



Joint Committee on Human Rights

Committee Office · House of Commons · London · SW1A 0AA

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From Joanna Cherry KC MP, Chair

[By Email]

Rt Hon Edward Argar MP
Minister for Prisons, Parole and Probation
Ministry of Justice

13th March 2024

Dear Edward,

Re: UK – Philippines Prisoner Transfer Agreement

The Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of the Philippines on the Transfer of Sentenced Persons¹ (“the UK-Philippines Prisoners Transfer Agreement”) provides the framework for the consensual transfer of prisoners from the Philippines to the UK, or from the UK to the Philippines.

As the Explanatory Memorandum accompanying this Agreement sets out, such bilateral prisoner transfer agreements, operating with the consent of the prisoner,² can be beneficial, as it will often be in the best interests of all concerned for a person to serve their prison sentence close to their family and friends “in an environment governed by their own cultures and languages and to allow for reintegration and rehabilitation into that State”, so that the individual can benefit from local pre-release training and probation programmes to facilitate their return to the community at the end of their sentence.³

However, prison conditions in the Philippines are very poor – with the third most overcrowded prisons in the world.⁴ Even the Government’s own advice to British nationals imprisoned in the Philippines explains that prison conditions are very poor, setting out that “*Generally, the Philippines has very overcrowded detention and prison facilities, with poor sanitation and limited access to prison fresh food and water. [...] Prison conditions in the Philippines are very poor; jails are amongst the most overcrowded globally with dormitory style sleeping accommodation. The prison authorities do not provide beds, mattresses or toiletries for detainees. Conditions are very cramped, with inadequate water supply, sanitation and ventilation. The internal discipline in many jails is controlled by prison gangs.*”⁵

Where substantial grounds have been shown for believing that a person, if removed to another country, would face a real risk of being subjected to treatment contrary to Article 3 of the European Convention on Human rights (the prohibition on torture, or inhuman or degrading treatment or

¹ [UK – Philippines Prisoner Transfer Agreement](#).

² See Article 3(b) of the UK Philippines Prisoner Transfer Agreement, which requires the prisoner’s consent.

³ As set out in the [Explanatory Memorandum](#) accompanying this Agreement.

⁴ [UNODC](#) article. See also [UN article](#) on the need for a national preventive mechanism in the Philippines; [Amnesty International](#).

⁵ FCDO [Philippines Prisoner Pack](#).



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punishment) in the receiving country, Article 3 implies an obligation not to remove the individual to that country.⁶ Given the prison conditions in the Philippines, it seems highly likely that anyone transferred from the UK to the Philippines to serve their prison sentence in the Philippines would face a real risk of being subjected to treatment contrary to the prohibition on torture or inhuman or degrading treatment or punishment (Article 3 of the ECHR).

There are therefore questions as to whether - notwithstanding Article 9 of the UK–Philippines Prisoner Transfer Agreement,⁷ the individual's consent, or the fact that the Philippines is bound by existing human rights obligations,⁸ - the UK would nonetheless be prohibited from transferring a detainee to the Philippines, given the prison conditions and the consequent real risk that a person transferred to the Philippines under the treaty would be subject to treatment contrary to the prohibition on torture or degrading or inhuman treatment or punishment under Article 3 ECHR.

The Explanatory Memorandum produced by the Ministry of Justice, provides, under the “human rights” heading: “When a request for transfer under the PTA is made, the prisoner's links with the United Kingdom and with Philippines will be considered, in particular under Article 8 of the European Convention on Human Rights. Account will be taken of prison conditions under Articles 2 and 3 and if there are any concerns as to the prisoner's safety in the event of a transfer.”

We note in this context that the House of Lords International Agreement Committee's recent Report “Scrutiny of international agreements: UK-Philippines Prisoner Transfer Agreement”⁹ concluded that the Government's Explanatory Memorandum was inadequate, including in relation to the human rights analysis of both the situation of UK prisoners in the Philippines, as well as concerns the possible transfer of Filipino prisoners in the UK to the Philippines, concluding “The EM makes no comment on prison conditions in the Philippines. Given the recognised concerns about prison conditions in the Philippines, we consider that the human rights section of the EM is inadequate.”

Given that it is likely that the transfer of any of the 16 Filipino prisoners¹⁰ currently in the UK would be in breach of Article 3 ECHR due to the prison conditions in the Philippines, it is necessary for Parliament to understand how the Government would approach its obligations and its decision-making process in relation to any such a prisoner transfer.

⁶ *Ilias and Ahmed v. Hungary*, European Court of Human Rights, Grand Chamber judgment, 2019, §§ 125-126.

⁷ Article 9 of the prisoner transfer agreement provides that “*All sentenced persons transferred under this Treaty shall be treated in accordance with international obligations applicable to each Contracting State, particularly the right to life and the prohibition against torture and cruel, inhuman or degrading treatment.*”

⁸ The Philippines has signed and ratified the International Covenant on Civil and Political Rights 1966 (and its Optional Protocols) and the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1986 (and its Optional Protocol) – both of which clearly prohibit torture and cruel, inhuman or degrading treatment or punishment.

⁹ [Report](#) of the House of Lords International Agreements Committee, “Scrutiny of international agreements: UK-Philippines Prisoner Transfer Agreement”.

¹⁰ [Explanatory Memorandum](#) accompanying the UK – Philippines Prisoner Transfer Agreement.



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The Committee would like to understand what safeguards and processes are in place were the Ministry of Justice to consider transferring anyone to serve their prison sentence in the Philippines. Could you please set out the exact process for deciding whether there are substantial grounds for believing that a person, if removed under a prisoner transfer agreement to a country with poor prison conditions such as the Philippines, would face a real risk of being subjected to treatment contrary to Article 3 of the ECHR? Please set out the information, analysis and decision-making process that would be involved by the Government in such a case. Could you please clarify the safeguards that would be present to ensure sufficient focus would be given to prevent any breach of human rights in any outward prisoner transfer? Could you please let us know whether Parliament would be informed of such transfers?

I am copying this letter to the Chair of the House of Lords International Agreements Committee, the Chair of the Justice Select Committee and the Chair of the Foreign Affairs Committee.

I would be grateful for a response by 27 March 2024.

Yours sincerely,

Joanna Cherry KC MP

Chair, Joint Committee on Human Rights