

Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

FIFTEENTH CONGRESS
First Regular Session

HOUSE BILL NO. 2863

Introduced by HON. HON. AL FRANCIS C. BICHARA

EXPLANATORY NOTE

Social rehabilitation of sentenced persons is the main objective of penal sentences. In view of this intention, it is beneficial if nationals, deprived of their liberty abroad, will be given the choice to serve sentences in their own country where their rehabilitation can be properly monitored by their families. Out of this humanitarian concern, the Philippine Government has been negotiating with countries with large concentrations of Filipino migrant workers in order to forge treaties for the transfer of sentenced persons.

These treaties and those which the government will similarly enter into with other countries, are however, not self-executory. Thus, they require the enactment of domestic law that will provide for the implementation of the transfer of Filipinos sentenced abroad.

This proposed measure authorizes the Secretary of Justice to receive custody of a Filipino sentenced abroad or cause the transfer of an alien serving sentence in Philippine penitentiaries in accordance with the provisions of pertinent treaties on the transfer of sentenced persons entered into by the Philippine Government. Furthermore, it also establishes a procedure in securing and verifying the consent of sentenced persons and provides for allocation of funds to cover administrative costs attendant to the transfer of sentenced Filipino prisoners.

To date, the Philippine Government already concluded five (5) Transfer of Sentenced Persons Treaties with Hong Kong Special Administrative Region of the People's Republic of China in 2000, with Thailand in 2001, with Canada and Cuba in 2002 and with Spain in 2007. The agreements entered into with Hong Kong, Thailand and Spain are already in force.

The Office of the Undersecretary for Migrant Workers Affairs (OUMWA) of the Department of Foreign Affairs (DFA) reported that as of **2009**, there is a total of **2,931** Filipinos convicted and serving sentence in foreign lands. If this proposal is passed into law, the country could easily assist these detained Filipinos abroad to serve their sentences in Philippine penitentiaries.

Hence, the immediate passage of this bill is earnestly sought.

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AN ACT
AUTHORIZING THE TRANSFER OF SENTENCED PERSONS
TO OR FROM FOREIGN COUNTRIES

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

1 SEC. 1. **Short Title.** - The short title of this Act shall be known as the
2 "Transfer of Sentenced Persons Act of 2010".

3 SEC. 2. **Definition of Terms.** - For the purposes of this Act, the following
4 terms shall imply the following meaning:

5 a) "**Transfer**" means a transfer of an individual for the purpose of the execution in
6 one country of a sentence imposed by the court of another country;

7 b) "**Sentence**" means any penalty involving deprivation of liberty ordered by a
8 court on a criminal defendant in the course of the exercise of its criminal
9 jurisdiction;

10 c) "**Sentenced Person**" means a person who is found guilty of commission of an
11 offense and made to serve a sentence by a final judgment of a court;

12 d) "**Transferring Country**" means the country from which the sentenced person
13 may be, or has been transferred;

14 e) "**Receiving Country**" means the country to which the sentenced person may
15 be, or has been transferred;

16 f) "**Secretary**" means the Secretary of the Department of Justice or his duly
17 designated representative; and

18 g) "**Treaty**" means a treaty under which a person sentenced in the court of one
19 country may be transferred to another country for the purpose of serving the
20 sentence imposed by the said court.

1 SEC. 3. **Applicability.** - This law shall only be applicable to the transfer of a
2 sentenced person to and from A foreign country pursuant to a treaty that is in force:
3 PROVIDED, *however*, that a sentence imposed by a foreign court upon a sentenced
4 person who is subsequently transferred to the Philippines pursuant to a treaty shall
5 be fully executed in the Philippines even though the treaty under which the
6 sentenced person was transferred is no longer in force.

7 SEC. 4. **Nationality of Sentenced Person.** – A sentenced person may be
8 transferred from the Philippines to a country of which the sentenced person is a
9 citizen or national. Only a sentenced person who is a Filipino citizen may be
10 transferred to the Philippines.

11 SEC. 5. **Double Criminality.** - At the time of the transfer, it must be shown
12 that the offense for which the sentenced person was sentenced is still an offense in
13 the transferring country and in the receiving country.

14 SEC. 6. **Political Offense.** – The transfer shall not be granted if the
15 sentenced person is convicted of a political offense.

16 SEC. 7. **Authority of the Secretary.** - The Secretary is authorized:

17 a) to receive custody of a sentenced person under a treaty from a foreign
18 country and as appropriate, confine him in the proper penal or correctional
19 institution;

20 b) to transfer a sentenced person to the foreign country of which he is a
21 citizen or national;

22 c) to issue rules and regulations for the proper implementation of this Act;

23 d) to submit to a foreign country and to receive from it the certification and
24 reports required to be made under a treaty;

25 e) to authorize the transportation through Philippine territory of a sentenced
26 person convicted in a foreign country who is being transported to a third country for
27 the execution of his sentence, the expenses of which shall be paid by the country
28 requesting the transportation; and,

29 f) to designate agents to receive, on behalf of the Philippines, the delivery by
30 a foreign government of a Filipino citizen being transferred to the Philippines for the
31 purpose of serving a sentence imposed by a court of the foreign country, and to
32 convey him to the place designated by the Secretary.

33 SEC. 8. **Applicability of Philippine Laws.** - All laws of the Philippines, as
34 appropriate, pertaining to prisoners shall be applicable to a person who is transferred
35 to the Philippines, unless the treaty or this Act provides otherwise.

