has broadened the scope of this obligation and now requires States to protect non-nationals from being returned to countries in which their life is threatened or where they risk being subjected to torture or inhuman and degrading treatment, regardless of their immigration status.[32]

Domestic Law

The Constitution of the Kingdom of Cambodia (the "Constitution") states that Cambodia "*recognizes and respects human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights* [and] *all the treaties and conventions related to human rights, women's and children's rights*" (Article 31). In addition, as a result the Constitutional Council's decision of 10 July 2007, recognizing that international treaties ratified by Cambodia are directly applicable in domestic law,[33] Cambodia's obligations under the Refugee Convention are incorporated into the domestic legal system.

The creation of Cambodia's Refugee Department in 2008 was hailed as a positive development that it was hoped would allow Cambodia to become a model for the region.[34] The Cambodian government has since – with the assistance of UNHCR – taken over responsibility for receiving and adjudicating asylum claims. A further positive step was the adoption of **Sub-Decree No. 224 of 2009[35] on Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia ("Sub-Decree 224"),** which "is generally in line with"[36] the definition of a refugee in the 1951 Convention and explicitly restates the *non-refoulement* principle.[37] The Sub-Decree provides that if an applicant fulfills the criteria set out in the Sub-Decree, they "*shall be granted refugee status*." The Sub-Decree therefore provides a basis from which Cambodia could take further positive steps to ensure full compliance with its obligations by ensuring transparent and fair refugee status determination processes in practice.

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[30] Article 33(1), 1951 Refugee Convention

[31] See UNHCR, Note on Non-Refoulement (Submitted by the High Commissioner) EC/SCP/2 (23 August 1977), para. 4 http://bit.ly/2qa0Sof

[32] International Organization for Migration, "Information note on the principle of non-refoulement" (April 2014) http://bit.ly/2pbyrI7; See, for example, Article 3, UN Convention against Torture: http://bit.ly/U5cWWq

[33] Constitutional Council of the Kingdom of Cambodia, Decision No. 092/003/2007 (10 July 2007)

[34] Kitty McKinsey, 'Cambodia on track to become refugee model for Southeast Asia,' (UNHCR News, 20 October, 2008) http://bit.ly/2ppn1AS

[35] Sub-Decree No. 224 http://bit.ly/2q5jrsL

[36] UNHCR, "Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review" (June 2013) http://bit.ly/2pCKwYe UNHCR recognized the adoption of Sub-Decree No. 224 as "an important development and Cambodia should be commended for its leadership in processing asylum applications," while at the same time noting "a number of concerns with the law." Human Rights Watch were also critical of the Sub-Decree's provisions: Human Rights Watch, "Preliminary Analysis of the Refugee Sub-Decree" (19 March 2010) http://bit.ly/2oItB6w.

[37] Sub-Decree No. 224, Article 23

Analysis of recent treatment of Montagnard asylum seekers in Cambodia and recommendations

In December 2016, 13 Montagnards were "voluntarily" returned to Viet Nam after their asylum applications were rejected[38] followed by a further group of six on 14 March 2017. Another twenty five people, who had fled to Cambodia two years ago, were sent back to Vietnam on 24 April 2017.[39] The RGC and UNHCR stated that the Montagnards agreed to return to Viet Nam voluntarily, but some of the returnees have refuted those assertions.[40] In early April 2017 almost 50 Montagnards fled Cambodia for Thailand after the Interior Ministry began rejecting some of their asylum claims. The refugees told the press that they feared they would be subject to repression, arrested, tortured or even killed if they were also sent back to Viet Nam.[41] At present, around 70 Montagnard asylum seekers remain in Cambodia.[42]

It is highly doubtful whether the Cambodian authorities are complying with their obligations to interpret and apply the definition of a refugee in the 1951 Convention, and Sub-Decree No. 224, correctly and in good faith, given the very small proportion of Montagnard asylum seekers whose claims have succeeded in recent years. In light of the well-documented religious and political persecution Montagnards face in Viet Nam, *prima facie* they appear to fully meet the requirement of a "well-founded fear" of persecution under the Convention and to be entitled to the protections of refugee status. Furthermore, in 2015 13 Montagnards were granted refugee status by the Cambodian authorities; there is no evidence of a fundamental change in circumstances in Viet Nam since that time which would justify the conclusion that a risk of persecution no longer exists.[43] In any case, even if a Montagnard individual does not qualify as a refugee, it is clear that the obligation of *non-refoulement* will protect them against being returned to Viet Nam while a threat to their life and freedom exists: Cambodia's continuing return of Montagnards in these circumstances is in flagrant violation of this fundamental principle of refugee law.[44]

