

Factsheet

Agreement between Australia and Cambodia for the relocation of refugees from Nauru to Cambodia

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This factsheet describes the agreement between Australia and Cambodia for the relocation of refugees from Nauru to Cambodia, outlines the agreement's [main features](#), answers some [key questions](#) about its application, describes progress on its [implementation to date](#), and sets out some of the [international reactions](#) to its announcement. It supplements the general factsheet on [refugee protection in Cambodia](#), and the in focus briefs on [the implementation of the Cambodia agreement](#), and [Cambodia's treatment of Montagnard asylum seekers from Vietnam](#).

The Cambodia agreement in brief

On 26 September 2014, Australia and Cambodia signed an agreement providing for the relocation of refugees from Nauru to Cambodia. The [agreement](#) is set out in two instruments:

- *Memorandum of Understanding between the Government of the Kingdom of Cambodia and the Government of Australia relating to the Settlement of Refugees (MOU)*, and
- *Operational Guidelines for the Implementation of the Memorandum of Understanding on Settlement of Refugees in Cambodia (Operational Guidelines)*.

The agreement was negotiated in secrecy without consultation with parliament or civil society in Australia or Cambodia, and its terms were not made public until after the signing. The agreement has received widespread criticism from the United Nations High Commissioner for Refugees (UNHCR) as well as from politicians, lawyers, refugees, human rights advocates and members of the public in both countries (see [below](#)).

After being a refugee-producing country for so many years, it is commendable that Cambodia has expressed a desire '[to show the world it is ready to take... refugees in a humanitarian manner](#)' and contribute to finding durable solutions for some of the world's refugees. However, by its nature and terms, the Cambodia agreement is unlikely to achieve this outcome. As stated by the then UN High Commissioner for Refugees, António Guterres, the Cambodia agreement '[is a worrying departure from international norms](#)'. It constitutes an attempt by Australia to shift its moral and legal responsibilities to refugees who sought protection in its territory onto one of the least developed countries in the region, which currently is not in a position to meet the needs of refugees – either those transferred by Australia or those who arrive by other means. As such, the agreement sets a dangerous

precedent that undermines the integrity of the international system for sharing responsibility for refugees.

Other issues of significant concern with the agreement include that:

- many of its practical details remain unclear, including how much it will cost, how many refugees will be relocated and where they will be accommodated in Cambodia;
- while it is alleged that refugees will only be relocated on a voluntary basis, significant pressure has been, and may continue to be, placed on refugees to make them agree to relocation;
- many of the rights and services that the agreement claims to guarantee to refugees are unlikely to be made available to them in practice;
- it is unclear how the agreement will interact with existing Cambodian law where there is a conflict between the two, for example where the agreement guarantees certain rights to refugees which they do not currently enjoy by law (or in practice); and
- as a result, the agreement carries a significant risk of violating Australia's obligations under international refugee and human rights law.

Main features of the Cambodia agreement

Who will be sent to Cambodia?

According to the agreement (article 4 of the MOU), the refugees who will be relocated from Nauru to Cambodia are persons who:

- originally sought protection in Australia and were removed to Nauru for processing;
- have undergone refugee status determination in Nauru and been found to be a 'refugee', as defined in the 1951 Convention relating to the Status of Refugees (Refugee Convention);
- 'meet the entry and settlement requirements' of Cambodia (these requirements are not specified in the agreement);
- have been provided with information by Cambodian officials on the living conditions, customs, traditions, culture and religion of Cambodia; and
- have voluntarily accepted an offer of settlement in Cambodia (see [below](#) for more information).

In practice, it is reported that Australian immigration officials also approached asylum seekers within the Nauru detention centre about relocation to Cambodia, even though they had not yet had their asylum claims determined. It is unclear whether an asylum seeker who volunteers to go to Cambodia will still need to wait the ordinary amount of time to have his or her claim processed through the established procedures, or if the claim will receive favourable treatment and be expedited.

There are currently no arrangements for refugees to be relocated to Cambodia from Manus Island in Papua New Guinea.

How many refugees will be sent to Cambodia?

