

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 2703

Introduced by HON. GLORIA MACAPAGAL-ARROYO, HON. JUAN
MIGUEL M. ARROYO, HON. DIOSDADO M. ARROYO

EXPLANATORY NOTE

The Philippines recognizes and adheres to the internationally accepted principle of reciprocity which is the basis of mutual cooperation and amity among nations.

It is always a sensitive issue when a Philippine national is sentenced in a foreign jurisdiction for committing a crime. In this situation, there is always a compelling interest to balance two primordial interests--the duty of the State to protect the rights of our nationals on one hand, and the recognition of a foreign country's sovereign right to administer justice in its jurisdiction, on the other. In the same manner, foreign nationals found guilty of committing a crime in Philippines also involve these two interests.

The Departments of Foreign Affairs and Justice have engaged the representatives of the Hongkong Special Administrative Region of the People's Republic of China and the government of Thailand for the purpose of negotiating the terms of treaties that would allow Filipinos convicted in these countries to serve their sentences in Philippine penal institutions. These treaties will also provide reciprocal rights for Hongkong and Thai citizens convicted by Philippine Courts. The Philippines is expected to forge treaties with Hongkong and Thailand for the transfer of sentenced persons in the future. Similar engagements with other countries are in progress particularly those with substantial number of Filipino migrant workers.

As these treaties are not self-executory and will require the enactment of a domestic law that will provide the procedure and mechanism for its implementation, there is this urgency in filing this bill. This bill gives the authority to the Secretary of Justice to receive a Filipino sentenced in a foreign country or cause the transfer of an alien serving sentence in the Philippine penal institutions in accordance with provisions of the treaties between the Philippines and the concerned country. In addition, it provides for the procedure in securing the consent of the sentenced person and the verification of such consent. It further provides for the administrative costs attendant to the transfer of sentenced persons.

Treaties on prisoner transfer and this bill which seeks to implement them are borne out of humanitarian consideration, that of the plight of a sentenced person in foreign lands. It allows a person to serve his or her sentence in his

home country where his rehabilitation may be properly monitored and within reach of his or her family and relatives.

In view of the overriding public and humanitarian interests involved, it is imperative that this bill be immediately^{ly} passed.


HON. GLORIA MACAPAGAL-ARROYO


HON. JUAN MIGUEL ARROYO


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AN ACT
AUTHORIZING AND PROVIDING FOR THE PROCEDURE FOR THE
TRANSFER OF SENTENCED PERSONS TO OR FROM FOREIGN
COUNTRIES AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Short Title.* This Act shall be known as the "Transfer of Sentenced Persons Act of 2010."

SEC. 2. *Declaration of Policy.* The State recognizes the sovereign right of every State to administer its judicial system within its jurisdiction. Likewise, the Philippines recognizes and adheres to the internationally accepted principle of reciprocity among nations.

SEC. 3. *Definition of Terms.* For the purpose of this Act, the following terms shall have the following meaning:

- a) "Transfer" means a transfer of an individual for the purpose of the execution in one country of a sentence imposed by the court of another country;
- b) "Sentence" means any penalty involving deprivation of liberty ordered by a court on a criminal defendant in the course of the exercise of its criminal jurisdiction;
- c) "Sentenced Person" means a person who is found guilty of commission of an offense and made to serve a sentence by a final judgment of a court;
- d) "Transferring Country" means the country from which the sentenced person may be, or has been transferred;
- e) "Receiving Country" means the country to which the sentenced person may be, or has been transferred;
- f) "Secretary" means the Secretary of the Department of Justice or his duly designated representative; and,
- g) "Treaty" means a treaty under which a person sentenced in the court of one country may be transferred to another country for the purpose of serving the sentence imposed by the said court

SEC. 4. *Applicability.* This law shall only be applicable to the transfer of a sentenced person to and from a foreign country pursuant to a treaty that is in force: PROVIDED, however, that a sentence imposed by a foreign court upon a sentenced person who is subsequently transferred to the Philippines pursuant to a treaty shall be fully executed in the Philippines even though the treaty under which the sentenced person was transferred is no longer in force.

