

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE  
CANBERRA

**AGREEMENT BETWEEN**  
**THE GOVERNMENT OF AUSTRALIA**  
**AND**  
**THE GOVERNMENT OF THE KINGDOM OF CAMBODIA**  
**CONCERNING**  
**TRANSFER OF SENTENCED PERSONS**

Canberra, 11 October 2006

Not yet in force  
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**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE  
GOVERNMENT OF THE KINGDOM OF CAMBODIA CONCERNING  
TRANSFER OF SENTENCED PERSONS**

The Government of Australia and the Government of the Kingdom of Cambodia (hereinafter referred to as "the Parties");

Taking into consideration the laws and regulations in force regarding law enforcement of the Parties and the desirability of enhancing their cooperative efforts in law enforcement and the administration of justice;

Desiring to cooperate in the enforcement of penal sentences; and

Desiring to cooperate in the transfer of sentenced persons to facilitate their successful reintegration into society;

Have agreed as follows:

ARTICLE 1

DEFINITIONS

For the purposes of this Agreement:

- (a) "transferring Party" means the Party from whose jurisdiction the sentenced person may be, or has been, transferred.
- (b) "receiving Party" means the Party to whose jurisdiction the sentenced person may be, or has been, transferred.
- (c) "sentenced person" means a person who is required to be detained in a prison, a hospital or any other place in the territory of the transferring Party to serve a sentence and also applies to an offender who has been conditionally released.
- (d) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court or a tribunal for a limited or unlimited period of time in the course of the exercise of its criminal jurisdiction.
- (e) "territory" means
  - (i) in respect of the Kingdom of Cambodia, all territory within the jurisdiction of the Kingdom of Cambodia and

- (ii) in respect of Australia, the States and Territories of Australia, including external Territories of Australia.
- (f) "community ties" means:
  - (i) the prisoner's principal place of residence immediately before being sentenced to imprisonment in the territory of the transferring Party was in the territory of the receiving Party; or
  - (ii) the prisoner's parent, grandparent or child has a principal place of residence in the territory of the receiving Party; or
  - (iii) the prisoner is married to or has a de facto relationship with anyone whose principal place of residence is in the territory of the receiving Party; or
  - (iv) the prisoner has a close continuing relationship (involving frequent personal contact and a personal interest in the other person's welfare) with anyone whose principal place of residence is in the territory of the receiving Party.

## ARTICLE 2

### PURPOSE OF AGREEMENT

- (1) The Parties undertake to afford each other the widest measure of cooperation in respect of the transfer of sentenced persons in accordance with the provisions of this Agreement.
- (2) A sentenced person may be transferred from the territory of the transferring Party to the territory of the receiving Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on them.

## ARTICLE 3

### CENTRAL AUTHORITIES

- (1) The Central Authorities of the Parties shall process requests for transfer in accordance with the provisions of this Agreement.
- (2) The Central Authority for the Kingdom of Cambodia is the Ministry of Justice. The Central Authority for Australia is the Australian Government

Attorney-General's Department. Either Party may change its Central Authority in which case it shall notify the other of the change.

(3) The Central Authorities may communicate directly with each other for the purposes of this Agreement.

#### ARTICLE 4

##### CONDITIONS FOR TRANSFER

A sentenced person may be transferred under this Agreement only on the following conditions:

- (a) The acts or omissions on account of which the sentence has been imposed constitute the essential elements of a criminal offence according to the law of the receiving Party, or would constitute such essential elements of a criminal offence if committed within the jurisdiction of the receiving Party. This requirement may be waived in a particular case if both Parties agree and to the extent permitted by the domestic law of the receiving Party.
- (b) Where the Kingdom of Cambodia is the receiving Party, the sentenced person is a Cambodian national.
- (c) Where Australia is the receiving Party the sentenced person is:
  - (i) an Australian citizen; or
  - (ii) is permitted to travel to, enter and remain indefinitely in Australia in accordance with Australian law and has community ties with a State or Territory of Australia;
- (d) The offender was not sentenced in respect of an offence under the law of Cambodia:
  - (i) against the internal or external security of the State;
  - (ii) against His Majesty the King, or a member of the royal family; or
  - (iii) against legislation protecting Cambodian national art treasures.

