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for International Refugee Law

## Research Brief

# THE AUSTRALIA-CAMBODIA REFUGEE DEAL

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Australia undertook intergovernmentally through the agreement we have made with Nauru to assist that jurisdiction with eventual resettlement and/or removal of persons, depending on whether or not they were found to be refugees. That behoves us to undertake discussions, consultations and eventually negotiations with what are known as third country resettlement destinations.<sup>8</sup>

The Cambodia Agreement was supported by various other arrangements that comprised between the Republic of Nauru and Commonwealth of Australia, Relating to the Transfer to

their countries of origin in October 2015, March 2016 and April 2016 respectively.<sup>17</sup> In



Despite these protests, pressure to accept the Cambodia Agreement (or return to countries of origin) was applied in a number of ways over the following months and years. In September 2014, Scott Morrison filmed a video message to asylum seekers and refugees in Nauru and elsewhere warning that

<sup>28</sup> In 2015, his successor as Minister for Immigration and Border Protection, Peter Dutton, filmed a similar video message encouraging refugees to seize the

is free from per <sup>29</sup> settlement support would be provided to refugees who waited and relocated to Cambodia

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The possibility of family reunion (which was not available in Nauru) and cash incentives were offered as inducements to encourage refugees to go to Cambodia. Meanwhile, harsh conditions, ongoing and indefinite detention, the return-oriented environment and the lack of future prospects in Nauru were factors pressuring asylum seekers and refugees to leave. It is questionable whether any decision made in these circumstances, either about relocating

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<sup>30</sup>

### **How much did the Cambodia Agreement cost?**

When the Cambodia Agreement was first signed, and in the following months,<sup>31</sup> its exact forecasted costs were yet to be



covering the costs of at least 12 months of settlement services, which may have included language and vocational training and materials and loans for starting a small business. After

## ***Family reunification***







- language classes, employment preparation, and education, and to support community engagement;
- ◁ guarantees against *refoulement*; and
- ◁ procedures to provide and support family reunification.<sup>65</sup>

Relevantly, Cambodia committed to facilitating the lawful entry into Cambodia of any refugee who accepted an offer of relocation, granting them permanent residence status, and treating

Status of Refugees (Refugee Convention).<sup>66</sup> There was also anecdotal evidence that members of Cambodian society, and other foreigners in Phnom Penh, made refugees feel welcome there. However:

- ◁ as set out above, it was not certain that relocated refugees would be able to enjoy in practice the full range of rights to which they were entitled under international law and
- ◁ Cambodia did not have an established and adequately resourced integration programme which provided the necessary services and support to refugees. All services and support were provided by private contractors (IOM and CSA) and fully funded by Australia, or by charities and other non-governmental organisations in Cambodia;
- ◁ there was no evidence that Cambodia would be able or willing to sustain the provision of services to relocated refugees if Australia were to discontinue its support for the programme;
- ◁ family reunification was not provided to those who requested it; and
- ◁ it was not clear whether refugees relocated from Nauru would ever be able to obtain Cambodian citizenship, either for themselves or their children.

As such, Cambodia did not appear to have established, or to be able or willing to maintain, an effective resettlement programme at this time. Its ongoing dependence on Australian support differentiated the Cambodia Agreement from a resettlement arrangement.

refugees did not originally seek asylum in their territories. By contrast, successive Australian governments have pursued arrangements with other countries in the region to accept *all* of the refugees who arrive by boat and seek asylum in Australia, repeatedly stating that none will ever receive permanent protection in Australia.

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interpreters free of charge, and states that a representative or legal guardian must be provided to work in the best interests of asylum seekers who are children or have disabilities. UNHCR may assist, facilitate or provide recommendations during the RSD process. According to this law, once a person has been recognised as a refugee they become entitled to the same rights and subject to the same obligations as a  
including the rights to a residence card, to work or run a business, to sponsor family members to come to Cambodia, and to all other rights set out in the Refugee Convention.

elled or returned in any manner  
whatsoever to the frontiers of territories where his or her life, freedom or rights would be threatened on account of his or her race, religion, nationality, membership of a social group  
wever, Article 7 permits the government to deny certain  
people entry into Cambodia, meaning asylum seekers may be turned away without having

of exclusion, such decisions should generally be made within the context of a regular RSD procedure with rigorous procedural safeguards.<sup>71</sup> Further, even if a person is excluded from refugee status, they should not be returned or turned away to any place where they would face a real  
obligations under the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Other concerning provisions of Sub-decree No. 224 include: article 11, which permits officials to reject an application for refugee status immediately if the asylum seeker does not cooperate with the official in clarifying information, or commits any activity that could endanger national security or public order during the RSD process; and article 5, which provides that recognition, cessation and cancellation of refugee status shall be determined by proclamation of the Minister of the Interior, with the risk that this power may be arbitrary and unreviewable.

