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**The Special Representative of the Secretary-General
for human rights in Cambodia**



Briefing note

Cambodia's obligations under the UN Convention relating to the Status of Refugees and under international law

Cambodia is a party to the 1951 Convention Relating to the Status of Refugees and the related 1967 Protocol. It has therefore undertaken that it will not forcibly return ("refouler") asylum seekers or refugees if their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, or political opinion (article 33). It has also undertaken not to impose penalties upon asylum seekers who enter Cambodian territory illegally (article 31).

Central to the obligation of non-refoulement are:

- i. non-rejection at the border/frontier; and
- ii. the need for a fair refugee status determination procedure by which those persons in need of protection can be identified.

Asylum seekers may only be returned to their country of nationality if two conditions are met. First that an application for recognition as a refugee has been refused after being reviewed through a fair status determination procedure. Second, that there are no grounds for believing that – if returned - their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion, or that they would be subjected to torture.¹

Cambodia has yet to develop procedures for the registration and reception of asylum seekers, for regularizing the legal status of asylum seekers who enter the country illegally, or for refugee status determination. Hitherto, UNHCR has undertaken these tasks. Until agreement is reached between the Government and UNHCR on an appropriate Cambodian system for determining refugee status, and until UNHCR is able to operate without restriction in Cambodia, asylum seekers must have free access to UNHCR to make their applications in order for Cambodia to comply with its Convention obligations.

Asylum seekers from Vietnam do not present themselves to the Cambodian authorities due to fear of forcible deportation and of penalties for illegal entry. They have tried to make their way to the UNHCR office in Phnom Penh as the only available means to have their claims for refugee status determined, and of regularising their legal status.

Anyone assisting asylum seekers, including individuals and non-governmental organisations working to protect human rights and to provide humanitarian assistance, should not be seen as acting unlawfully and should not be subject to harassment, threats or other reprisals. They

¹ Article 3, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

are simply assisting asylum seekers to realise their rights under an international law by which Cambodia is legally bound. In assisting asylum seekers, they are working in accordance with the UN Declaration on the Right and Responsibility of Individuals, Groups, and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and they are providing protection against threats to life and humanitarian assistance to alleviate suffering, regardless of the cause.

The authorities have a general duty to respect the rights protected by the international human rights treaties to which Cambodia is party in relation to all individuals within its territory, irrespective of their nationality. Under the Refugee Convention, persons who are recognized as refugees are also entitled to a range of human rights, including economic and social rights such as access to medical care and schooling in their country of asylum.

The granting of asylum to a refugee is not a hostile act. States parties to the Refugee Convention, over 140 in total, have granted asylum over the years to refugees from countries with which they have friendly diplomatic relations. Most countries have in place national refugee status determination systems to determine, on a case by case basis, whether an asylum seeker falls within the scope of the Convention and thus should be given protection. This is usually done by independent and impartial decision makers who apply the law without regard to political considerations.

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Article 31-refugees unlawfully in the country of refuge

1- The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2- The Contracting States shall not apply to the movements of such refugees restriction other than those which are necessary and such restriction shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

Article 33- Prohibition of expulsion or return (“refoulement”)

1- No Contracting States shall expel or return (“refouler”) a refugees in any manner whatever to the frontier of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2- The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.