

HOUSE OF LORDS

International Agreements Committee

7th Report of Session 2023–24

**Scrutiny of international
agreements: UK-
Philippines Prisoner
Transfer Agreement**

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International Agreements Committee

The International Agreements Committee is appointed by the House of Lords in each session to consider, and where appropriate report on, 1) matters relating to the negotiation, conclusion and implementation of international agreements, and 2) treaties laid before Parliament in accordance with Part 2 of the Constitutional Reform and Governance Act 2010.

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The Members of the International Agreements Committee are:

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<u>Lord Boateng</u>	<u>Lord Hannay of Chiswick</u>
<u>Lord Fox</u>	<u>Lord Howell of Guildford</u>
<u>Lord Geidt</u>	<u>Baroness Kingsmill</u>
<u>Lord German</u>	<u>Lord Marland</u>
<u>Lord Goldsmith</u> (Chair)	<u>Lord Udny-Lister</u>

Declaration of interests

See Appendix 1.

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Committee staff

The Committee Staff are Rhiannon Williams (Clerk), Cathy Adams (Legal Adviser), Sophie Andrews-McCarroll (Policy Analyst) and Clayton Gurney (Committee Operations Officer)

Contact details

All correspondence should be addressed to the International Agreements Committee, Committee Office, House of Lords, London SW1A 0PW. Telephone 0207 219 4585. Email HLINTLAGREEMENTS@parliament.uk

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SUMMARY

This report considers the following agreement, laid before Parliament in accordance with section 20 of the Constitutional Reform and Governance Act 2010:

- Agreement 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 Persons (CP 1012, 2024).

The Agreement provides for the transfer of Filipino nationals who are in prison in the UK and for the transfer of UK nationals, or persons with a right to reside in the UK, who are in prison in the Philippines. A person transferred under the Agreement would serve the remainder of their prison sentence in their home country. Transfers can only be made with their consent.

Prison conditions in the Philippines are notoriously harsh and amongst the most over-crowded globally, yet the Government's Explanatory Memorandum deals only in cursory fashion with the human rights implications of the Agreement. Moreover, it says nothing about the potential benefits for UK nationals detained in the Philippines.

We therefore report the Agreement to the House for special attention on the grounds that the explanatory material is inadequate and does not fully explain the policy background.

Scrutiny of international agreements: UK-Philippines Prisoner Transfer Agreement

AGREEMENT REPORTED FOR SPECIAL ATTENTION

Agreement 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

1. The Agreement was laid before Parliament on 22 January 2024.

Background

2. Prisoner Transfer Agreements provide a mechanism for the transfer of foreign national offenders back to their home state to serve the remainder of their prison sentence. Such agreements allow an offender to be transferred to a prison location where they can more easily receive visits from family and friends. Transfers can facilitate reintegration and rehabilitation of the offender. The Government also uses Prisoner Transfer Agreements as an immigration tool to expel foreign national offenders who have breached the conditions of their right to stay in the United Kingdom.²

UK-Philippines Agreement

3. This Agreement provides for the transfer of Filipino nationals serving a prison sentence in the UK and for the transfer of UK nationals, or persons with a right to reside in the UK, who are serving a prison sentence in the Philippines. To be eligible for a transfer, the prisoner must have been convicted of an offence which is a crime in both the UK and the Philippines and must, in general, have at least one year left to serve of their sentence.³ While some Prisoner Transfer Agreements provide for compulsory transfer, this Agreement requires the consent of the prisoner before a transfer can proceed.⁴

Human Rights

4. The 2022 US State Department Human Rights Report⁵ on the Philippines states that “Prison conditions [in that country] were often harsh and life-threatening and included gross overcrowding, inadequate sanitary conditions, physical abuse, and a chronic lack of resources including medical

1 Foreign, Commonwealth and Development Office, *Agreement 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 Persons*, CP 1012 (January 2024): https://assets.publishing.service.gov.uk/media/65a935a4b2f3c6000de5d551/CS_Philippines_1.2024_UK_Philippines_Treaty_Transfer_Sentenced_Persons.pdf [accessed 14 February 2024]

2 House of Commons written answer [11410](#), Session 2023–24. See also House of Commons Library, *Deportation and early removal of foreign national offenders*, [Research briefing](#), 2 February 2024, p 7

3 Article 3(f) of the Agreement provides that the parties may exceptionally agree to transfer a prisoner who has less than a year to serve.

4 Article 3(b) of the Agreement

5 United States Department of State, *Philippines 2022 Human Rights Report*: https://www.state.gov/wp-content/uploads/2023/02/415610_PHILIPPINES-2022-HUMAN-RIGHTS-REPORT.pdf [accessed 19 February 2024]

care and food.” The Report highlights other serious human rights concerns about the Philippines’ prison system including failure to separate male and female and adult and juvenile prisoners, gang violence, a lack of opportunities for recreation or education, inadequate ventilation, poor access to natural lighting, and a lack of potable water leading to illness and death. Media reports have also identified corruption as a significant issue.⁶

5. As part of its consular functions providing support to British nationals overseas, the Foreign, Commonwealth and Development Office has produced an Information Pack for British Nationals detained or imprisoned in the Philippines.⁷ Chapter Two of this document contains information on conditions at the New Bilibid Prison in Manila “where prisoners who have been sentenced to prison terms of more than three years are detained, and where the majority of the British Nationals in prison in the Philippines are held.” This document confirms the harsh state of prison conditions in the Philippines:

“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. Detainees will have to pay for basic requirements such as a bed space in a crowded cell, a mattress and toiletries. Food is extremely basic, usually consisting of 3 daily meals of rice and a small amount of protein (e.g., fish). ... Very basic communal bathing facilities are available. This varies by jail but can be as basic as a hosepipe or trough of water.”

