

Agreement between the Government of Republic of India and the Royal Government of Cambodia on the transfer of sentenced persons

UNION OF INDIA

India

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AGREEMENT-BETWEEN-THE-GOVERNMENT-OF-REPUBLIC-OF-INDIA of 2008

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Agreement between the Government of Republic of India and the Royal Government of Cambodia on the transfer of sentenced persons Published vide Notification No. G.S.R. 376(E), 14th May, 2008 Ministry of Home Affairs (CS Division) G.S.R. 376(E). - In exercise of the powers conferred by sub-sections (1) and (2) of Section 3 of the Repatriation of Prisoners Act, 2003 (49 of 2003), the Central Government hereby directs that the provisions of the said Act shall apply to the Kingdom of Cambodia and notifies the agreement entered into between the Government of the Republic of India and the Government of the Kingdom Cambodia as under: The Government of the Republic of India and the Royal Government of Cambodia hereinafter referred to as the Contracting States; Desiring to facilitate the social rehabilitation of sentenced persons into their own countries; and Considering that this objective should be fulfilled by giving foreigners, who have been convicted and sentenced as a result of their commission of a criminal offence, the opportunity to serve their sentences within their own society; Have agreed as follows: Article 1 Definitions For the purpose of this Agreement: (a) "Judgement" means a decision or order of a court or tribunal imposing a sentence; (b) "receiving State" means a State to which the sentenced person may be, or has been, transferred in order to serve his sentence; (c) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court or tribunal for a determinate period of time or for life imprisonment on account of a criminal offence; (d) "sentenced person" means a person undergoing a sentence of imprisonment under an order passed by a criminal court including the courts established under the law for the time being in force in the Contracting States; (e) "transferring State" means the State in

Agreement between the Government of Republic of India and the Royal Government of Cambodia on the transfer of sentenced persons which the sentence was imposed on the person who may be, or has been transferred. Article 2 General Obligations

1. A person sentenced in the territory of one Contracting State may be transferred to the territory of the other Contracting State in accordance with the provisions of this Agreement in order to serve the sentence imposed on him. To that end, he may express to the transferring State or the receiving State his willingness to be transferred under this Agreement.

2. Transfer may be requested by any sentenced person who is a national of a Contracting State or by any other person who is entitled to act on his behalf in accordance with the law of the Contracting State by making an application to the Contracting State and in the manner prescribed by the Government of that Contracting State.

Article 3 Conditions for transfer

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

(a) the person is a national of the receiving State; (b) the death penalty has not been imposed on the sentenced person; (c) the judgment is final; (d) no enquiry, trial or any other proceeding is pending against the sentenced person in the transferring State; (e) at the time of receipt of the request for transfer, the sentenced person still has at least six months of the sentence to serve or is undergoing a sentence of life imprisonment or the sentence is indeterminate; (f) that the acts or omissions for which that person was sentenced in the transferring State are those which are punishable as a crime in the receiving State or would constitute a criminal offence if committed on its territory; (g) the sentenced person has not been convicted for an offence under the military law; (h) transfer of custody of the sentenced person to the receiving State shall not be prejudicial to the sovereignty, security or any other interest of the transferring State; (i) consent to the transfer is given by the sentenced person or, where in view of his age or physical or mental condition either Contracting State considers it necessary, by any other person entitled to act on his behalf in accordance with the law of the Contracting State; and (j) the transferring and receiving States agree to the transfer.

2. In exceptional cases, the transferring and receiving States may agree to a transfer even if the remaining period to be served by the sentenced person is less than six months.

Article 4 Obligation to furnish information

1. If the sentenced person has expressed an interest to the sentencing State in being transferred under this Agreement, the transferring State shall send the following information and documents to the receiving State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:

(a)the name and nationality, date and place of birth of the sentenced person;(b)his address, if any, in the receiving State;(c)a statement of the facts upon which the sentence was based;(d)the nature, duration and date of commencement of the sentence;(e)a certified copy of the judgment and a copy of the relevant provisions of the law under which the sentence has been passed against the sentenced person;(f)a medical, social or any other report on the sentenced person, where it is relevant for the disposal of his application or for deciding the nature of his confinement;(g)any other information which the receiving State may specify as required in all cases to enable it to consider the possibility of transfer and to enable it to inform the sentenced person of the full consequences of transfer for him under its law;(h)the request of the sentenced person to be transferred or of a person entitled to act on his behalf in accordance with the law of the transferring State; and(i)a statement indicating how much of the sentence has already been served, including information on any pre-trial detention, remission, or any other factor relevant to the enforcement of the sentence.

2. For the purposes of enabling a decision to be made on a request under this Agreement, the receiving State shall send the following information and documents to the transferring State unless either the receiving or the transferring State has already decided that it will not agree to the transfer:

(a)a statement or document indicating that the sentenced person is a national of the receiving State;(b)a copy of the relevant law of the receiving State constituting the acts or omissions, on account of which the sentence has been passed in the transferring State, as if such acts or omissions were an offence under the law of the receiving State or would constitute an offence if committed on its territory;(c)a statement of the effect of any law or regulation relating to the duration and enforcement of the sentence in the receiving State after the sentenced person's transfer including, if applicable, a statement of the effect of paragraph 2 of Article 8 of this Agreement on his transfer;(d)the willingness of the receiving State to accept the transfer of the sentenced person and an undertaking to administer the remaining part of the sentence of the sentenced person; and(e)any other information or document which the transferring State may consider necessary.