SEC.5. *Nationality of Sentenced Person.* A sentenced person may be transferred from the Philippines to a country of which the sentenced person is a citizen or national. Only a sentenced person who is a Filipino citizen may be transferred to the Philippines.

SEC.6. *Double Criminality.* At the time of the transfer it must be shown that the offense for which the sentenced person was sentenced is still an offense in the transferring country and in the receiving country.

SEC.7. *Political Offense Not Covered.* The transfer shall not be granted if the sentenced person is convicted of a political offense.

SEC.8. *Authority of the Secretary.* This Act authorizes the Secretary to:

- a) receive custody of a sentenced person under a treaty from a foreign country and as appropriate, confine him in the proper penal or correctional institution;
- b) transfer a sentenced person to the foreign country of which he is a citizen or national;
- c) issue rules and regulations for the proper implementation of this Act;
- d) submit to a foreign country and to receive from it the certification and reports required to be made under a treaty;
- e) authorize the transportation through Philippine territory of a sentenced person convicted in a foreign country who is being transported to a third country for the execution of his sentence, the expenses of which shall be paid by the country requesting the transportation; and
- f) designate agents to receive, on behalf of the Philippines, the delivery of a foreign government of a Filipino citizen being transferred to the Philippines for the purpose of serving a sentence imposed by a court of the foreign country and to convey him to the place designated by the Secretary.

SEC.9. *Applicability of Philippine Law.* All laws of the Philippines, as appropriate, pertaining to prisoners shall be applicable to a person who is transferred to the Philippines, unless the treaty or this Act provides otherwise.

SEC.10. *Transfer of Persons Serving Sentence.* Except as provided in this Act, a person serving a sentence in a foreign country who is transferred to the custody of the Secretary shall remain in the appropriate penal institution or establishment in the Philippines under the same conditions as if he had been committed to the custody of said penal

institution or establishment by a Philippine court and for the period of time which remains to be served under his sentence imposed by the transferring country.

SEC.11. *Credit for Good Conduct and other Time Allowances.* The transferred person shall be entitled to deductions from the period of his sentence for time served abroad as a detention prisoner in connection with the offense or acts for which the sentence was imposed.

The transferred person shall also be entitled to good conduct and other time allowances or any other credit toward the service of the sentence which had been given by the transferring country for time served as of the time of the transfer. Subsequent to the transfer, the sentence person shall also be entitled to credits for good conduct and for loyalty provided under Articles 97 and 98 of the Revised Penal Code and similar laws.

If the country from which the offender is transferred does not give allowances for good conduct or loyalty, the basis for computing deductions from the sentence imposed shall be at the rates prescribe in the aforementioned provisions of the Revised Penal Code and similar laws.

A sentence for an offense committed earlier by the transferred person in the Philippines, which imposed by a Philippine court while said person is serving the sentence in a foreign country shall be aggregated with the foreign sentence in the same manner as if the foreign sentence was one imposed by a Philippine court on the sentenced person for an offense against the people of the Philippines.

SEC.12. *Consent of Sentenced Person.* No sentenced person may be transferred to or from the Philippines without the said person's consent. Once given and verified, the sentenced person's consent to transfer shall be irrevocable. However, in the case the sentenced person is incapacitated from giving such consent, his or her consent maybe given by a person or person's entitled to act under his or her behalf under the laws in force in his or her country, including the State.

