

## Agreement between the Government of Australia and the Government of the Kingdom of Cambodia concerning Transfer of Sentenced Persons

### Introduction

- 4.1 This chapter contains the Committee's report on its consideration of the *Agreement between the Government of Australia and the Government of the Kingdom of Cambodia concerning Transfer of Sentenced Persons*, done at Canberra on 11 October 2006 (the Agreement). However, it does not contain the Committee's recommendation relating to the Agreement, which was made in Report 82. A copy of Report 82 is at Appendix D.
- 4.2 The Committee decided to expedite its recommendation with respect to this treaty action so that the other domestic requirements for the treaty's entry into force could proceed as quickly as possible. Ordinarily, the Committee would not have been required to report on the Agreement until 20 March 2007, after the expiry of 15 joint sitting days. By tabling a brief report before the summer break, and well before the 15 days sitting period has expired, the Committee acted to provide the Government with an opportunity to complete the other domestic requirements for implementation much earlier than would normally be the case.

- 4.3 The Committee thought it was important to ensure that any Australians who would access the provisions of the Agreement once it has entered into force would have the opportunity to do so as soon as possible. The Committee is aware that one Australian serving a prison sentence in Cambodia was arrested in 2005 when he was 16 years old.

## Terms of the Agreement

- 4.4 The Agreement provides a formal process for the transfer of prisoners between Australia and Cambodia. Prisoners are eligible to apply for transfer from Cambodia to Australia provided they:
- Are Australian citizens; or
  - Are otherwise permitted by Australian law to enter and remain indefinitely in Australia and have community ties to Australia.<sup>1</sup>
- 4.5 Prisoners are eligible to apply for transfer from Australia to Cambodia if they are a Cambodian national.<sup>2</sup>
- 4.6 Other conditions which must be satisfied for a prisoner to be transferred include:
- The prisoner was not sentenced in respect of an offence under the law of Cambodia against the internal or external security of the state, against His Majesty the King, or a member of the royal family, or against legislation protecting Cambodian national art treasures;<sup>3</sup>
  - The prisoner must have at least one year remaining to be served at the time of the request for transfer;<sup>4</sup> and
  - The judgment must be final and no other legal proceedings relating to the offence or any other offence are pending in the transferring party;<sup>5</sup>

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1 National Interest Analysis (NIA), para. 5, Article 4(c) of the Agreement.

2 NIA, para. 6, Article 4(b) of the Agreement.

3 Article 4(d) of the Agreement.

4 Article 4(e) of the Agreement.

5 Article 4(f) of the Agreement.

- 4.7 Prisoners can apply to either the Australian or Cambodian government for transfer under the Agreement. However, prisoners will only be transferred if they, the Australian government and the Cambodian government all give informed consent to the transfer.<sup>6</sup>
- 4.8 The Committee was informed that as at 27 November 2006 there were five Australians who had been sentenced to imprisonment in Cambodia and 13 Cambodians sentenced to imprisonment in Australia.<sup>7</sup>

## International Transfer of Prisoners

- 4.9 The operation of Australia's domestic legislation and international arrangements entered into by Australia is called the international transfer of prisoners (ITP) scheme.<sup>8</sup> Under Australian law, the *International Transfer of Prisoners Act 1997* (the ITP Act) allows for regulations to be made which give effect to Australia's bilateral and multilateral transfer of prisoner agreements.
- 4.10 The ITP scheme has humanitarian, rehabilitative and social objectives.<sup>9</sup> Allowing prisoners to serve their sentence in the home country is expected to relieve the hardship and burden on the relatives of the prisoner, facilitate the prospects of that prisoner's rehabilitation and also reduce the administrative burden on Australian consular officials in Cambodia.<sup>10</sup>
- 4.11 The New South Wales Council for Civil Liberties also pointed out that:

The separation of prisoners from their families, most of whom cannot bear the cost of travel, is particularly acute; even more so when the prisoners have young children, or are themselves children. Language is a real barrier, along with a myriad of other cultural factors. The health of prisoners appears to

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6 NIA, para. 18, Articles 5(2)(a) and 4(g) of the Agreement.