It is unclear how many refugees will be relocated to Cambodia. The agreement does not specify a number, and states only that decisions about the number and timing of relocations are to be made by Cambodia. Whereas former Australian Immigration Minister [Scott Morrison previously stated](#) that there would be ‘no caps’ and that as many as 1,000 refugees would be relocated, Cambodian Interior Minister [Sar Kheng reportedly said](#) Cambodia would accept only ‘three to four’ refugees at first as ‘a trial’. By April 2016, only five refugees are reported to have accepted the offer of resettlement in Cambodia, three of whom have subsequently left the country. An up to date record of all transfers is available in our [In Focus brief](#) on the relocation of refugees from Nauru to Cambodia.

When will refugees be sent to Cambodia?

When the agreement was first made, it was unclear when refugees would start going to Cambodia. A timeframe is not set out in the agreement; instead, the timing of transfers to Cambodia depends on whether and when refugees choose to accept the offer of relocation and Cambodia chooses to accept them. Former Immigration Minister Morrison initially suggested that the [first refugees would be relocated by the end of 2014](#). Ultimately the first group of four refugees [did not arrive in Cambodia until June 2015](#), with [an additional one refugee joining them in November 2015](#).

How much will the agreement cost?

The exact cost of the agreement remains unclear. Former Immigration Minister Morrison [announced](#) that Australia would provide Cambodia with \$40 million over four years ‘to support various overseas aid development projects’, in addition to the approximately \$79 million that it was providing in aid to Cambodia. In October 2015 Michael Pezzullo, Secretary of the Department of Immigration and Border Protection, clarified that Australia was providing \$40 million in ‘development assistance – not directly related to the resettlement per se’, as well as \$15 million for the overall resettlement program that would be ‘pay on performance’. According to these and other comments, it appears that the \$15 million was not paid to Cambodia all at once, but rather will be disbursed on a progressive basis depending on how many refugees are resettled.¹

The agreement does not mention these specific dollar amounts, or the division between development assistance and resettlement funding. Instead it lists specific costs that Australia has agreed to cover (which constitute the majority of the costs associated with relocation and settlement), including:

- the costs of travel of Cambodian officials to Nauru to provide information to refugees who may be relocated;
- the costs of travel of refugees to Cambodia;
- the costs associated with the temporary accommodation of refugees upon arrival in Cambodia, including the costs of transporting refugees from the airport, the temporary

- accommodation itself, daily meals, clothes, health services, translation services, security services and meeting the other basic needs of refugees in temporary accommodation;
- the ‘direct costs of the settlement arrangements’, including:
 - packages for refugees’ daily subsistence, language and vocational training, materials and loans for starting a small business, private accommodation and other services for a period of 12 months from the refugees’ dates of departure from temporary accommodation; and
 - health services commensurate with local community standards for a period of five years from the refugees’ dates of departure from temporary accommodation; and
 - an unspecified amount of ‘additional development assistance’ to Cambodia, including to ensure benefits to local communities where refugees are settled.²

Australia has also agreed to ‘provide capacity-building and necessary assistance to Cambodian officials to support the successful implementation of the MOU’ (Operational Guidelines, article 28). It is unclear whether this assistance will include a financial contribution. For more information about the extent to which this agreement is a capacity-building agreement, see [below](#).

Where will refugees live in Cambodia?

This is unclear. The agreement provides that refugees will be provided with ‘temporary accommodation’ in the capital city Phnom Penh for an unspecified amount of time (‘until they have achieved basic Khmer language skills and have passed a medical examination’), and that subsequent ‘settlement services’ will be provided to refugees outside of Phnom Penh.³ The Cambodian Government initially described the temporary accommodation as a ‘[temporary camp](#)’ or ‘[provisional centre](#)’, but little information is publicly available about the living conditions of the first few refugees to accept the resettlement deal in Cambodia. In April 2016 a Cambodian government spokesperson, Phay Siphon, [reportedly told journalists](#) that there had previously been a plan to build a refugee centre in Cambodia ‘controlled by the Australian embassy’.

After this temporary accommodation it appears that refugees will be required to live outside of Phnom Penh. Australia ‘may’ provide refugees with financial assistance to help them find private accommodation (Operational Guidelines, article 21(d)), but there is no guarantee that they will find an appropriate place to live, especially given the [problems with property and land ownership](#) that already exist in Cambodia.

What rights and services will be provided to refugees in Cambodia?