SEC.13. *Verification of Consent of a Sentenced Person to Transfer from the Philippines.* Prior to the transfer of a sentenced person from the Philippines, the Secretary shall verify that the sentenced person;

- a) consents to such transfer and that such consent is voluntary and not the result of any promises, threats, or other improper inducements with full knowledge of the consequences thereof, and
- b) understand and agrees that the transfer shall be subject to the following conditions;
 - (i) only the appropriate court in the transferring country may modify or set aside the conviction of sentence, and any proceeding seeking such action may only be brought in such court;

- (ii) the service of the sentence shall be carried out according to the laws of the receiving country and that those laws are subject to change ;
- (iii) if a court in the receiving country should determine upon a proceeding initiated by the sentenced person or on his behalf that his transfer was not accomplished in accordance with the treaty or laws of the transferring country, the offender may be returned to the transferring country to complete the sentence if the said country request for his return; and,
- (iv) that his consent to transfer, once given and verified, is irrevocable.

SEC.14. *Verification of Proceedings.* The proceedings for the verification of the consent of a sentenced person shall be in accordance with the terms of the treaty.

SEC.15. *Right to Counsel.* In proceeding to verify the consent given by a sentenced person for transfer, the sentenced person shall be advised of his right to consult with counsel before determining if his consent is given voluntarily and with full knowledge of the consequences. If the sentenced person wishes to consult with counsel before giving his consent, he shall be advised that the proceedings will be suspended until he has had an opportunity to consult with counsel. If the sentenced person is financially unable to obtain counsel, the same shall be provided with the assistance of counsel for free.

SEC.16. *Loss of Rights Disqualification.* A sentenced person transferred to the Philippines to serve a sentence imposed by a foreign court shall not incur any loss of civil, political or civic rights nor incur any disqualification other than those which are provided under the laws of the Philippines in which the issue arises and which would result from the fact of the conviction in the foreign country.

SEC.17. *Transit of Sentenced Person.* Subject to the provisions of a treaty to which the Philippines is a party, if either party transfers a sentenced person from any third country, the country shall cooperate in facilitating the transit through its territory to such sentenced person. The party intending to make such transfer shall give advance notice to the other party of such transit.

SEC.18. *Return of Transferred Person.* Upon final decision by a Philippine court that the transfer of the sentenced person to the Philippines was not in accordance with the treaty or the laws of the Philippines and upon ordering the sentenced person's release from serving the sentence in the Philippines, the transferred person so released may be returned to the transferring country to complete the sentence. *PROVIDED*, however that:

- a) The transferring country requests for his return. The Secretary, through diplomatic channels, shall notify the appropriate authority of the transferring country within

ten (10) days from final decision of a Philippine court ordering the release of the transferred person. The notification shall specify the time within which the transferring country must request for the return of the transferred person be not later than thirty (30) days from the date of the release order of the court.

- b) Upon receipt, through diplomatic channels, of a request from the transferring country that the transferred person ordered released be returned for the completion of his sentence, the Secretary may file a complaint for the return of the transferred person to the transferring country with judge of the court that exercised jurisdiction over the transferred person. The complaint shall be made under oath and supported by affidavits establishing that:
- (i) the transferred person was convicted and sentenced by a court of the transferring country;
 - (ii) the transferred person was transferred to the Philippines for the execution of his sentence;
 - (iii) the transferred person was ordered released by a Philippine court before he had completed his sentence because the transfer of the offender was not in accordance with the treaty or laws of the Philippines, and,
 - (iv) the transferring country has requested that the transferred person be returned for the completion of the sentence.

Attached to the complaint shall be a copy of the sentence of the court of transferring country and of the decision of the court in the receiving country that ordered the release of the transferred person.

A summons or warrant shall be issued by the judge ordering the transferred person to appear or to be brought before it. If the judge finds that the person before him is the person described in the complaint and that the facts alleged in the complaint are true, he shall issue an order for the commitment of that person to the custody of the Secretary until surrender to the transferring country has been made. The finding and a copy of all testimonies taken before him and of all documents introduced before him shall be transmitted to the Secretary of Foreign Affairs of the Philippines so that an order may, upon the request of the proper authorities of the transferring country, be issued against the transferred person.

c) A complaint referred to in subsection (b) must be filed within sixty (60) days from the date on which the decision ordering the release of the offender becomes final.

d) A sentenced person returned under this Section shall be subject to the jurisdiction of the transferring country to which he is returned for all purposes.

e) The return of a transferred person shall be conditioned upon the transferred person being given credit toward service of the sentence for the time spent in the custody of, or under the supervision of the Philippine court or the Secretary.