Finally, Montagnards have reported being subject to restrictive living conditions when in Cambodia, including three times a day registration and limitations on their ability to leave their apartments.[45] Such excessive restrictions on the liberty of individuals do not appear to meet the requirement of necessity and it is unclear how such intrusive monitoring of the asylum seekers' movements can be justified. In particular, the detention of a Montagnard couple – including a woman who is four

[38] Radio Free Asia, "Cambodia Sends a Group of Montagnards Back to Vietnam" (21 December 2016) http://bit.ly/2pV5bTg

[39] Aun Pheap and George Wright, "Six More Montagnard Asylum-Seekers Sent Back to Vietnam", (*The Cambodia Daily,* 15 March 2017), http://bit.ly/2m1izaS ; Erin Handley and Chhay Channyda, 'Asylum seekers sent back to VN'; (The Phnom Penh Post, 25 April 2017) http://bit.ly/2oujjqc

[40] George Wright and Aun Pheap, 'Returning Montagnards Criticize UN, Government', (The Cambodia Daily, 25 April 2017) http://bit.ly/2pjAlGU

[41] George Wright, "Montagnard Refugees Tell of Escape to Thailand," *The Cambodia Daily* (19 April 2017) http://bit.ly/2o6KJCw; Shaun Turton and Phak Seangly, 'Montagnards flee to Thailand, fearing return to persecution in Vietnam', (The Phnom Penh Post, 03 April, 2017), http://bit.ly/2pxLN2J

[42] George Wright and Aun Pheap, 'Returning Montagnards Criticize UN, Government,' (The Cambodia Daily, 25 April 2017) http://bit.ly/2pjAlGU

[43] See Human Rights Watch, "World Report 2017," Viet Nam chapter http://bit.ly/2oafjv6

[44] In addition to the refoulement of Montagnard asylum-seekers, on 19 December 2009 Cambodia refouled 20 Uighur asylum-seekers who were forcibly deported to China just days after Cambodia adopted Sub-Decree No. 224. See UNHCR, "Submission by the United Nations High Commissioner for Refugees For the Office of the High Commissioner for Human Rights' Compilation Report - Universal Periodic Review" (June 2013) http://bit.ly/2pCKwYe

[45] George Wright, "Montagnard Refugees Tell of Escape to Thailand," *The Cambodia Daily* (19 April 2017) http://bit.ly/2o6KJCw

months pregnant – for eight days in poor conditions in Phnom Penh,[46] appears to be in violation of the requirement that any detention be humane and dignified.[47]

Recommendations to the RGC:

- **Ensure all asylum seekers in Cambodia have the opportunity to lodge asylum claims and receive a fair determination of their claims for protection**, in accordance with international law, and work closely with UNHCR, other international partners, and civil society to this end;
- Comply with its legal obligations as a party to the Refugee Convention and under IHRL; in particular, **fully respect the fundamental principle of *non-refoulement* and immediately impose a complete moratorium on all repatriations of Montagnard asylum seekers and refugees** ("voluntary" or otherwise), until international observers are able to carry out effective, ongoing monitoring of the conditions of returned Montagnards in Viet Nam to ensure their lives or freedom will not be threatened;
- **Ensure that treatment of asylum seekers and refugees in Cambodia complies with international standards**; in particular, ensure that any restrictions on the movement of asylum seekers meet the requirement of necessity under the Refugee Convention, and that detention is imposed only as a last resort, with detainees held in humane and dignified conditions.

Recommendations to UNHCR:

- **Call on the Vietnamese government to allow full and unrestricted access by international observers** to areas from which Montagnard asylum seekers in Cambodia originate or to which they have been returned;
- **Cease facilitation of the repatriation of Montagnard asylum seekers from Cambodia** ("voluntary" or otherwise) until international observers are able to carry out effective, ongoing monitoring of the conditions of returned Montagnards in Viet Nam, to ensure their lives or freedom will not be threatened;
- **Call on the Cambodian authorities to comply with their obligations under international refugee law and international human rights law**, and speak out against violations of Cambodia's obligations in this regard; in particular, ensure that refugee status determinations are carried out fairly and in accordance with the law, and that treatment of asylum seekers and refugees in Cambodia meets international standards.

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[46] George Wright and Aun Pheap, "Detention of Montagnard Couple Disputed" *The Cambodia Daily* (14 April 2017) http://bit.ly/2opFFVQ; Erin Handley and Chhay Channyda, 'Asylum seekers sent back to VN,' *The Phnom Penh Post* (25 April 2017) http://bit.ly/2oujjqc

[47] Erin Handley, "Deportation plan 'unlawful'" *The Phnom Penh Post* (19 April 2017) http://bit.ly/2pitFth