According to the MOU and the Operational Guidelines, Cambodia will treat all relocated refugees in accordance with its obligations under the Refugee Convention (MOU, article 9), and they will be entitled to:

- residency and travel documents;
- Cambodian citizenship through naturalisation (a process which allows non-citizens to acquire citizenship of the country);
- work rights;

- family reunification for dependent family members;
- health insurance;
- Khmer language training; and
- settlement services and assistance to cover their basic needs and help them become self-sufficient.⁴

However, as set out in the following section, there may be a profound difference between the rights and services the agreement claims will be available to refugees, and those that they will be able to access in reality.

Analysing the agreement: key questions answered

Is there any precedent for the Cambodia agreement?

No, an agreement of this nature has never been made before and is contrary to all international practice on refugee matters. At various times the Australian Government has attempted to portray the Cambodian agreement as an arrangement for ‘resettlement’, ‘responsibility-sharing’ or ‘capacity-building’, and to liken it to other arrangements of these kinds, but in fact it is none of these.

Why is the Cambodia agreement not a typical ‘resettlement’ arrangement?

‘Resettlement’ is one of three durable solutions which States and UNHCR seek to find for refugees (the other two being local integration in the country of asylum and voluntary repatriation to the refugee’s country of origin). It involves selecting recognised refugees who have left their countries of origin and are living in camps or urban areas abroad, and relocating them to another country which has agreed to admit them on a permanent basis. Resettlement is available to very few refugees, with the UNHCR submitting less than one per cent of the world’s refugee population to resettlement countries for consideration. Resettlement countries then have full discretion to choose how many and which of these referred refugees they will accept.⁵

By their very nature, resettlement arrangements always involve countries with a greater capacity to host refugees accepting them from other countries of asylum which are less able or willing to do so. It is unprecedented for a country like Australia, with not only the legal and moral obligation to find a solution for refugees, but also the capacity and expertise to do so, to relocate them instead to a country like Cambodia, which struggles with severe poverty, under-development, and insufficient infrastructure, services, and capacity to meet the needs of its own citizens, let alone refugees.

Why is the Cambodia agreement not a responsibility-sharing arrangement?

In 2015 there were [an estimated 3.5 million refugees](#) (one third of the world’s total refugees), 1.9 million internally displaced people, and 1.4 million stateless people in the Asia-Pacific

region alone. These figures demonstrate that it is crucial for all States in the region to cooperate and share responsibility for providing protection to those who need it.

However, rather than being an agreement for the sharing of responsibility for asylum seekers in the region, this agreement constitutes an elaborate and expensive attempt by Australia to avoid taking *any* of the responsibility for refugees who arrived by boat after 19 July 2013. Responsibility-sharing, as its name suggests, usually involves a number of States sharing between them responsibility for processing and resettling refugees, even if they did not originally seek asylum in their territories. By contrast, the Australian Government is looking for other countries in the region to accept *all* of the refugees who arrive by boat and seek asylum in Australia, and has repeatedly stated that none of these asylum seekers will receive permanent protection in Australia. This is responsibility-*shifting*, not responsibility-sharing (see the comments of UN High Commissioner for Refugees António Guterres, [below](#)).

The fact that Australia selects a certain number of refugees to be resettled through UNHCR resettlement programs from camps and other locations around the world does not change the nature of the agreement with Cambodia. Resettlement is an important but voluntary commitment, and does not negate Australia's obligations to take responsibility for those who arrive spontaneously at Australian shores seeking protection.

Why is the Cambodia agreement not a capacity-building arrangement?

While the agreement states that 'Australia will provide capacity-building and necessary assistance to Cambodian officials to support the successful implementation of the MOU', neither the MOU nor the Operational Guidelines provide any information about what this 'capacity-building' or 'assistance' might be. The agreement makes no provision for specialised training, knowledge-transfers, joint projects, the secondment of officials from one country to the other, or any other identifiable form of capacity-building. It is also noteworthy that while Cambodia has built its refugee policy and capacity over the last decade, Australia has not had a major role in this process. Accordingly, while the capacity of some Cambodian Government officers might develop incidentally as a by-product of their work alongside Australian authorities, there is no evidence in the agreement or public statements of either government to suggest that this is a primary purpose of the agreement. Incidental capacity-building of this nature is also unlikely to be sustainable, and therefore will not provide a basis for true regional cooperation on refugee issues in the long-term.