6. When a treaty is laid before Parliament, the Government is required to draw Parliament’s attention to any human rights implications in the Explanatory Memorandum (EM). Paragraph 8 of the EM for this Agreement states:

“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.”⁸

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.**

6 “Drugs, jacuzzis and a horse: the anarchic Philippines prison where anything can be bought”, *The Guardian*, 23 March 2023: <https://www.theguardian.com/world/2023/mar/03/drugs-jacuzzis-and-a-horse-the-anarchic-philippines-prison-where-anything-can-be-bought>. [accessed 19 March 2024]

7 Foreign, Commonwealth and Development Office, Information Pack for British Nationals detained or imprisoned in the Philippines, (updated 6 February 2024): <https://www.gov.uk/government/publications/philippines-prisoner-pack/information-pack-for-british-nationals-detained-or-imprisoned-in-the-philippines#chapter-2-detention-conditions-in-the-philippines> [accessed 19 February 2024]

8 Ministry of Justice, Explanatory Memorandum on the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Republic of the Philippines on the Transfer of Sentenced Persons: available at <https://www.gov.uk/government/publications/ukphilippines-treaty-on-the-transfer-of-sentenced-persons-cs-philippines-no12024> [accessed 26 February 2024]

7. The harshness of prison conditions in the Philippines gives rise to obvious human rights concerns in relation to the transfer of prisoners from the United Kingdom. The circumstances described in the US and UK government reporting could amount to inhuman or degrading treatment.⁹ However, no transfer can take place without the consent of the prisoner, which mitigates these concerns to some extent. Furthermore, according to the EM, there were only 16 Filipino nationals held in UK prisons as at 30 September 2023, so it seems likely that this Agreement will only lead to the transfer of a small number of individuals out of the UK prison system, if any.
8. The information provided to the Committee does not address the potential significance of this Agreement for UK nationals detained in the Philippines. Nor has the Government provided any information on the number of UK nationals in prison there. This is striking, especially as there are well-known concerns about the Philippines' criminal justice system.¹⁰ We consider that the Agreement is potentially a valuable new mechanism to enable UK nationals detained in deplorable conditions in the Philippines to be transferred to serve the remainder of their sentence at home. **We regret that no Government assessment was supplied to the Committee of the opportunities for the transfer of UK nationals detained in the Philippines.**

Inadequacy of Explanatory Memorandum

9. In our report on “Treaty Scrutiny: Working Practices” in July 2020¹¹ we set out the criteria which this Committee uses to draw an agreement to the special attention of the House. One of these is:
 - that the explanatory material laid in support provides insufficient information on the agreement's policy objective and on how it will be implemented.

For the reasons noted in paragraphs 6 and 8 above we consider that the Explanatory Memorandum provided with this Agreement is inadequate. We therefore report the UK-Philippines Prisoner Transfer Agreement to the House for special attention together with our comments in paragraphs 6 and 8.

9 In November 2022 the United Nations Human Rights Committee expressed concern about “reports of the widespread practice of torture and ill-treatment in places of detention” and conditions of detention generally in the Philippines: UN Human Rights Committee, ‘Concluding observations on the fifth periodic report of the Philippines, (UN doc CCPR/C/PHL/CO/5)’, (30 November 2022): <https://cdn.sanity.io/files/6u5teakk/production/acafa8a1f47581179b85365bf1216043280a45f1.pdf?dl=> [accessed 26 February 2024]

10 United States Department of State, *Philippines 2022 Human Rights Report*: https://www.state.gov/wp-content/uploads/2023/02/415610_PHILIPPINES-2022-HUMAN-RIGHTS-REPORT.pdf [accessed 19 February 2024]. See also World Justice Project ‘Rule of Law Index, Philippines’: <https://worldjusticeproject.org/rule-of-law-index/country/2023/Philippines/Criminal%20Justice/> [accessed 19 February 2024]

11 International Agreements Committee, *Treaty scrutiny: working practices*, (11th Report, Session 2019-21, HL Paper 97)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Anderson of Swansea
Lord Boateng
Lord Fox
Lord Geidt
Lord German
Lord Goldsmith KC (Chair)
Lord Grimstone of Boscobel
Lord Hannay
Lord Howell of Guildford
Baroness Kingsmill
Lord Marland
Lord Udney-Lister

Declarations of Interest

Lord Anderson of Swansea
No relevant interests

Lord Boateng
*Independent non-executive director, at the Ghana International Bank
Board member, Syngenta Foundation*

Lord Fox
No relevant interests

Lord Geidt
*Chairman of Council, King's College London
President, Royal Overseas League*

Lord German
No relevant interests

Lord Goldsmith KC
Partner, Debevoise & Plimpton LLP (International law firm)

Lord Grimstone of Boscobel
No relevant interests

Lord Hannay of Chiswick
*Member, advisory board of the Centre for European Reform,
Member, European Leadership Network
Chair, European & International Analysts Group*

Lord Howell of Guildford
No relevant interests

Baroness Kingsmill
No relevant interests

Lord Marland
Director, Janspeed Technologies Ltd (manufacturer of motor parts)

Lord Udney-Lister
Advisor to the Group Chairman of HSBC