Article 5Requests and replies

1. Requests for transfer shall be made in writing in the prescribed proforma, if any, and addressed through the central authority of the transferring State through diplomatic channels to the central Authority of the receiving State. Replies shall be communicated through the same channels.

2. For the purpose of paragraph 1 of this Article, the Central Authority shall be, in relation to India, the Ministry of Home Affairs; and in relation to Cambodia, shall be the Ministry of Interior, Kingdom of Cambodia, Phnom Penh.

3. The receiving State shall promptly inform the transferring State of its decision whether or not to agree to the requested transfer.

Article 6 Consent and its verification

1. The transferring State shall ensure that the person required to give consent to the transfer in accordance with paragraph 1(i) of Article 3 of this Agreement, does so 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 State.

2. The transferring State shall afford an opportunity to the receiving State to verify that the consent is given in accordance with the conditions set out in paragraph 1 of this Article.

Article 7 Effect of transfer for the receiving State

1. The competent authorities of the receiving State shall continue the enforcement of the sentence through a court or administrative order, as may be required under its national law, under the conditions set out in Article 8 of this Agreement.

2. Subject to the provisions of Article 10 of this Agreement, the enforcement of the sentence shall be governed by the law of the receiving State and that State alone shall be competent to take all appropriate decisions.

Article 8 Continued enforcement of sentence

1. The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State.

2. If, however, the sentence is by its nature or duration or both incompatible with the law of the receiving State, or its law so requires, that State may, by Court or administrative order, adapt the sentence to a punishment or

measure prescribed by its own law. As to its nature and duration the punishment or measure shall, as far as possible, correspond with that imposed by the judgment of the transferring State. It shall however not aggravate, by its nature or duration, the sentence imposed in the transferring State.

Article 9 Effect of completion of sentence for the transferring State When the receiving State notifies the transferring State under paragraph 1(a) of Article 12 of this Agreement that the sentence has been completed, such notification shall have the effect of discharging that sentence in the transferring State. Article 10 Pardon, amnesty or commutation and review of judgment (1) The transferring State alone shall decide on any application for the review of the judgement. (2) Either of the Contracting States may grant pardon, amnesty or commutation of the sentence in accordance with its Constitution or other laws. Article 11 Termination of enforcement of sentence The receiving State shall terminate enforcement of the sentence as soon as it is informed by the transferring State of any decision or measure as a result of which the sentence ceases to be enforceable. Article 12 Information on enforcement of sentence

1. The receiving State shall notify the transferring State:

(a) when the enforcement of the sentence has been completed; or (b) If the sentenced person escapes from custody before enforcement of the sentence has been completed, in such cases the receiving State shall make every effort to have the prisoner arrested so that he serves the remainder of his sentence and that the prisoner be prosecuted for committing an offence under the relevant law of the receiving State on escape of prisoner.

2. The receiving State shall furnish a special report concerning the enforcement of the sentence, if so required by the transferring State.

Article 13 Transit If either Contracting State enters into arrangements for the transfer of sentenced persons with any third State, the other Contracting State shall cooperate in facilitating the transit through its territory of the sentenced persons being transferred pursuant to such arrangements, except that it may refuse to grant transit to any sentenced person who is one of its own nationals. The Contracting State intending to make such a transfer shall give advance notice to the other Contracting State of such transit. Article 14 Costs Any costs incurred in the application of this Agreement shall be borne by the receiving State, except costs incurred exclusively in the territory of the transferring State. The receiving State may, however, seek to recover all or part of the costs of transfer from the sentenced person or from some other source. Article 15 Territorial Application

1. This agreement shall apply:

(a) to the Republic of India, and (b) to the Kingdom of Cambodia and reference to the territory of a Contracting State shall be construed accordingly.

2. The application of this agreement to any territory, in respect of which extension has been made in accordance with paragraph 1 of this Article, may be terminated upon expiry of six months notice given by either Contracting State to the other through the diplomatic channels.

Article 16 Language Requests and supporting documents shall be accompanied by a translation into the language or one of the official language of the requesting State or English. Article 17 Scope of application This Agreement shall be applicable to the enforcement of sentences imposed either before or after its entry into force. Article 18 Amendments Any amendments or modifications to this Agreement agreed by the Contracting States shall come into effect when confirmed by an Exchange of Diplomatic Notes. Article 19 Final provisions

1. This Agreement shall be subject to ratification and shall enter into force on the date on which instruments of ratification are exchanged.

2. The Agreement shall continue to remain in force until six months from the date upon which either Contracting State gives written notice to the other Contracting State of its intention to terminate it.

3. Notwithstanding any termination, this Agreement shall continue to apply to the sentenced persons who have been transferred under this agreement before the date on which such termination takes effect.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement. Done in duplicate at New Delhi on the 8th day of December 2007 in the Hindi, Khmer and English languages, all texts being equally authentic. In case of difference in interpretation the English text shall prevail.

For the Government of the
Republic of India Shivraj
V. Patil Home Minister

For the Government of the Republic of France HOR
Namhong Deputy Prime Minister and Minister of Foreign
Affairs and International Cooperation