It is relevant to note that while the Cambodian Government has received increasing criticism for its [treatment of Montagnard asylum seekers](#) from Vietnam since late 2014, the Australian Government has made no public statement on the matter and does not appear to have taken steps to ensure Cambodia acts in accordance with its international obligations with respect to refugees. As such, it does not appear likely that the Australian Government will be active in practice in relation to building Cambodia's capacity and willingness to provide protection and meet its responsibilities to refugees and asylum seekers in its territory.

Will refugees only be sent to Cambodia if they ‘voluntarily’ decide to go?

Despite assurances that refugees will only be relocated to Cambodia if they ‘voluntarily’ choose to go, significant pressure has been placed on refugees to accept relocation. In some cases this pressure may mean that refugees feel coerced into accepting relocation, rather than having a genuine free choice.

The Australian Government faces an immense political difficulty, because it has insisted that no refugees will be settled in Australia from Nauru or Papua New Guinea, while having no other settlement options. After almost four years of offshore processing, Australia has failed to secure agreement with either Nauru or Papua New Guinea for the permanent settlement of all refugees in those countries. Nauru has only agreed to settle refugees temporarily, and Papua New Guinea has indicated that it will only be able to settle some of the men processed on Manus Island. As such, the Australian Government faces the increasingly critical question of where they should go.

This is where Cambodia becomes relevant. After months of extensive negotiations with various countries, the Cambodia agreement appeared to be the Australian Government’s best and last hope to avoid backtracking on its position and accepting refugees in Australia where they first sought asylum. However, the vast majority of asylum seekers and refugees in Nauru have indicated that they will not volunteer to go to Cambodia. In the immediate aftermath of learning about the Cambodia agreement, seven teenage asylum seekers [reportedly attempted suicide](#), other asylum seekers (including children) [sewed their lips shut in protest](#), and a group of refugees already settled in Nauru [held a protest march](#) with signs reading ‘only our corpse [sic] might go to Cambodia’ and ‘suicide is sweeter than Australia’s dirty policy’. Refugees also [wrote a letter to the Australian Government](#) saying, ‘they can send us to Cambodia but only our dead bodies’. These and other actions indicated that at least some of the refugees on Nauru did not feel they had a genuinely voluntary choice about relocation to Cambodia.

Pressure to accept the deal was applied in a number of ways, including by video messages from former Immigration Minister Morrison and current Immigration Minister Peter Dutton, warning refugees in Nauru that settlement in Australia ‘is not an option that the Australian Government will ever present to you’ and that Cambodia is their ‘only long term settlement option’.⁶ Previously, Minister Morrison threatened that recognised refugees who did not accept relocation to Cambodia [might have their protection claims reconsidered](#). The prospect of family reunion in Cambodia, which is not forthcoming in Nauru, and large cash incentives, were also offered as inducements to encourage refugees to go to Cambodia. Decisions made in these conditions may not be truly ‘voluntary’.⁷

Will refugees sent to Cambodia receive permanent protection?

If refugees choose to go to Cambodia, it is not certain that they will receive permanent protection there. The agreement states that Cambodia will grant refugees permanent residence status (MOU, article 8) and that they will be entitled to apply for Cambodian nationality through the process of naturalisation (Operational Guidelines, article 24(a)),

however these rights are not necessarily guaranteed under Cambodian law or delivered in practice.

Access to identity documents

According to the MOU, refugees relocated to Cambodia will be entitled to a 'Refugee Recognition Certificate', 'Refugee resident card' and 'Refugee identity card' (Operational Guidelines, article 11). However, there is some concern about whether and when these documents will in fact be issued. Currently, refugees in Cambodia are entitled by law to a resident card,⁸ but in practice they are only issued with a *Prakas* (Refugee Recognition Certificate), which does not confer the same rights as a resident card (see below regarding naturalisation).⁹ While this practice might change with the new agreement, compliance with this provision of the MOU is not certain. Furthermore, the agreement does not clarify:

- whether and how a 'Refugee resident card' might differ from an ordinary 'resident card';
- what the differences are between the three identity documents, and the relevance of these differences;
- the circumstances in which each identity document might be revoked or cancelled;
- when exactly the identity documents will be provided to refugees; and
- whether refugees will be required to apply for extensions to their 'Refugee resident card' every two years, as is required for ordinary resident cards.¹⁰

The need for clarity on these matters is particularly acute because Cambodia does not have a single, centralised system for issuing or recognising identity documents.¹¹ The existence of multiple forms of identity documents and confusion about establishing identity may prevent refugees and others from exercising their legal rights and accessing services.

