

10 January 2007

Committee Secretary
Joint Standing Committee on Treaties
Department of House of Representatives
PO Box 6021
Parliament House
CANBERRA ACT 2600
AUSTRALIA

Dear Secretary

Agreement between the Government of Australia and the Government of the Kingdom of Cambodia concerning Transfer of Sentenced Persons, Canberra, 11 October 2006 [2006] ATNIF 22 (“the Treaty”)

The purpose of this letter is to make submissions on the Treaty on behalf of the NSW Council for Civil Liberties (“CCL”).

Summary

CCL supports the Treaty and congratulates the Government on its speedy negotiation. However, a greater sense of urgency needs to be injected into the process giving effect to prisoner transfers.

CCL Supports the Treaty

CCL has long been a supporter of prisoner transfer treaties and has actively lobbied for them. During my time as CCL President, I visited prisoners in Thailand in advance of Australia's first prisoner transfer treaty entered into with that country, and I have since visited Cambodia. I have seen first hand the devastating impact on Australians imprisoned in a foreign country over and above the impact of imprisonment generally.

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 deteriorate faster in these circumstances, and rehabilitation becomes a more remote prospect.

The transfer of prisoners on humanitarian grounds is compelling and Australia has recognised this with a legislative framework now in existence in each State and Territory as well at the Commonwealth level. Bilateral treaties are now in place with Thailand and Hong Kong, and Australia is a party to the multilateral Council of Europe Convention on the Transfer of Sentenced Persons.

CCL supports the Treaty.

CCL Concerned about the Delay in Process

CCL is currently acting for Gordon Vuong who is serving a 13 year sentence in Cambodia for a drug offence, and who at the time of his arrest in January 2005 was a 16 year old juvenile.

By the standards of the Australian legal system, in particular as it applies to juveniles, Gordon would never have been convicted, let alone given a 13 year sentence. He was arrested, interrogated and signed a statement without any adult present to represent him. There was no lawyer, no consular official and no parent present during his interrogation. He was represented by a corrupt lawyer who presented no evidence on Gordon's behalf at his trial. The process surrounding his conviction, sentencing and appeal remain disturbing.

By letter dated November 2006 (copy attached), Mr Chris Dennis, Acting Assistant Secretary, Attorney-General's Department, wrote to Ms Hong Ta, Gordon's mother, setting out the process giving effect to a prisoner transfer. There is no doubt that Mr Dennis is genuinely seeking to be helpful to Ms Ta and we are neither critical of him nor the Department for providing this advice to Ms Ta.

What is concerning, however, is the extraordinary length of time it takes to effect a transfer.

Mr Dennis states: "The process for entry into force [of the Treaty] normally takes between 6 and 9 months from the date of signature of the Treaty (in this case, 10 October 2006). However, this period can be affected by how long it takes the other country (in this case Cambodia) to complete its domestic processes for entry into force." We have no quarrel with this process or the consequential time frame. That seems an entirely reasonable length of time to table the Treaty in Parliament, have JSCOT consider it, make and consider Regulations, complete the domestic treaty process in Cambodia, and exchange diplomatic notes.

Mr Dennis also states: "Once the Treaty enters force, prisoners can apply for transfer between Australia and Cambodia . . . The Department aims to finalise applications within 12 months. However, this period can be affected by how long it takes Cambodia to provide the information we require . . .".

12 months is an extraordinary length of time to give effect to a transfer. In our submission, it should be entirely possible to conduct this process in a more efficient manner with a consequential reduction in the time taken. There are seven steps once the treaty has entered force.

First, the prisoner sends a completed application form. This should not take long and, in any event, could precede the Treaty entering force, thus saving time.

Second, Cambodia sends required information about Gordon. We acknowledge that Cambodia will be asked to send the information before the Treaty enters force and accept that what happens in Cambodia is beyond the control of Australia. However, much of the information required is already in the possession of the Department of Foreign Affairs. Consular officials visit Gordon regularly and see the Prison Director. There seems little reason for this step to materially lengthen the process.

Third, NSW decides whether to consent to Gordon's transfer. This only takes place after step 2. There seems to us little reason why the NSW Minister for Justice could not be contacted immediately for 'in principle' approval.

Fourth, Cambodia decides whether to consent to Gordon's transfer. This only takes place after the NSW Minister for Justice has given consent. Again, there seems to us little reason why Cambodia could not be contacted in advance on an 'in principle' basis, though we defer here to those who have direct dealings with the Cambodian authorities.

Fifth, Gordon decides whether to consent. This should not take long and, in any event, can logically precede earlier steps.

Sixth, the Australian Federal Minister for Justice and Customs decides whether to consent. This should not take long.

Seventh, Cambodia and NSW arrange the transfer. This should not take long.

Taken together, these steps should not take anything like 12 months (in addition to the 6 to 9 months taken for the Treaty to enter force). They should certainly not take this long in the case of Gordon Vuong. At the time of his arrest in January 2005, Gordon was a 16 year old juvenile. The process surrounding his conviction, sentencing and appeal remain disturbing. We support the Treaty, but a greater sense of urgency needs to be injected into the process giving effect to prisoner transfers generally, and to Gordon Vuong's transfer in particular.

Please feel free to call me on (02) 8266 3114 or 0417 677 600 if I can be of any further assistance.

Yours Sincerely

Kevin O'Rourke
NSW Council for Civil Liberties