

FOURTEENTH CONGRESS OF THE REPUBLIC }
 OF THE PHILIPPINES }
 First Regular Session }

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SENATE

RECEIVED BY: 

COMMITTEE REPORT NO. 19

Submitted by the Committee on Foreign Relations
 on NOV 19 2007.

Re: P.S. Res. No. 212, prepared by the Committee

Recommending its approval without amendment.

Sponsor: Senator Defensor Santiago.

MR. PRESIDENT:

The Committee on Foreign Relations, to which was referred the Treaty,
 entitled:

**“TREATY ON THE TRANSFER OF SENTENCED PERSONS
 BETWEEN THE REPUBLIC OF THE PHILIPPINES AND THE
 KINGDOM OF SPAIN”**

has considered the same and has the honor to report it back to the Senate with
 the recommendation that Proposed Senate Resolution No. 212,
 prepared by the Committee, entitled:

**“RESOLUTION
 CONCURRING IN THE RATIFICATION OF THE TREATY ON
 THE TRANSFER OF SENTENCED PERSONS BETWEEN THE
 REPUBLIC OF THE PHILIPPINES AND THE KINGDOM OF
 SPAIN”**

be approved without amendment.

Respectfully submitted:


 MIRIAM DEFENSOR SANTIAGO
 Chairperson

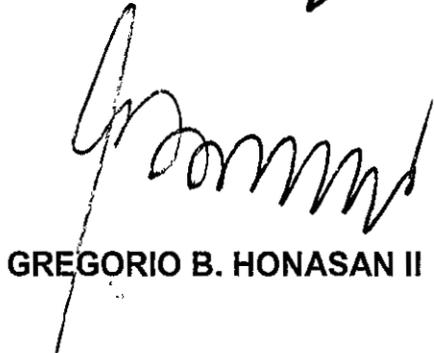
Members:


EDGARDO J. ANGARA

JOKER P. ARROYO


JUAN PONCE ENRILE

RICHARD "DICK" J. GORDON


GREGORIO B. HONASAN II

MANUEL "LITO" M. LAPID

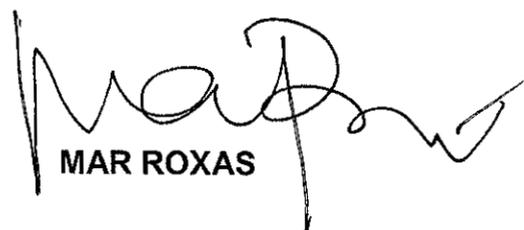

RAMON "BONG" REVILLA, JR.


JUAN MIGUEL F. ZUBIRI


RODOLFO G. BIAZON

LOREN LEGARDA

M.A. MADRIGAL

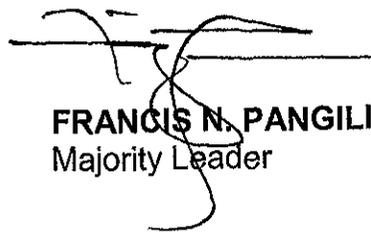

MAR ROXAS

ANTONIO "SONNY" F. TRILLANES IV

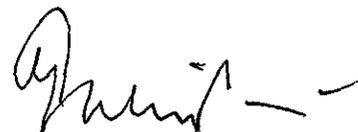
Ex-Officio Members:



JINGGOY EJERCITO ESTRADA
President Pro-Tempore



FRANCIS N. PANGILINAN
Majority Leader



AQUILINO Q. PIMENTEL, JR.
Minority Leader

MANNY VILLAR
President
Senate of the Philippines
Pasay City

FOURTEENTH CONGRESS OF THE REPUBLIC }
OF THE PHILIPPINES }
First Regular Session }

7 NOV 19 8 31 AM

SENATE

RECEIVED BY: 

P.S. RES. NO. 212

Prepared by the Committee on Foreign Relations

**“RESOLUTION
CONCURRING IN THE RATIFICATION OF THE TREATY ON
THE TRANSFER OF SENTENCED PERSONS BETWEEN THE
REPUBLIC OF THE PHILIPPINES AND THE KINGDOM OF
SPAIN”**

WHEREAS, the *Treaty on the Transfer of Sentenced Persons between the Republic of the Philippines and the Kingdom of Spain* was signed on 18 May 2007 in Madrid, Spain;