Access to citizenship

While a refugee with permanent resident status could live in Cambodia permanently without acquiring Cambodian nationality, citizenship is an important part of permanent protection because many rights and freedoms are by law guaranteed only to Cambodian citizens (see [below](#)). The MOU claims to give refugees the right to apply for Cambodian citizenship by naturalisation, however this right is likely to be frustrated in practice by the lack of any law or regulation setting out the practical details or requirements for the application process.

Further, a person is only eligible to apply for naturalisation if they fulfil certain conditions. These include requirements that the person has lived in Cambodia and held a resident card continuously for at least seven years; has a paper issued by the local authorities certifying that they have 'good behaviour and moral conduct'; does not have a criminal record; and has a 'mentality and physical aptitude which will cause neither danger nor burden to the nation'.¹² These conditions, which by law apply to all foreigners, may be inappropriate for refugees for a number of reasons. First, to date refugees in Cambodia have been ineligible to apply for citizenship because they have not been issued with resident cards. It remains to be seen whether this practice changes for refugees relocated under the agreement. Secondly, refugees who were charged with political crimes as part of their persecution in their countries

of origin could potentially be excluded from citizenship on the basis of their criminal records in those countries. Finally, refugees with disabilities or other physical or mental health concerns, including refugees suffering from the effects of torture and trauma in their countries of origin and in detention in Nauru, could be excluded from citizenship on the basis that they are a 'danger or burden' to Cambodia.

Even if a refugee does fulfil all the conditions for citizenship, the law states that naturalisation is 'not a right ... but only a favour of the Kingdom of Cambodia' and that the Government may reject any application at its own discretion.¹³ Accordingly, it is not certain that refugees relocated to Cambodia will acquire a right to citizenship.

Voluntary repatriation

The agreement also provides that Australia will 'help facilitate the process of voluntary repatriation' of refugees relocated under the agreement to their countries of origin or another country where they have the right to enter and reside, 'as consented or requested' by the refugee (Operational Guidelines, article 25). At the outset there was some concern that this provision implied that the agreement was not intended as a long-term solution for refugees, and that refugees would feel pressured to return to their countries of origin (especially if services in Cambodia are very limited and they cannot sustain a livelihood). By April 2016, three out of five refugees resettled in Cambodia have elected to be repatriated to their countries of origin.

Will refugees sent to Cambodia enjoy the same rights and entitlements as Cambodian citizens?

No. While former Immigration Minister Morrison implied that refugees would receive the same treatment as Cambodian citizens by stating that they will enjoy 'the standard entitlements of other residents of that country', the agreement guarantees only the same rights as other *non-citizen* residents.¹⁴ While non-citizens often do not to enjoy all the rights of citizens (for example, the right to vote), by law and in practice non-citizen residents in Cambodia have *significantly* fewer rights and tend to experience discriminatory treatment in many aspects of daily life.

First and foremost, the rights, protections and freedoms set out in the Cambodian Constitution are guaranteed only to 'Khmer citizens'. Further, under Cambodian law, refugees and other migrants are subject to a range of restrictions. For example, the law:

- authorises restrictions to be imposed on their freedom of movement within Cambodia and their ability to travel outside of Cambodia (see below);
- imposes restrictions on their ability to work (see below); and
- imposes limits on their right to own property (it is unclear if any of the new documents which will be issued to relocated refugees will exempt them from this limitation).

In addition, refugees experience difficulties in accessing rights and services due to discrimination by the authorities and members of the public, language barriers, and the fact

that under Cambodian law they are treated the same as all other regular migrants despite having different needs and backgrounds.¹⁵

Finally, it is worth noting that even if refugees were entitled to the same rights and entitlements as Cambodian citizens, the available services would in many cases be insufficient to meet their particular needs. For example, refugees relocated to Cambodia may require advanced mental health services to assist them in recovering from the effects of their past persecution and detention in Nauru. These services are extremely limited in Cambodia, and are unlikely to be sufficient to meet the additional demand, particularly outside Phnomh Penh.

Will refugees sent to Cambodia be able to choose their place of residence and enjoy freedom of movement?

