

## **The Transfer of Sentenced Persons Agreement**

The Agreement on the Transfer of Sentenced Persons between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Republic of the Philippines will enter into force on 15 June 2002.

AGREEMENT BETWEEN THE GOVERNMENT OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE  
PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF  
THE REPUBLIC OF THE PHILIPPINES  
FOR THE TRANSFER OF SENTENCED PERSONS

The Government of the Hong Kong Special Administrative Region of the People's Republic of China having been duly authorised to conclude this agreement by the Central People's Government of the People's Republic of China and the Government of the Republic of the Philippines,

Desiring to co-operate in the transfer of sentenced persons to facilitate their reintegration into society,

Have agreed as follows-

**ARTICLE 1****Definitions**

For the purposes of this Agreement

- (a) 'transferring Party' means the Party from whose jurisdiction the sentenced person may be, or has been, transferred;
- (b) 'receiving Party' means the Party to whose jurisdiction the sentenced person may be, or has been, transferred;
- (c) 'sentenced person' means any person who has been sentenced by a court in the jurisdiction of the transferring Party;
- (d) 'sentence' means any punishment or measure involving deprivation of liberty ordered by a court in the course of the exercise of its criminal jurisdiction.

**ARTICLE 2****General Principles**

A sentenced person may be transferred from the jurisdiction of the transferring Party to the jurisdiction of the receiving Party in accordance with the provisions of this Agreement in order to serve the sentence imposed on him.

**ARTICLE 3****Central Authorities**

- (1) Each Party shall establish a Central Authority.
- (2) The Central Authority for the Hong Kong Special Administrative Region shall be the Secretary for Justice or an officer authorised by the Secretary for Justice. The Central Authority for the Republic of the Philippines shall be the Secretary of Justice or a person designated by the Secretary of Justice. Either Party may change its Central Authority in which case it shall notify the other of the change.
- (3) Requests for transfer shall be conveyed through the Central Authority as may be notified from time to time by one Party to the other.
- (4) The Central Authorities shall process requests for transfer in accordance with the provisions of this Agreement.

**ARTICLE 4****Conditions for Transfer**

A sentenced person may be transferred only on the following conditions:

- (a) the conduct on account of which the sentence has been imposed would constitute a criminal offence according to the law of the receiving Party if it had been committed within the jurisdiction of its courts;
- (b) where the Hong Kong Special Administrative Region is the receiving Party the sentenced person is a permanent resident of, or has close ties with the Hong Kong Special Administrative Region;

- (c) where the Republic of the Philippines is the receiving Party the sentenced person is a citizen of the Philippines;
- (d) the sentence imposed on the sentenced person is for a period of 3 years or more of which at least one year remains to be served at the time of the request for transfer;
- (e) the judgment is final and no further proceedings relating to the offence or any other offence are pending in the transferring Party;
- (f) the transferring and receiving Parties and the sentenced person all agree to the transfer, provided that where either Party considers it necessary, the sentenced person's consent may be given by a person entitled to act on his behalf.

## ARTICLE 5

### Procedure for Transfer

- (1) The Parties shall inform sentenced persons of their right to transfer under this Agreement.
- (2) A request for transfer may be made by the transferring Party or the receiving Party to the other Party. If the sentenced person wishes to be transferred, he may express such a wish to the transferring Party or the receiving Party, which shall consider such an expressed wish against the criteria set out in Article 4 before deciding whether to request a transfer.
- (3) Subject to the provisions of paragraph (1) of Article 8 the transferring Party shall provide the receiving Party with the following information in any request for transfer:

- (a) the facts upon which the conviction and sentence were based and the text of the legal provisions creating the offence;
  - (b) the duration of the sentence and the length of time already served by the sentenced person and any remissions to which he is entitled on account of work done, good behaviour, pre-trial confinement or other reasons;
  - (c) proof of the conviction and sentence;
  - (d) proof of the permanent residence of, or close ties with the Hong Kong Special Administrative Region, or proof of Philippine citizenship of the sentenced person, as the case may be.
- (4) Either Party shall, as far as possible, provide the other Party, if it so requests, with any relevant information, documents or statements before making a request for transfer or taking a decision on whether or not to agree to the transfer.
- (5) The transferring Party shall afford an opportunity to the receiving Party, if the receiving Party so desires, to verify through an official designated by the receiving Party, prior to the transfer, that the sentenced person's consent to the transfer in accordance with Article 4(f) of this Agreement is given voluntarily and with full knowledge of the consequences thereof.
- (6) Delivery of the sentenced person by the authorities of the transferring Party to those of the receiving Party shall occur on a date at a place within the jurisdiction of the transferring Party agreed upon by both Parties.

## ARTICLE 6

## Continued Enforcement of Sentence

- (1) The receiving Party shall enforce the sentence as if the sentence had the same duration as advised by the transferring Party and had been imposed in the receiving Party.
- (2) The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving Party, including those governing conditions for service of imprisonment, confinement or other deprivation of liberty, and those providing for the reduction of the term of imprisonment, confinement or other deprivation of liberty by parole, conditional release, remission or otherwise.
- (3) The receiving Party shall modify or terminate enforcement of the sentence as soon as it is advised of any decision by the transferring Party to cancel or reduce the sentence in order to avoid a denial of justice.
- (4) If the sentence is by its duration incompatible with the law of the receiving Party that Party may, with the consent of the transferring Party, adapt the sentence in accordance with the sentence prescribed by its own law for a similar offence. The adapted sentence shall not be more severe than that imposed by the transferring Party in terms of duration.
- (5) The receiving Party may, if a sentenced person would be a juvenile according to its law, treat the sentenced person as a juvenile regardless of his or her status under the law of the transferring Party.
- (6) The receiving Party shall inform the transferring Party:
  - (a) when the sentenced person is discharged;
  - (b) if the sentenced person is granted conditional release;  
or

- (c) if the sentenced person has escaped from custody before enforcement of the sentence has been completed.
- (7) The receiving Party shall, if the transferring Party so requests, provide any information requested in relation to the enforcement of the sentence.
- (8) The receiving Party shall continue to enforce a sentence imposed by the transferring Party in accordance with this Article even though this Agreement has ceased to have effect.

## ARTICLE 7

### Transit of Sentenced Person

If either Party transfers a sentenced person from another jurisdiction, the other Party shall co-operate in facilitating the transit through its territory of such a sentenced person. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

## ARTICLE 8

### Language and Expenses

- (1) Written communications between the Parties shall be in an official language of the Party to which the communication is addressed.
- (2) The expenses incurred in the continued enforcement of the sentence after transfer shall be borne by the receiving Party. The expenses incurred in the transfer of the sentenced person shall generally be borne by the receiving Party. The receiving Party may, however, seek to recover all or part of the cost of transfer from the sentenced person.



**ARTICLE 9****Settlement of Disputes**

Any dispute arising out of the interpretation, application or implementation of this Agreement shall be resolved through diplomatic channels if the Central Authorities are themselves unable to reach agreement.

**ARTICLE 10****Final Provisions**

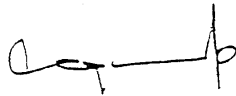
- (1) This Agreement shall enter into force thirty days after the date on which the Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with.
- (2) Either Party may terminate this Agreement at any time by giving notice to the other. In that event the Agreement shall cease to have effect three months after the date of receipt of the notice.

In witness whereof, the undersigned being duly authorised thereto by their respective Governments, have signed the present Agreement.

Done at the Hong Kong Special Administrative Region, this twenty-eighth day of April in the year of two thousand in duplicate, in the Chinese and English languages, each text being equally authentic.

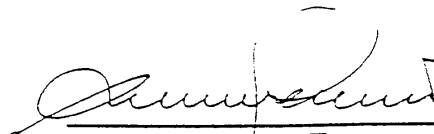
For the Government of the  
Hong Kong Special  
Administrative Region of the  
People's Republic of China

For the Government of the  
Republic of the Philippines



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Regina Ip



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Artemio G. Tuquero