WHEREAS, the *Treaty*, consisting of twenty-three (23) articles, provides for the conditions and procedures whereby a person sentenced in the territory of one Party may be transferred to the territory of the other Party of which he or she is a citizen in order to serve the sentence imposed on him or her;

WHEREAS, the *Treaty*, shall be applied only on the following conditions:
a) if the acts or omissions on account of which the sentence has been imposed are punishable in the administering State, although the definition thereof may not be identical; b) if the sentenced person is a national of the administering State at the time of the request for transfer; c) if the judgment is final and there are no legal proceedings relating to the offense or any other offense is pending in the sentencing State; d) if the transfer is consented to by the sentenced person or, in the event of incapacity, by his legal representative; e) if the part of the sentence still to be served at the time of the receipt of the request is at least one year; and f) if the sentenced person has satisfied payment of fines, court costs, civil indemnities and/or pecuniary sanctions of all kinds for which he is liable under the terms of the sentence or has provided sufficient security to ensure payment thereof to the satisfaction of the sentencing State, unless the sentenced persons has been declared insolvent;

WHEREAS, Article 23, paragraph 1 of the *Treaty* provides that it shall enter into force thirty (30) days after the date on which the Contracting States have notified each other in writing that their perspective requirements for the entry into force of this *Treaty* have been met;

WHEREAS, in the hearing conducted by the Senate Committee on Foreign Relations on November 16, 2007, concerned government agencies, such as the Department of Foreign Affairs (DFA), Department of Justice (DOJ), Bureau of Corrections, and the Public Attorney’s Office (PAO) have expressed their support in the ratification of the *Treaty*;

WHEREAS, pursuant to Section 21, Article VII of the 1987 Philippine Constitution, "*No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the members of the Senate*";

NOW, THEREFORE, be it resolved that the Senate of the Philippines concur as it hereby concurs in the ratification of the *Treaty on the Transfer of Sentenced Persons between the Republic of the Philippines and the Kingdom of Spain*

Adopted,


MIRIAM DEFENSOR SANTIAGO
Chairperson

**TREATY ON THE TRANSFER OF SENTENCED PERSONS
BETWEEN THE REPUBLIC OF THE PHILIPPINES AND
THE KINGDOM OF SPAIN**

The Republic of the Philippines and the Kingdom of Spain,

Considering that the objective of sentences is the social rehabilitation of the sentenced persons and that for the attainment of this objective it would be beneficial if nationals who are deprived of their liberty abroad were given the opportunity to serve their sentences in their own countries;

Desiring to cooperate in the transfer of sentenced persons to facilitate their reintegration into society;

Have agreed as follows:

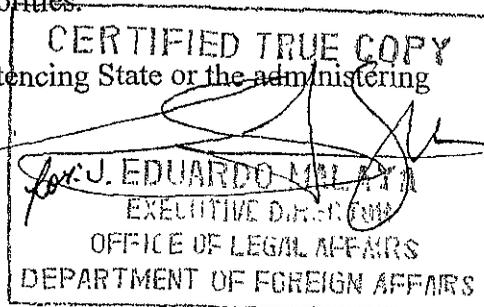
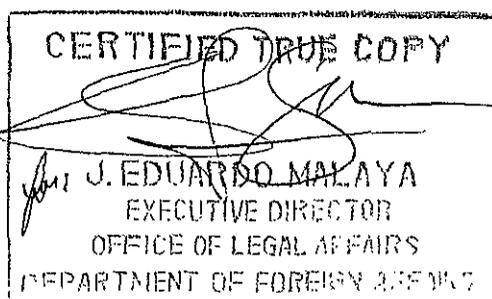
**Article 1
Definitions**

For the purposes of this Treaty:

- a) "sentencing State" means the State in which the sentence was imposed on the person who may be subject to transfer;
- b) "administering State" means the State to which the sentenced person may be, or has been, transferred;
- c) "sentenced person" means the person on whom a punishment or measure involving deprivation of liberty has been imposed on account of a criminal offense; and
- d) "sentence" means any punishment or measure involving deprivation of liberty ordered by a court of the sentencing state on account of a criminal offense.