- (e) The sentenced person has at least one year remaining to be served at the time of the request for transfer. This requirement may be waived by the agreement of the Parties.
- (f) The judgment is final and no other legal proceedings relating to the offence or any other offence are pending in the transferring Party.
- (g) The transferring and receiving Parties and the sentenced person all consent to the transfer. Where the sentenced person is incapable of giving consent under the law of the transferring Party, consent may be given by a person entitled to act on their behalf.
- (h) The sentenced person has been fully informed by the receiving Party of any costs associated with the transfer that the receiving Party may seek to recover from the sentenced person in accordance with Article 12(3).

## ARTICLE 5

### PROCEDURE FOR TRANSFER

- (1) The Parties shall endeavour to inform sentenced persons of the substance of this Agreement.
- (2)
  - (a) If the sentenced person wishes to be transferred, they may express such a wish to the transferring Party or the receiving Party, either of whom must inform the other Party in writing.
  - (b) A request for transfer may be made by the receiving Party to the other Party.
  - (c) Requests for transfer shall be in writing and shall include the following information:
    - (i) the full name, date and place of birth of the sentenced person;
    - (ii) a statement of the citizenship, nationality or residence status of the sentenced person; and

(iii) the location of the sentenced person and current address.

(3) Where a request for transfer has been made, the transferring Party shall provide the receiving Party with the following information:

- (a) a statement of the facts upon which the conviction and sentence were based and a statement of the relevant law creating the offence;
- (b) the termination date of the sentence, if applicable, and the length of time already served by the sentenced person and any remissions to which they are entitled on account of work done, good behaviour, pre-trial confinement or other reasons;
- (c) a copy of the certificate or record of conviction and sentence and, if available, copies of any judgments and sentencing remarks;
- (d) details of any request for extradition of the sentenced person that has been made to the transferring Party or of any State that has expressed interest in extraditing the sentenced person or that is likely, in the opinion of the transferring Party, to request extradition;
- (e) any corrections, medical or social reports on the sentenced person, information about their treatment in the transferring Party, and any recommendation for their further treatment in the receiving Party; and
- (f) any other additional information requested by the receiving Party.

(4) The receiving Party must provide the transferring Party with the following information before transfer, if requested by the transferring Party:

- (a) a document or statement indicating that the sentenced person complies with the conditions in Article 4(b) or 4(c);
- (b) a statement that the acts or omissions on account of which the sentence has been imposed constitute the essential elements of a criminal offence according to the law of the receiving Party or would constitute such essential elements of a criminal offence if committed within the jurisdiction of the receiving Party. Alternatively, a statement that the receiving Party waives this requirement to the extent permitted by its domestic law;

(c) a statement describing how the sentenced person's sentence would be enforced by the receiving Party; and

(d) any other additional information.

(5) Either Party shall, as far as possible, provide the other Party, if it so requests, with any relevant information, documents or statements before making a request for transfer or taking a decision on whether or not to agree to a transfer.

(6) Delivery of the sentenced person by the authorities of the transferring Party to those of the receiving Party shall occur on a date and at a place within the territory of the transferring Party as agreed upon by both Parties.

## ARTICLE 6

### CONSENT OF THE SENTENCED PERSON

(1) The transferring Party shall ensure that the sentenced person consents to the transfer voluntarily and with full knowledge of the legal consequences thereof. The procedure for giving such consent shall be governed by the law of the transferring Party.

(2) The transferring Party shall afford an opportunity to the receiving Party, if the receiving Party so desires, to verify through an official designated by the receiving Party, prior to the transfer, that the sentenced person's consent to the transfer in accordance with Article 4(f) is given voluntarily and with full knowledge of the legal consequences thereof.

## ARTICLE 7

### RETENTION OF JURISDICTION

The transferring Party shall retain jurisdiction for the review, revision, modification, cancellation, pardon, amnesty or commutation of convictions and sentences imposed by its courts.