7 Ms Robin Warner, *Transcript of Evidence*, 5 December 2006, p. 2.

8 NIA, para. 9.

9 NIA, para. 10.

10 NIA, para. 7.

deteriorate faster in these circumstances, and rehabilitation becomes a more remote prospect.<sup>11</sup>

- 4.12 As Cambodia is not part of any multilateral convention relating to the transfer of prisoners, and following growing public pressure for Australia to conclude bilateral ITP agreements with more of its regional neighbours, the negotiation of the Agreement was considered a priority.<sup>12</sup> Cambodia has not completed a bilateral ITP treaty with any other country.<sup>13</sup>

## Implementation and entry into force

- 4.13 The Agreement will be implemented through regulations under the ITP Act.<sup>14</sup>
- 4.14 The Committee was informed that Administrative Arrangements with all the States and Territories, with the exception of South Australia, are in place to facilitate the transfer of prisoners into, and out of, State and Territory prisons.<sup>15</sup>
- 4.15 The Agreement will enter into force 30 days after an exchange of notes by which each party notifies the other that its domestic requirements for the Agreement's entry into force have been complied with.<sup>16</sup>
- 4.16 The Committee received a submission from the New South Wales Council for Civil Liberties concerning the long delay in processing a request for prisoner transfer.<sup>17</sup> Their specific concerns relate to Gordon Vuong, who was 16 at the time of his arrest in Cambodia in January 2005, and the likelihood that it will take approximately 12 months, in addition to the 6 to 9 months for the Agreement to enter into force, to process a request for transfer to Australia.<sup>18</sup> The New South Wales Council for Civil Liberties calls for a 'greater sense of

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11 New South Wales Council for Civil Liberties, *Submission 3*, p. 1.

12 NIA, paras 14 and 16.

13 NIA, para. 15.

14 NIA, para. 26.

15 Ms Robin Warner, *Transcript of Proceedings*, 5 December 2006, p. 5; NIA, paras 27-28.

16 NIA, para. 3.

17 New South Wales Council for Civil Liberties, *Submission 3*, p. 2.

18 New South Wales Council for Civil Liberties, *Submission 3*, p. 3.

urgency' to be 'injected into the process giving effect to prisoner transfers generally, and to Gordon Vuong's transfer in particular.'<sup>19</sup>

- 4.17 The Committee supports this call and while it recognises that much will also depend on Cambodian authorities, encourages the Government and relevant government agencies to treat requests for prisoner transfers with the speed that the nature of the circumstances necessitate.

## Consultation

- 4.18 As part of the consultation for the Agreement, on 22 July 2005, Senator the Hon Christopher Ellison wrote to all State and Territory ministers with portfolio responsibility for implementation of the ITP scheme.<sup>20</sup>
- 4.19 Responses were received from the Hon Tony Kelly MLC, New South Wales Minister for Justice, the Hon John D'Orazio MLA, Western Australian Minister for Justice and Small Business and the Hon Judy Jackson, Tasmanian Attorney-General. Attorney-General Jackson and Minister Kelly supported the proposed treaty action. Minister D'Orazio thanked the Australian Government for the opportunity to comment.<sup>21</sup>
- 4.20 Copies of the letter from Senator the Hon Chris Ellison were forwarded to the Commonwealth-State/Territory Standing Committee on Treaties (SCOT). No response was received from SCOT either in response to the letters or at meetings in September 2005, May 2006 and September 2006 at which the treaty was listed on the schedule as under negotiation.<sup>22</sup>

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19 New South Wales Council for Civil Liberties, *Submission 3*, p. 3.

20 NIA, 'Consultation', para. 5.

21 NIA, 'Consultation', para. 6.

22 NIA, 'Consultation', para. 7.

## Conclusion

- 4.21 The Committee supports the Prisoner Transfer Agreement with Cambodia and has recommended in Report 82 that binding treaty action be taken.<sup>23</sup> Report 82 is reproduced at Appendix D.
- 4.22 The Committee also encourages the Government to act quickly to implement the Agreement to ensure that any Australians who would access the provisions of the Agreement once it has entered into force will have the opportunity to do so as soon as possible.

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23 Joint Standing Committee on Treaties Report 82, see Appendix D.