BILATERAL

TREATY BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF CANADA ON THE TRANSFER OF SENTENCED PERSONS AND ON COOPERATION IN THE ENFORCEMENT OF PENAL...

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THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES AND THE GOVERNMENT OF CANADA (hereinafter referred to as the “Parties”);

TAKING into consideration the laws and regulations of the Parties in force regarding enforcement of penal sentences;

DESIRING to cooperate in the enforcement of penal sentences;

CONSIDERING that this cooperation would serve the interests of the administration of justice;

DESIRING to facilitate the successful reintegration of sentenced persons into society;

CONSIDERING that these objectives can best be fulfilled by giving the respective nationals of the Parties who are deprived of their liberty as a result of their commission of a criminal offence the opportunity to serve their sentences within their own society;

HAVE AGREED as follows:

ARTICLE I

DEFINITIONS
For the purpose of this Treaty:

1.

“transferring State” means the party from which the sentenced person may be, or has been, transferred;

2.

“receiving State” means the party to which the sentenced person may be, or has been, transferred;

3.

“sentenced person” means any person who has been sentenced by a court of the transferring State, including any person who is required to be detained in a hospital or any other institution in the transferring State by virtue of an order made by a court of that State on account of a criminal offence.

4.

“sentence” means any punishment or measure involving deprivation of liberty or supervision in the community ordered by a court of the transferring State on account of a criminal offence.

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ARTICLE 2

GENERAL PRINCIPLES
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 accordance with the provisions of this Treaty in order to serve the sentence imposed on him or her.

ARTICLE 3

CENTRAL AUTHORITIES

1.

Each Party shall establish a Central Authority.

2.

The Central Authority for the Republic of the Philippines shall be the Department of Justice. The Central authority for Canada shall be the Solicitor General of Canada. Each Party may change its Central Authority in which case it shall notify the other of the change.

ARTICLE 4

SCOPE OF APPLICATION
The application of this Treaty shall be subject to the following conditions, namely that:

1.

the acts or omissions on account of which the sentence has been imposed constitute a criminal offence according to the law of the receiving State or would constitute a criminal offence if committed on its territory;

2.

the sentenced person is a citizen of the receiving State;

3.

the sentence imposed on the sentenced person is one of imprisonment or any other form of deprivation of liberty, including supervision in the community;

- for life; or

- for a period or which at least one year remains to be served at the time of the request for transfer;

4.

a sentenced person may not be transferred unless he or she has served in the transferring State any minimum period of imprisonment, or any other form of deprivation of liberty stipulated by the law of the transferring State. In the case of the Republic of the Philippines, in the absence of any law on the matter, the minimum period will be one third (1/3) of the maximum period imposed by the court, or four years, whichever is less;

5.

the judgment is final and there are no other legal proceedings relating to the offence;

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6.

the transferring and receiving States and the sentenced person all agree to the transfer. However, if either Party considers it necessary in view of his or her age or physical or mental condition, the sentenced person's consent may be given by a person entitled to act on his or her behalf;

ARTICLE 5

REQUESTS, REPLIES AND PROCEDURE FOR TRANSFER

1.

(a) The Parties shall inform sentenced persons of the substance of the Treaty.

(b) The offender, desiring a transfer under the Treaty, may express his or her interest to the sentencing State or to the receiving State.

2.

The request for transfer may be made by the transferring State or the receiving State through diplomatic channels. The request shall be addressed to the authority of the requested State by the authority of the requesting State. Replies shall be communicated through the same channels without delay.

3.

Requests and replies shall be made in writing.

4.

The receiving State and the transferring State shall retain absolute discretion to approve or refuse the transfer.

5.

In making their decision, each Party shall consider all factors that may contribute to the offender's social reintegration.

6.

An offender shall be informed, in writing, of any action and decision taken by either State on the request.

7.

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 to taking a decision on whether or not to agree to the transfer.

8.

The transferring State shall afford an opportunity to the receiving State, if the receiving State so desires, to verify through an official designated by the receiving State, prior to the transfer; that the necessary consent of the sentence person or of a person entitled to act on his behalf to the transfer in accordance with Article 4 (6) of this Treaty is given voluntarily and with full knowledge of the legal consequences thereof.

9.

The transferring State shall provide the receiving State with the following information:

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(a) a summary of the facts upon which the sentence was based, the text of the legal provisions defining the offence and the conclusion of the court judgment;

(b) the commencement and the termination date of the sentence, the length of time already served by the sentenced person and any credits to which he is entitled on account of work done, good behavior, pretrial confinement or other reasons;

(c) a certified copy of all judgments and sentences concerning the sentenced person and of the law on which they are based;

(d) any other additional information requested by the receiving State so far as such information may be of significance for the sentenced person's transfer and for the enforcement of his or her sentence.

