

REVIEW OF THE 1966 COMMONWEALTH SCHEME RELATING TO THE RENDITION OF FUGITIVE OFFENDERS

Memorandum by the Government of Sri Lanka

The Sri Lanka Extradition Law No. 8 of 1977 came into operation on 18 February 1977. One of its objectives, so far as intra-Commonwealth rendition of fugitive offenders is concerned, is to give effect to the Commonwealth Scheme of 1966.

2. Basing itself on the experience acquired in operating this Statute over the past three years, the Government of Sri Lanka wishes to make the following observations—

Requirement of a prima facie case

3. The Commonwealth Scheme provides for the necessity of establishing a prima facie case against the person sought to be returned. The Sri Lanka Extradition Law seeks to give effect to this principle in section 10(4)(a) which requires that evidence should be adduced as—

“would be sufficient to warrant his trial for that offence if it has been committed within the jurisdiction of the Court”.

4. While in no way attempting to dispense with a prima facie case which Sri Lanka considers fundamental to the law of extradition the Government of Sri Lanka would like Commonwealth Governments to examine the procedures which Courts in Commonwealth countries have adopted to give effect to this principle.

5. Bearing in mind that what is at issue here is not the innocence or guilt of the person whose return is requested (which is solely the function of the appropriate Court in the requesting State) the Government of Sri Lanka feels that in order to satisfy the requirement of a prima facie case, it is not necessary to conduct an inquiry on the lines of a normal court case where lawyers for each side lead evidence and call for witnesses. Consideration may be given to a more expeditious and simplified form of inquiry before a single judicial authority or, even better, a panel of judges and where such judge or panel arrives at a decision on the basis of the evidence contained in the dossier which the appropriate authorities of the requesting State would necessarily have to furnish in support of their request.

Returnable offences

6. In drafting the schedule of extraditable offences, Sri Lanka has not confined itself to the offences set out in the 1966 Scheme. Having regard to local conditions and the obligations of international conventions, the schedule includes offences such as, for example, offences against the law relating to exchange control and jeopardising the safety of aircraft in or of the persons or property on board such aircraft.

7. Anticipating the need for greater flexibility in regard to the categories of extraditable offences, and accepting the limited effect of unilateral additions of offences in national legislation, Sri Lanka views with favour the suggestions made by Professor Shearer to add the following general categories to the schedule of extraditable offences—

- i offences established under international conventions to which both the requesting and the requested country are parties; and
- ii offences agreed upon on a reciprocal basis.

Citizenship of fugitive

8. Although the Sri Lanka Extradition Law makes no distinction between citizens and non-citizens, in practice requests for extradition of citizens will only be considered if the executive authority is satisfied from an examination of the merits of the case that there will be no derogation of the principles of natural justice by the requesting State and provided that, on the basis that the requesting State undertakes to return its own citizens to Sri Lanka upon a request being so made.

Appeals by requesting Governments

9. Since requesting States are represented in Sri Lanka by the Attorney-General who appears as *amicus* and is not therefore a party to the proceedings it is arguable that he may not have the status to appeal unless express provision is made in our law to enable him to do so in extradition cases. Although the Court may be moved by way of revision, it would appear to be more realistic to amend the existing provisions making special revision procedures available to requesting States.