1 **SEC. 9. *Transfer of Persons Serving Sentence.*** - Except as provided in this
2 Act, a person serving a sentence in a foreign country who is transferred to the
3 custody of the Secretary shall remain in the appropriate penal institution or
4 establishment in the Philippines under the same conditions as if he had been
5 committed to the custody of said penal institution or establishment by a Philippine
6 court and for the period of time which remains to be served under his sentence
7 imposed by the transferring country.

8 **SEC. 10. *Credit for Good Conduct and other Time Allowances.*** - The
9 transferred person shall be entitled to deductions from the period of his sentence for
10 time served abroad as a detention prisoner in connection with the offense or acts for
11 which the sentence was imposed.

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

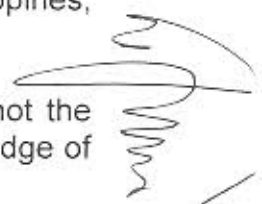
18 If the country from which the offender is transferred does not give allowances
19 for good conduct or loyalty, the basis for computing deductions from the sentence
20 imposed shall be at the rates prescribed in the aforementioned provisions of the
21 Revised Penal Code and similar laws.

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

27 **SEC. 11. *Consent of Sentenced Person.*** – No sentenced person may be
28 transferred to or from the Philippines without the said person's consent. Once given
29 and verified, the sentenced person's consent to transfer shall be irrevocable.
30 However, in the case the sentenced person is incapacitated from giving such
31 consent, his or her consent maybe given by a person or person's entitled to act
32 under his or her behalf under the laws in force in his or her country, including the
33 State.

34 **SEC. 12. *Verification of Consent of a Sentenced Person to Transfer from***
35 ***the Philippines.*** - Prior to the transfer of a sentenced person from the Philippines,
36 the Secretary shall verify that the sentenced person ;

37 a) consents to such transfer and that such consent is voluntary and not the
38 result of any promises, threats, or other improper inducements with full knowledge of
39 the consequences thereof; and,



b) understands 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 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 requests for his return; and
- (iv) that his consent to transfer, once given and verified, is irrevocable.

SEC. 13. **Verification Proceedings.** - The proceedings for the verification of the consent of a sentenced person shall be in accordance with the terms of the treaty.

SEC. 14. **Right to Counsel.** - In proceedings 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. 15. **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. 16. **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. 17. **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 the 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;

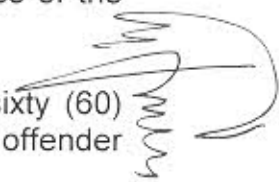
iii) the transferred person was ordered released by a Philippine court before he had completed his sentence because the transfer of the offender was not in accordance with the treaty or laws of the Philippines; and,

iv) the transferring country has requested that the transferred person be returned for the completion of the sentence.

There shall be attached to the complaint a copy of the sentence of the court of the 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.



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

3 e) The return of a transferred person shall be conditioned upon the transferred
4 person being given credit toward service of the sentence for the time spent in the
5 custody of, or under the supervision of the Philippine court or the Secretary.
6

7 **SEC. 18. *Execution of Sentence Imposed; Restitution or Reparation.*** - If
8 in a sentence issued in a criminal proceeding of a transferring country, a sentenced
9 person transferred to the Philippines has been ordered to pay the sum of money to
10 the victim of the offense, that penalty of award or damages may be enforced as
11 though it were a judgment rendered by a Philippine court. Proceedings to collect the
12 moneys ordered to be paid may be instituted by the Secretary in a Philippine court.
13 Moneys recovered pursuant to such proceedings shall be transmitted through
14 diplomatic channels to the treaty authority of the transferring country for distribution
15 to the victim.

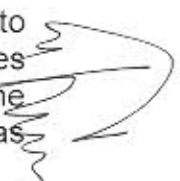
16 **SEC. 19. *Jurisdictions of Proceedings Relating to Transfer of Sentenced***
17 ***Person.*** - When a treaty is in effect between the Philippines and a foreign country
18 providing for the transfer of sentenced person;

19 a) the country in which the sentenced person was convicted shall have
20 exclusive jurisdiction and competence over proceedings seeking to challenge, modify
21 or set aside convictions or sentences handed down by a court of such country;
22

23 b) all proceedings instituted by or in behalf of a sentenced person transferred
24 from the Philippines to a foreign country seeking to challenge, modify or set aside the
25 conviction or sentence upon which the transfer was based shall be brought in the
26 country that would have jurisdiction and competence if the sentenced person had not
27 been transferred;

28 c) all proceedings instituted by or in behalf of a sentenced person transferred
29 to the Philippines pertaining to the manner of execution in the Philippines of a
30 sentence imposed by a foreign court shall be brought in the Philippine court in the
31 place where the transferred person is confined or in which supervision is exercised
32 and shall name the Secretary and the official having the immediate custody or
33 exercising immediate supervision of the transferred person as respondents. The
34 Secretary shall defend against such proceedings;

35 d) all proceedings instituted by or in behalf of a sentenced person seeking to
36 challenge the validity or legality of the sentenced person transfer from the Philippines
37 shall be brought in the Philippine court in which the proceedings to determine the
38 validity of the sentenced person consent were held and shall name the Secretary as
39 respondent; and,



e) all proceedings instituted by or in behalf of a 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. 20. **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. 21. **Appropriations.** - This is hereby authorized to be appropriated such funds as may be necessary to carry out the purposes of this Act.

SEC. 22. **Implementing Rules and Regulations.** - The Secretary shall 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. 23. **Repealing Clause.** - All laws, executive issuances, rules and regulations, or parts thereof, which are inconsistent with the provisions of this Act are hereby repealed or amended accordingly.

SEC. 24. **Separability Clause.** - Should any part of this Act 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. 25. **Effectivity.** - This Act shall take effect thirty (30) days after publication in a newspaper of general circulation at least once for three 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,