No. Despite Cambodia's commitment to ensure that refugees enjoy all of the rights guaranteed to them under the Refugee Convention,¹⁶ it does not appear that they will enjoy their right to choose their place of residence and move freely within Cambodian territory.¹⁷ Upon arrival in Cambodia refugees will be housed in 'temporary accommodation' provided by the Cambodian Government, which may be in the form of a camp or centre. The agreement states that refugees will enjoy freedom of movement throughout the country during this time; however, refugee advocates in Cambodia have expressed deep concern about the nature and conditions of any institutionalised accommodation in light of past experience with similar arrangements.

The agreement does not explicitly limit the freedom of movement of refugees once they leave the temporary accommodation, but in practice refugees will have no choice but to live in particular places where essential services are available. The Cambodian Secretary of State for the Ministry of Foreign Affairs, [Long Visalou](#), has affirmed that refugees 'will live outside Phnom Penh' and 'surely ... will not be housed [permanently] in Phnom Penh' because it has 'too many people already'. It is unclear whether the Cambodian Government intends to *prohibit* refugees from living in Phnom Penh, or will merely seek to discourage them by providing services elsewhere. In either case, it is concerning that while in principle refugees will be able to travel freely around Cambodia, Cambodian law authorises the Minister of the Interior to prohibit refugees and other migrants from entering, residing in, or travelling far from a certain zone (or indeed the entire territory of Cambodia).¹⁸

Will refugees sent to Cambodia receive travel documents and be able to travel outside of Cambodia?

It is unclear. While the agreement guarantees to refugees the right to receive travel documents in accordance with the Refugee Convention,¹⁹ refugees who are already in Cambodia are not currently issued travel documents as a matter of course, despite also having that guarantee under Cambodian law. Travel documents must be specifically requested by individuals wishing to travel when they are needed.

Will refugees sent to Cambodia be able to work and earn a living?

Under the agreement, refugees are guaranteed the rights to apply for jobs and run businesses (and are expected to become self-sufficient within a year),²⁰ however these rights may not translate to an ability to earn a living in practice.

The Cambodian Government has implemented a number of significant policies in recent years to boost its economy and increase employment, but many Cambodians still struggle to find work at all, or to earn sufficient income to support a family. Every year between 300,000 to 400,000 young Cambodian job-seekers enter the domestic labour market where there are limited job opportunities, especially in rural areas.²¹ Competition is particularly high for jobs which do not require advanced education or training.

The majority of Cambodians who do find employment work in Cambodia's 'informal sector', meaning in jobs outside the legal framework which are not recognised, protected or regulated by public authorities. Workers in Cambodia's informal economy include self-employed and small business operators, and workers without formal contracts, such as street vendors, motorbike-taxi drivers, garbage collectors, shoe-shiners, construction workers and domestic workers. They generally earn very low and irregular incomes, have little or no access to organised markets or banks to get credit, and lack the protection and support of social security and labour laws. Other Cambodian job-seekers migrate to neighbouring countries to find work, with more than 200,000 Cambodians estimated to be living and working illegally in Thailand alone. For many workers this experience is fraught with risks, including unsafe, abusive and exploitative working conditions, sub-standard living conditions and pay, abuse and detention by the authorities and human trafficking and slavery.²²

Refugees face additional difficulties in accessing employment in Cambodia, with employment in the formal sector almost impossible. Refugees (like other regular migrants) must hold a work permit to work legally, which can be revoked on a number of grounds, including if the refugee is 'competing with Cambodian job-seekers'.²³ Even if a refugee does hold a valid work permit, Cambodian law imposes many restrictions on the hiring of foreign workers and requires employers to give priority to Cambodian citizens when hiring.²⁴ As a result, the only real employment opportunities for refugees are in the informal sector where they lack legal protection. Further, refugees face very significant obstacles in all sectors of employment due to racial discrimination, language barriers and the lack of social support networks. Indeed, refugees in Cambodia often depend on non-profit organisations and charities to help them earn a living.

Accordingly, former Immigration Minister Morrison's [comments](#) that 'those who have come on boats [are] quite innovative and entrepreneurial and I think there would be opportunities for people with those sorts of skills and enthusiasms' may misrepresent the reality of the labour market in Cambodia generally, and for refugees in particular.

Implementation of the Cambodia agreement

Four refugees originally [volunteered to go](#) to Cambodia: an Iranian couple, an Iranian man and a man from Myanmar. The [Iranian couple](#) and the [man](#) from Myanmar have since chosen to return to their countries of origin, despite being found to have a well-founded fear of persecution. A [fifth refugee was transferred in November 2015](#). In April 2016 a Cambodian government spokesperson, Phay Siphon, [described the agreement as a 'failure'](#), saying 'at least we relieved them from the camp'. He told Al Jazeera that there had previously been a plan to build a refugee centre in Cambodia 'controlled by the Australian embassy'.