**Article 2
General Principles**

- 1. Punishment or measures involving deprivation of liberty imposed in Spain on nationals of the Philippines may be served in penal establishments of the Philippines or under the supervision of its authorities.
- 2. Punishment or measures involving deprivation of liberty imposed in the Philippines on nationals of Spain may be served in penitentiary establishments in Spain or under the supervision of its authorities.
- 3. Transfer may be requested by either the sentencing State or the administering State.



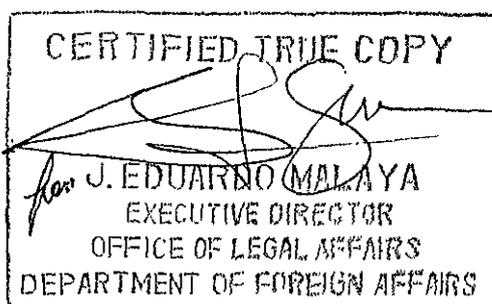
Article 3
Central Authorities

1. The Central Authority for the Republic of the Philippines shall be the Department of Justice. The Central Authority for the Kingdom of Spain shall be the Ministry of Justice. Either State may change its Central Authority in which case it shall notify the other State of the change.
2. Requests for transfer and replies shall be made in writing.
3. The request for transfer and the reply to such request shall be transmitted through diplomatic channels. All other communications shall be conveyed directly to the Central Authority of either State.
4. Decisions taken by a State with a view to executing this Treaty shall be notified without delay to the other State without any need for stating the grounds therefor.

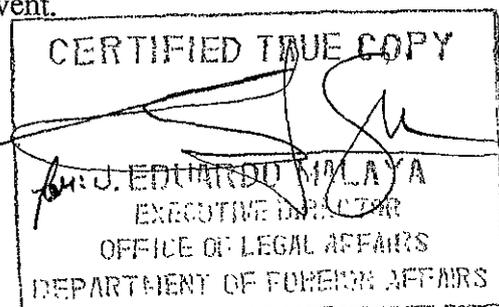
Article 4
Conditions for Transfer

This Treaty shall be applied only on the following conditions:

1. if the acts or omissions on account of which the sentence has been imposed are punishable in the administering State, although the definition thereof may not be identical;
2. if the sentenced person is a national of the administering State at the time of the request for transfer;
3. if the judgment is final and there are no other legal proceedings relating to the offense or any other offense is pending in the sentencing state;
4. if the transfer is consented to by the sentenced person or, in the event of incapacity, by his legal representative;
5. if the part of the sentence still to be served at the time of the receipt of the request referred to in Article 6 is at least one year. In exceptional cases, as determined by both States, a request may be accepted even if part of the sentence still to be served is less than one (1) year;
6. if the sentenced person has satisfied payment of fines, court costs, civil indemnities and/or pecuniary sanctions of all kinds for which he is liable under the terms of the sentence, or has provided sufficient security to ensure payment thereof to the satisfaction of the sentencing State, unless the sentenced person has been declared insolvent.



2



Article 5
Consent of the Sentenced Person

1. The competent authorities of each State shall inform those sentenced persons who are nationals of the other State about the possibilities of transfer available under this Treaty and the legal consequences arising therefrom.
2. The desire of the sentenced person to be transferred must be expressly stated. The sentencing State must make it possible for the administering State, if it so requests, to verify and make sure that the sentenced person is aware of the legal consequences involved in the transfer, and his consent is voluntarily given.
3. The manner of expressing consent shall be governed by the law of the sentencing State.

Article 6
Request for Transfer

1. The sentenced person may make his request for transfer to the sentencing State or the administering State.
2. When either State receives a request for transfer from a sentenced person, that State shall, as soon as possible, notify the other State of the receipt of such request.

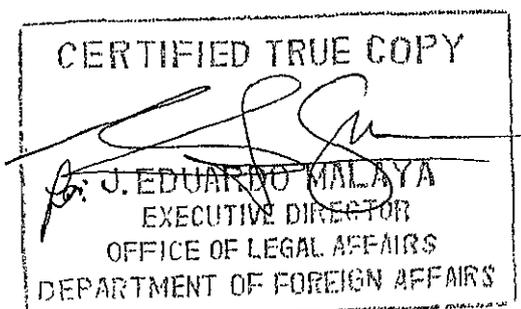
Article 7
Preliminary Information

Upon request, the sentencing State shall inform the administering State of:

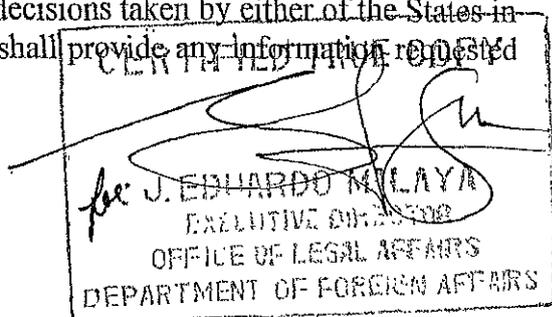
- a) the name, date and place of birth of the sentenced person;
- b) a statement of the facts upon which the sentenced was based; and
- c) the duration and dates of commencement and termination of the sentence or deprivation of liberty imposed.

Article 8
Consular Information

The sentenced person must be informed by the diplomatic or consular officials of his country about the steps taken in the administering State with a view to the application of the foregoing paragraphs, as well as of the decisions taken by either of the States in respect of his request for transfer. The States shall provide any information requested by the diplomatic or consular officials.



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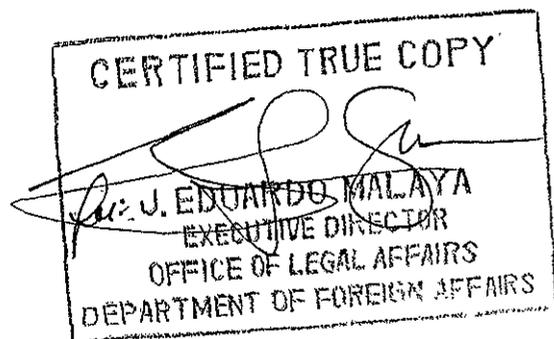


Article 9
Supporting Documents

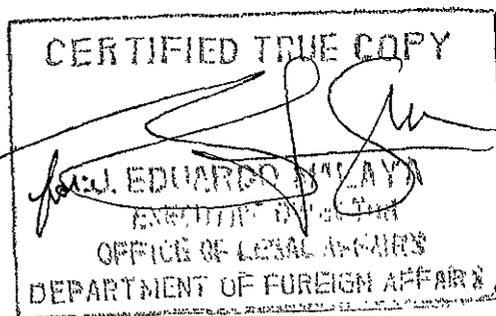
1. If a transfer is requested, the sentencing State shall provide the following documents to the administering State;
 - a) a certified true copy of the judgment, indicating that it is final;
 - b) a copy of the relevant legal provisions;
 - c) a statement indicating the duration of the sentence or deprivation of liberty, the time already served and the time that remains to be served including penitentiary reductions granted to sentenced persons; and
 - d) a document containing the consent of the sentenced person to the transfer.
2. The administering State, for its part, shall provide the following documents to the sentencing State:
 - a) a statement or document indicating that the sentenced person is a national of that State; and
 - b) a copy of the relevant legal provisions which provide that the acts or omissions on account of which the sentence has been imposed also constitute a criminal offense in the administering State.
3. Either State may request from the other State additional information or documents related to the transfer.

Article 10
Continued Enforcement

1. Once the transfer has been carried out, the enforcement of the sentence shall be governed by the law of the administering State.
2. When enforcing the sentence, the administering State:
 - a) shall be bound by the duration of the sentence or measure of deprivation of liberty;
 - b) shall be bound by the findings of facts indicated in the judgment; and
 - c) shall not convert the sentence or deprivation of liberty into pecuniary sanction.



4



Article 11
Pardon, Amnesty, or Commutation

Only the sentencing State may grant pardon, amnesty or commutation of the sentence pursuant to its Constitution and laws. The administering State however may request the sentencing State to grant pardon, amnesty or commutation of the sentence by submitting an application with sufficient grounds.

Article 12
Retention of Jurisdiction

The sentencing State shall have exclusive jurisdiction in respect of proceedings of any kind the purpose of which is to review the judgment.

Article 13
Termination of Enforcement

The administering State shall terminate enforcement of the sentence as soon as it is informed by the sentencing State of any decision or measure as a result of which it ceases to be enforceable.

Article 14
Ne bis in idem

A sentenced person handed over to serve a sentence or measure of deprivation of liberty under this Treaty may not be arrested, committed for trial or convicted in the administering State for the same offenses for which he was sentenced.