(e) The above information shall be translated into an official language of the receiving State and duly authenticated.

10.

Delivery of the sentenced person by the authorities of the transferring State to those of the receiving State shall occur on a date at a place within the transferring State agreed upon by both Parties.

11.

The receiving State shall be responsible for the custody and transport of the offender to the prison, penitentiary, or place where the sentence shall be completed.

ARTICLE 6

RETENTION OF JURISDICTION
Regarding the judgments of the courts of the transferring State and the sentences imposed by them, as well as any procedures for the revision, modification, or cancellation of said judgments and sentences, the transferring State shall retain exclusive jurisdiction.

ARTICLE 7

PROCEDURE FOR ENFORCEMENT OF SENTENCE

1.

The receiving State shall be bound by the legal nature and duration of the sentence as determined by the transferring State. The receiving State shall enforce the sentence as if the sentence had been imposed in the receiving State. If however, the sentence is incompatible with the laws of the Receiving State, that State shall adapt the sentence to one which is prescribed by its own law for a similar offence.

2.

The continued enforcement of the sentence after transfer shall be governed by the laws and procedures of the receiving state, including those governing conditions for service of imprisonment, and conditional release, remission or otherwise.

3.

No sentence of deprivation of liberty shall be enforced by the receiving State in such a away as to extend it

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beyond the period specified in the sentence of the court of the transferring State.

4.

If the transferring State revises, modifies, or cancels the judgment or sentence pursuant to Article 6 of this Treaty or otherwise, reduces, commutes or terminates the sentence, the receiving State shall upon being notified of the decision give effect thereto in accordance with this Article.

5.

The receiving State may treat under its law relating to juveniles any sentenced person so categorized under its law.

6.

The receiving State shall provide information to the transferring State concerning the enforcement of the sentence:

(a) if the sentenced person is granted conditional release and when he is discharged on completion of his sentence;

(b) if the sentenced person has escaped from custody before enforcement of the sentence has been completed; or

(c) if the transferring State requests a report.

7.

An offender transferred under this Treaty may not again be detained, tried or sentenced in the Receiving state for the same offence upon which the sentence to be executed is based.

ARTICLE 8

TRANSFER OF SENTENCED PERSONS FROM A THIRD COUNTRY
If either Party transfers a sentenced person from any third State which also has a transfer agreement with either or both the transferring or receiving states, the other Party shall cooperated in facilitating the transit through its territory or such sentenced person. The Party intending to make such a transfer shall give advance notice to the other Party of such transit.

ARTICLE 9

EXPENSES
Each Party is responsible for expenses relating to the transfer that it has incurred on its own territory.

ARTICLE 10

LANGUAGE
Requests for transfer, as well as all the required documents and declarations under this Treaty, shall be in the language required by the transferring State, except that the documents referred to in Article 5, paragraphs 3, 9 (a) and 9 (b), and in Article 7, paragraph 4, the language required shall be in English.

ARTICLE 11

TEMPORAL APPLICATION
This treaty shall be applicable to the enforcement of sentences imposed either before or after its entry into force.

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ARTICLE 12

IMPLEMENTATION AND ENTRY INTO FORCE

This Treaty shall enter into force on the date of the later written notification by either of the Parties, through diplomatic channels, indicating that the domestic requirements for its entry into force have been complied with

ARTICLE 13

SETTLEMENT OF DISPUTES

Any dispute between the Contracting Parties arising out of the interpretation or implementation of this Treaty shall be settled by consultation or negotiations, through diplomatic channels.

ARTICLE 14

AMENDMENT

Any amendment or revision to the text of this Treaty shall be done by mutual consent of the Parties. This amendment or revision shall enter into force in accordance with the provision on entry into force.

ARTICLE 15

DURATION

The present Treaty shall remain in force for three years and shall be automatically renewed for additional periods of three years unless one of the Parties gives written notice to the other of its intention to terminate the treaty at least six months prior to the expiration of any three-year period.

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

DONE in duplicate at Manila, this 22nd day of May 2003, in the English and French languages, both texts being equally authentic.

(Sgd.)
FOR THE GOVERNMENT
OF THE REPUBLIC OF THE
PHILIPPINES (Sgd.)
FOR THE GOVERNMENT
OF CANADA

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