For a full timeline of developments, see our [In Focus brief](#) on the relocation of refugees from Nauru to Cambodia.

International reactions to the Cambodia agreement

Since the agreement was concluded there has been considerable international backlash. The UNHCR announced immediately that it was '[deeply concerned](#)' by the agreement, with former UN High Commissioner for Refugees António Guterres [stating](#) that:

We are seeing record forced displacement globally, with 87 per cent of refugees now being hosted in developing countries. It's crucial that countries do not shift their refugee responsibilities elsewhere. International responsibility sharing is the basis on which the whole global refugee system works. I hope that the Australian government will reconsider its approach ... Refugees are persons who are fleeing persecution or the life-threatening effects of armed conflict. They are entitled to better treatment than being shipped from one country to the next.

In a [joint statement](#) to the 65th session of the UNHCR Executive Committee in 2014, a coalition of international non-governmental organisations (NGOs) condemned Australia's policies, stating:

Australia is planning to resettle refugees in Cambodia, a country that faces major challenges in protecting the rights of its own citizens and has very little capacity to provide protection and support to refugees. We strongly support the High Commissioner's statement condemning this agreement as responsibility shifting and not responsibility sharing.

Protests against the agreement have been held in [Cambodia](#) and [Nauru](#). Australian politicians have spoken out against it.²⁵ The agreement has also received strong criticism from the [former Chief Justice of the Family Court of Australia](#), the Hon. Alastair Nicholson, who called it 'contrary to international law' and argued that 'it is unlawful to transfer refugees from one country to another in this way'. Speaking on behalf of an alliance of children's, human rights and refugee organisations, including UNICEF Australia, Save the Children, Plan International Australia, World Vision, Amnesty International, Refugee Council of Australia, International Detention Coalition and Children's Rights International, [he stated](#):

This planned deal is inappropriate, immoral and likely illegal. It is inappropriate because Cambodia has no capacity within its social sector to take an influx of refugees. Immoral because these vulnerable people are Australia's responsibility, and while we await the detail, it appears illegal in contravening Australia's humanitarian and refugee obligations to vulnerable children and families.

These extensive negative reactions have been [reported in international media](#). They follow deep concerns about the agreement which had already been expressed prior to its signing by many key figures and organisations, including [Cambodia's Opposition Leader](#), the [Cambodian Human Rights Action Committee](#) (a coalition of 21 Cambodian NGOs), the [Cambodian Centre for Human Rights](#), the [Jesuit Refugee Service](#), [Amnesty International](#), [Human Rights Watch](#), and academics such as [Professor Klaus Neumann](#) and [UNSW Emeritus Professor Carl Thayer](#). The [Australian Greens opposed the agreement](#), while the [Australian Labor Party expressed concerns but did not formally oppose it](#).

Further information

For more information or queries about offshore processing and the relocation of refugees to Cambodia, please contact Madeline Gleeson, Director of the Regional Protection and Cooperation Project, at madeline.gleeson@unsw.edu.au.

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Endnotes

¹ Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, 'Estimates', Canberra, 19 October 2015, p. 84 (Michael Pezzullo)

² MOU, articles 11, 12; Operational Guidelines, articles 4, 7, 15, 21, 22.

³ MOU, article 10(d); Operational Guidelines, articles 16 and 18.

⁴ MOU, article 10; Operational Guidelines, articles 11, 14, 19, 21, 22, 24(a).

⁵ For more information, see: Jane McAdam and Fiona Chong, *Refugees: Why Seeking Asylum is Legal and Australia's Policies are Not*, UNSW Press, Sydney, 2014, pp. 66-68, 154-156.

⁶ Daniel Pye, 'Cambodia and Australia sign refugee deal', *Al Jazeera*, 26 September 2014 <<http://m.aljazeera.com/story/2014926124117550180>>; Paul Farrell, 'Peter Dutton in video plea to Nauru refugees to call 'Cambodia settlement hotline'', *The Guardian*, 22 April 2015, <<http://www.theguardian.com/australia-news/2015/apr/22/peter-dutton-in-video-plea-to-nauru-refugees-to-call-cambodia-settlement-hotline>>.