## ARTICLE 8

### CONTINUED ENFORCEMENT OF SENTENCE

- (1) The receiving Party shall enforce the sentence as imposed by the transferring Party.
- (2) Notwithstanding the requirements of Article 8(3), the continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving Party. Where the Kingdom of Cambodia is the receiving Party, the sentenced person may be entitled to pardons or amnesty provided for under the law of the Kingdom of Cambodia. The sentence shall be no more severe than that imposed by the transferring Party in terms of nature or duration.
- (3) If the sentence is by its nature or duration incompatible with the law of the receiving Party, the receiving Party may adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence. When adapting the sentence, the appropriate authorities of the receiving Party shall be bound by the findings of fact, insofar as they appear from any opinion, conviction, judgment, or sentence imposed by the transferring Party. The adapted sentence shall be no more severe than that imposed by the transferring Party in terms of nature or duration.
- (4) The receiving Party may, if a sentenced person is a juvenile according to its law, treat the sentenced person as a juvenile regardless of their status under the law of the transferring Party.
- (5) The receiving Party shall modify or terminate enforcement of the sentence as soon as it is informed of any decision by the transferring Party in accordance with Article 7.
- (6) The Parties shall inform the sentenced person in writing of any action or decisions taken by the transferring Party or the receiving Party under paragraphs (2) to (5) of this Article.

## ARTICLE 9

### INFORMATION ON ENFORCEMENT OF SENTENCE

The receiving Party shall provide information to the transferring Party concerning enforcement of the sentence:



- (a) if the sentenced person is granted conditional release;
- (b) when it considers enforcement of the sentence to have been completed;
- (c) if the sentenced person has escaped from custody, or if the sentenced person dies, before enforcement of the sentence has been completed;
- (d) if the transferring Party requests a report.

## ARTICLE 10

### TRANSIT OF SENTENCED PERSON

This Article applies where either Party transfers a sentenced person to or from a third State with which both Parties have a transfer relationship. If this occurs and transit through the other Party's territory is necessary, then the other Party shall, subject to its domestic law, cooperate in facilitating the transit through its jurisdiction of such a sentenced person. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

## ARTICLE 11

### LANGUAGE

Requests for transfer and accompanying documents shall be submitted in, or accompanied by a translation into, an official language of the receiving Party.

## ARTICLE 12

### EXPENSES

- (1) The arrangement for bearing the expenses of the transfer will be decided between the Parties on a case by case basis.
- (2) The continued enforcement of the sentence after transfer shall be borne by the receiving Party.
- (3) The receiving Party may, however, seek to recover all or part of the cost of transfer from the sentenced person.

### ARTICLE 13

#### CONSULTATION

The Central Authorities of the Parties may consult with each other to promote the most effective use of this Agreement and to agree upon such practical measures as may be necessary to facilitate the implementation of this Agreement.

### ARTICLE 14

#### SETTLEMENT OF DISPUTES

- (1) The Parties shall seek to resolve any dispute arising out of the interpretation, application or implementation of this Agreement through the Central Authorities.
- (2) If the Central Authorities are unable to resolve a dispute as envisaged in Article 14 paragraph (1), the Parties shall seek to resolve the dispute through diplomatic channels.

### ARTICLE 15

#### TERRITORIAL APPLICATION

This Agreement shall apply to the territory of Australia and the territory of the Kingdom of Cambodia.

### ARTICLE 16

#### ENTRY INTO FORCE AND TERMINATION

- (1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of the Agreement have been complied with.
- (2) This Agreement shall apply to any request for transfer presented after the entry into force of the Agreement even if the sentence was imposed before the date of entry into force of this Agreement.

(3) Either Party may terminate this Agreement at any time by giving notice in writing to the other. In that event the Agreement shall cease to have effect six months after the date of receipt of the notice.

In witness whereof the undersigned, being duly authorised by their respective Governments have signed this Agreement.

Done in duplicate at Canberra this eleventh day of October, two thousand and six in the English and Khmer languages, each text being equally authentic.

FOR THE GOVERNMENT OF AUSTRALIA:	FOR THE GOVERNMENT OF THE KINGDOM OF CAMBODIA:
Hon Chris Ellison Minister for Justice and Customs	HE Prum Sokha Secretary of State of the Ministry of Interior