

**No. 47749**

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**Australia  
and  
Cambodia**

**Agreement between the Government of Australia and the Government of the Kingdom of Cambodia concerning transfer of sentenced persons. Canberra, 11 October 2006**

**Entry into force:** *14 April 2007 by notification, in accordance with article 16*

**Authentic texts:** *English and Khmer*

**Registration with the Secretariat of the United Nations:** *Australia, 14 September 2010*

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**Australie  
et  
Cambodge**

**Accord entre le Gouvernement de l'Australie et le Gouvernement du Royaume du Cambodge relatif au transfert des personnes condamnées. Canberra, 11 octobre 2006**

**Entrée en vigueur :** *14 avril 2007 par notification, conformément à l'article 16*

**Textes authentiques :** *anglais et khmer*

**Enregistrement auprès du Secrétariat des Nations Unies :** *Australie, 14 septembre 2010*

[ ENGLISH TEXT – TEXTE ANGLAIS ]

**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