Article 15
Principle of Specialty

In order that the sentenced person may be judged, convicted or subjected to any restriction of his personal liberty on account of previous acts that are different from those which gave rise to his transfer, action shall be taken in accordance with the terms provided under the Treaty of Extradition in force between the Parties.

Article 16
Handing Over of the Sentenced Person

1. The handing over of the sentenced person by the sentencing State to the administering State shall be at a mutually agreed time and place.
2. The transit costs for the sentenced person shall be borne by the administering State as of the time that the sentenced person is in its custody.

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CERTIFIED TRUE COPY

J. Eduardo Malaya

for: J. EDUARDO MALAYA
EXECUTIVE DIRECTOR
OFFICE OF LEGAL AFFAIRS
DEPARTMENT OF FOREIGN AFFAIRS

CERTIFIED TRUE COPY

J. Eduardo Malaya

for: J. EDUARDO MALAYA
EXECUTIVE DIRECTOR
OFFICE OF LEGAL AFFAIRS
DEPARTMENT OF FOREIGN AFFAIRS

Article 17
Information on Enforcement

The administering State shall inform the sentencing State;

- a) when enforcement of the sentence has been completed;
- b) in the event of escape by the sentenced person; or
- c) any matter related to this Treaty, that the sentencing State may request.

Article 18
Transfer of Sentenced Person on Parole

A sentenced person who is on parole shall continue to serve such sentence subsequent to his transfer in accordance with the law of the administering State and under the supervision of the authorities of that State.

Article 19
Languages

All documents submitted in accordance with this Treaty shall be in Spanish and in English.

Article 20
Consultation

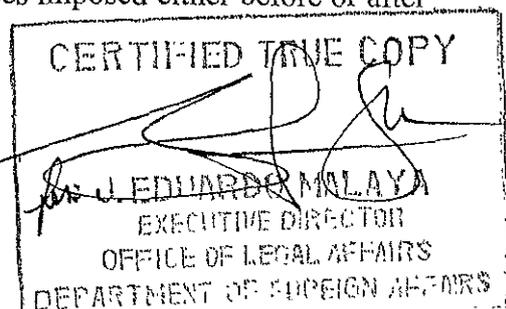
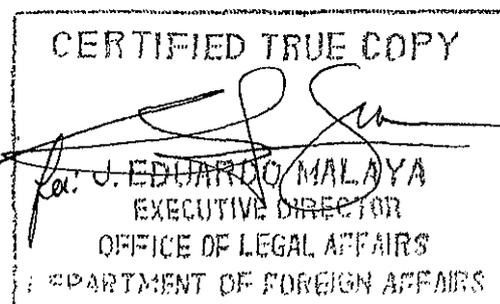
The Central Authorities of the Contracting States may consult with each other to promote the most effective use of this Treaty. The Central Authorities may also agree on such practical measures as may be necessary to facilitate the implementation of this Treaty.

Article 21
Settlement of Disputes

Any disputes arising from the interpretation or application of this Treaty shall be settled through diplomatic channels.

Article 22
Application

This Treaty shall apply to the enforcement of sentences imposed either before or after its entry into force.



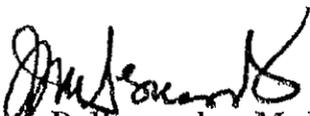
Article 23
Entry into Force, Duration and Termination

1. This Treaty shall enter into force thirty (30) days after the date on which the Contracting States have notified each other in writing that their respective requirements for the entry into force of this Treaty have been met.
2. This Treaty shall have an indefinite duration.
3. Either Contracting State may terminate this Treaty by notice in writing at any time and it shall cease to be in force on the one hundred and eightieth (180th) day after the day on which notice is received by the other Contracting State.

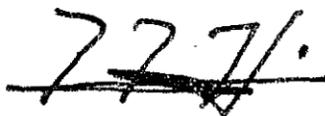
IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

Done in Madrid, Spain, this 18th day of May 2007, in two original copies in English and Spanish, both texts being equally authentic.

FOR THE REPUBLIC OF THE
PHILIPPINES


Joseph D. Bernardo y Medina
Ambassador Extraordinary and
Plenipotentiary to Spain

FOR THE KINGDOM OF SPAIN


Miguel Ángel Moratinos Cayuabé
Minister of Foreign Affairs and
Cooperation