⁷ In relation to the voluntary repatriation of asylum seekers and refugees from Nauru and Manus Island to their countries of origin, the UNHCR has repeatedly stated that a decision is voluntary only if it is "fully informed and consensual, and not prompted by uncertainty and protracted detention". True 'voluntariness' will be difficult where refugees "are reduced to a psycho-social state of hopelessness and despondency": UNHCR, *UNHCR Mission to*

the Republic of Nauru, 3-5 December 2012, [41]; UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 11-13 June 2013*, [80]. See also: UNHCR, *UNHCR Monitoring Visit to the Republic of Nauru, 7 to 9 October 2013*, [139]; UNHCR, *UNHCR Monitoring Visit to Manus Island, Papua New Guinea, 23 to 25 October 2013*, [118].

⁸ Kingdom of Cambodia, *Sub-Decree No. 224 of 2009 on Procedure for Recognition as a Refugee or Providing Asylum Rights to Foreigners in the Kingdom of Cambodia*, 17 December 2009 <<http://www.refworld.org/docid/4d81f0172.html>> article 15.

⁹ Jesuit Refugee Service, *State of Migration: An Overview of Forced Displacement in Cambodia*, July 2012, <<https://www.jrs.net/assets/Publications/File/StateofMigration.pdf>> p. 31.

¹⁰ Kingdom of Cambodia, *Law on Immigration*, 22 September 1994 <<http://www.refworld.org/docid/3ae6b52f8.html>> articles 15, 16 and 21.

¹¹ Jesuit Refugee Service, *State of Migration*, p. 50.

¹² Kingdom of Cambodia, *Law on Nationality*, 20 August 1996 <<http://www.refworld.org/docid/3ae6b5210.html>> article 8.

¹³ *Ibid.*, article 7.

¹⁴ MOU, article 9; Kingdom of Cambodia, *Sub-Decree No. 224*, article 15.

¹⁵ Jesuit Refugee Service, *State of Migration*, p. 33.

¹⁶ MOU, article 9; Operational Guidelines, article 23.

¹⁷ Refugee Convention, article 26.

¹⁸ Kingdom of Cambodia, *Law on Immigration*, article 17.

¹⁹ MOU, article 9; Operational Guidelines, article 19.

²⁰ Operational Guidelines, articles 21 and 24(a).

²¹ *Cambodia Trade Integration Strategy 2014-2018*, launched by Prime Minister Hun Sen on 18 February 2014, <http://www.enhancedif.org/en/system/files/uploads/ctis_2014-2018_exec_summary.pdf> p. 67.

²² See, for example, U.S. Department of State, 'Trafficking in Persons Report', June 2014 <<http://www.state.gov/documents/organization/226845.pdf>> pp. 120-121; Community Legal Education Center (CLEC), Cambodian League for the Promotion and Defense of Human Rights (LICADHO), Legal Support for Children and Women (LSCW) and Human Rights Watch, 'Universal Periodic Review, Cambodia: Joint Submission on Human Trafficking for Labor Exploitation', Introduction and Executive Summary, 2014, <http://www.licadho-cambodia.org/reports/files/188Document-UPR2013-LICADHO_CLEC_LSCW_HRW.pdf>; Jesuit Refugee Service, *State of Migration*, pp. 90-91, 123-133.

²³ Kingdom of Cambodia, *Labor Law*, 13 March 1997 <http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---ilo_aids/documents/legaldocument/wcms_150856.pdf> articles 261, 262.

²⁴ *Ibid.*, articles 263 and 264; Kingdom of Cambodia, *Prakas No. 196KB/Kr.K, on Use of Foreign Workforce*, 20 August 2014 <<http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/96887/114701/F-420425791/KHM96887%20Eng.pdf>> articles 1 and 2.

²⁵ Senator Lisa Singh, 'Cambodian Refugee Deal – Matters of Public Importance', September 2014 <<http://www.lisasingh.com.au/newsroom/758-cambodian-refugee-deal-matters-of-public-importance>>; Hong Lim MP (Victoria) quoted in Michelle Innis, 'Australia Alarms Rights Groups With Deal to Resettle Refugees in Cambodia', *The New York Times*, 26 September 2014, <<http://www.nytimes.com/2014/09/27/world/asia/australia-alarms-rights-groups-with-deal-to-resettle-refugees-in-cambodia.html>>.