### ***RSD and refugee protection in practice***

In addition to the deficiencies in the text of Sub-decree No. 224 identified above, other problems arise as a result of the law not being implemented in practice and general

The Cambodian government particular has raised questions about its willingness and capacity to provide refugee protection, and the appropriateness of Australia having entered into a refugee relocation arrangement with Cambodia. For example:

- ◁ since late 2014, Cambodia has failed to acknowledge Montagnards from Vietnam as to accept applications for asylum from the majority of them, and deported others back to Vietnam without conducting RSD. This treatment echoes previous responses by the Cambodian government to earlier groups of Montagnard asylum seekers arriving since 2001; and
- ◁ there have been cases of Uighur asylum seekers being forcibly deported to China, despite ongoing protection concerns. For example, in December 2009, 20 Uighur

China. The following day, Chinese Vice President Xi Jinping arrived in Cambodia and signed approximately US\$1.2 billion worth of contracts for aid and loans. China

reports from China suggested that a number of the Uighurs were facing life sentences or sentences in excess of 10 years.<sup>72</sup>

## Treatment of Montagnard asylum seekers in Cambodia

### Introduction

of indigenous, predominantly Christian minority groups from the mountainous central highlands region of Vietnam. While these groups are mainly concentrated in Vietnam, some also live across the border in north-eastern Cambodia, especially in Ratanakiri province.<sup>73</sup>

For more than a decade, Montagnards have faced a series of crackdowns by the Vietnamese government, which in turn have triggered mass demonstrations by Montagnards against their religious repression and confiscation of their ancestral lands.<sup>74</sup> Some protesters have called for self-rule or autonomy in the region. Montagnard asylum seekers have periodically fled into neighbouring Cambodia, in 1991 (AS/ASEK/RZHUHGHEV)



In June, the Cambodian government facilitated a visit to the Montagnards in Phnom Penh by a Vietnamese delegation, including police officers from some of the villages the asylum seekers had fled, encouraging them to return home.<sup>87</sup>





extrajudicial killings; at least one disappearance by local security forces; continued



## Endnotes

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<sup>1</sup> Available at

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*Guardian* (online), 8 November 2016, <https://www.theguardian.com/world/2016/nov/08/syrian-held-on-nauru-lands-in-cambodia-as-sixth-refugee-to-take-up-resettlement-offer>  
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(online), 22 April 2015, <https://www.theguardian.com/australia-news/2015/apr/22/peter-dutton-in-video-plea-to-nauru-refugees-to-call-cambodia-settlement-hotline>.

<sup>30</sup> UNHCR, *UNHCR Mission to the Republic of Nauru: 3-5 December 2012*, 14 December 2012, <http://www.refworld.org/pdfid/50cb24912.pdf>, 10; UNHCR, *UNHCR Monitoring Visit to the Republic of Nauru, 7 to 9 October 2013*, 26 November 2013, <http://www.unhcr.org/en-au/publications/legal/581175931/unhcr-monitoring-visit-to-the-republic-of-nauru-7-to-9-october-2013.html>, 25.

<sup>31</sup> Evidence to Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Estimates*, Canberra, 20 October 2014, 59 (Dr Wendy Southern); *Estimates*, Canberra, 23 February 2015, 147-148 (Kate Pope; Michael Pezzullo).

<sup>32</sup> MOU, arts 11, 12; Operational Guidelines, arts 4, 7, 15, 21, 22.

<sup>33</sup> Evidence to Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Estimates*, Canberra, 26 May 2015, 65 (Steven Groves); *Estimates*, Canberra, 19 October 2015, 121-122 (Michael Pezzullo); Evidence to Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Estimates*, Canberra, 11 November 2016, 28 (Michael Pezzullo).

<sup>34</sup> DIBP, Answer to question on notice no. 160 from Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, Supplementary Budget estimates 2017-18 (question from Senator Carr on 23 October 2017, answered 8 December 2017).

<sup>35</sup> Morrison, above n 14; Evidence to Senate Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, *Estimates*, Canberra, 3 June 2015, 171-172 (Craig Chittick); Department of Foreign Affairs and Trade (DFAT), Answer to question on notice no. 60 from Senate Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, Supplementary Budget estimates 2015-2016 (question from Senator Hanson-Young on 22 October 2015); DFAT, Answer to question on notice no. 13 from Senate Foreign

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<sup>36</sup> MOU, art 10(d); Operational Guidelines, art 16.

<sup>37</sup> Operational Guidelines, art 17.

<sup>38</sup> Griffiths and Clark, above n 26

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<sup>72</sup> *New York Times* (online), 21 December 2009, [https://www.nytimes.com/2009/12/22/world/asia/22cambodia.html?\\_r=0](https://www.nytimes.com/2009/12/22/world/asia/22cambodia.html?_r=0); Gleeson, above n 43, *Radio Free Asia* (online), 26 January 2012, <https://www.rfa.org/english/news/uyghur/life-in-prison-01262012205722.html>.

<sup>73</sup> *Khmer Loeu* *ngui thuong Jarai* (or *Cơ Loeu*), who live both in Vietnam and Cambodia, are one of the groups comprising the Montagnards.

<sup>74</sup> For more information, see: Human Rights Watch, *Phật giáo và Kitô giáo ở Việt Nam: A Case Study in Religious Repression*, 23 June 2015, <http://www.refworld.org/docid/559642b94.html>; Human Rights Watch, *Montagnard Christians in Vietnam: A Case Study in Religious Repression*, March 2011, <https://www.hrw.org/sites/de>





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