SEC.19. *Execution of Sentence Imposed; Restitution or Reparation.* If in a sentence issued in a criminal proceeding of a transferring country, a sentenced person transferred to the Philippines has been ordered to pay the sum of money to the victim of the offense, that penalty of award or damages may be enforced as though it were a judgment rendered by a Philippine court. Proceedings to collect the moneys ordered to be paid may be instituted by the Secretary in a Philippine court. Moneys recovered pursuant to such proceedings shall be transmitted through diplomatic channels to the treaty authority of the transferring country for distribution to the victim.

SEC.20. *Jurisdiction of Proceedings Relating to Transfer of Sentenced Person.* When a treaty is in effect between the Philippines and a foreign country providing for the transfer of sentenced person;

- a) the country in which the sentenced person was convicted shall have exclusive jurisdiction and competence over proceedings seeking to challenge, modify or set aside convictions or sentences handed down by a court of such country;
- b) all proceedings instituted by or in behalf of a sentenced person transferred from the Philippines to a foreign country seeking to challenge, modify or set aside the conviction or sentence upon which the transfer was based shall be brought in the country that would have jurisdiction and competence if the sentenced person had not been transferred;
- c) all proceedings instituted by or in behalf of a sentenced person transferred to the Philippines pertaining to the manner of execution in the Philippines of a sentence imposed by a foreign court shall be brought in the Philippine court in the place where transferred person is confined or in which supervision is exercised and shall name the Secretary and the official having the immediate custody or exercising immediate supervision of the transferred person as respondents. The Secretary shall defend against such proceedings;
- d) all proceedings instituted by or in behalf of a sentenced person seeking to challenge the validity or legality of the sentenced person's transfer from the Philippines shall be brought in the Philippine court in which the proceedings to determine the validity of the sentenced person consent were held and shall name the Secretary as respondent, and,
- e) all proceedings instituted by or in behalf of sentenced person seeking to challenge the validity or legality of his or her transfer to the Philippines shall be brought in the Philippine court of the place where he or she is confined or in which supervision exercised and shall name the Secretary and the official having immediate custody or exercising immediate supervision of the transferred person as respondents. The Secretary shall defend against such proceedings.

SEC.21. *Expenses.* The expenses incurred in the transportation of the sentenced person and those brought about by the continued enforcement of the sentence after transfer shall be borne by the receiving country. The Secretary may, however, seek to recover all or part of such costs from the transferred person.

SEC. 22. *Appropriations.* For the initial implementation of this Act, funds as may be necessary to carry out its provisions shall be taken from the current General Appropriations Act. Thereafter, such sum as may be necessary for its continued implementation shall be included in the Annual General Appropriations Act.

SEC. 23. *Implementing Rules and Regulations.* The Secretary shall, within sixty (60) days, draw up the necessary rules and regulations for the proper implementation of any such treaty or covenant, in accordance with the provisions of this Act.

SEC. 24. *Repealing Clause.* - All laws, presidential decrees, executive issuances, rules and regulations, or part thereof which are contrary to or inconsistent with the provisions of this Act are hereby repealed, amended or modified accordingly.

SEC. 25. *Separability Clause.* Should any portion or provisions of this Act that be declared unconstitutional or invalid by a competent court, the other provisions hereof shall continue to be in force as if the provisions so annulled or voided had never been incorporated in this Act.

SEC. 26. *Effectivity.* - This Act shall take effect thirty days (30) days after its publication in a newspaper of general circulation at least once for three (3) consecutive weeks, or in the Official Gazette. The provisions of this Act shall remain in force during the existence of a treaty or convention for the transfer of sentenced persons with any other state or government.

Approved.