

THE TRANSFER OF CONVICTED OFFENDERS FROM AND TO COMMONWEALTH JURISDICTIONS

Memorandum by the Government of Jamaica

The Scheme is regarded as desirable in principle. It is recognised however that the factors determining the economic feasibility of transfer arrangements between any two countries would include:

- i the scope of the scheme;
- ii the likely number of offenders, having regard to the migrant population, who would be transferred in any year to and from each of the participating countries;
- iii the capacity of existing penal institutions in the receiving country to cope with the influx of transferred offenders.

2. Mr. Webb's Paper under consideration has proposed that the transferred offender must be a citizen of the country to which he is transferred. Under the Canada/U.S.A. treaty this includes offenders who are dual nationals of both the sending and the receiving state. Under the Canada/Mexico treaty an offender is excluded from the application of the Scheme, if notwithstanding that he is a citizen of the receiving state, he has been present in the sending state for at least five years with an intent to remain there permanently.

3. It is agreed that as a basic principle the transferred offender should be a citizen of the country to which he is transferred. It is felt however that there should be some limitation of that general applicability of the Scheme to nationals of the receiving country and hence, that the Scheme should not apply to nationals of the receiving country—

- i who have been ordinarily resident in the sending country for a period of two years or more; or
- ii who have never resided in the receiving country.

Dual nationality of both the sending and the receiving country, as a basis for exclusion from the Scheme, was considered but rejected.

4. Paragraph 21 of the Paper refers to the question of the exclusion from the treaties mentioned of certain classes of offences, such as fiscal offences and those affecting sovereign rights, security and other essential interests. The Canada/U.S.A. treaty excludes offences against immigration laws or solely against the military laws of the State. This matter was discussed and the view arrived at that the determining factor, as regards the applicability of the scheme, should be the sentence imposed for the offence and not the type of offence. Hence, it is felt that the scheme should apply to all types of offences although the sending country should have a discretion to refuse to transfer offenders convicted of certain types of offences.

5. Paragraph 34 of the Paper raises the question of the application of the scheme to persons on whom

sentences other than sentences of imprisonment have been imposed. In this connection mention was made of probation orders and compensation orders as well as orders for costs. As regards these matters it is agreed that persons in relation to whom probation orders were made should be included in the scheme. No view is expressed at this stage however, as regards compensation or cost orders.

6. Paragraph 22 of the Paper suggested two alternatives as regards the financial implications of arrangements for the transfer of offenders:

- a) that the government of the country in which the offender was convicted should pay for his journey on the basis that the government will be relieved of the future cost of keeping the offender in prison and of supervising him on parole;
- b) that the government of the country whose national is being repatriated, as the government having the greatest interest in the well-being and rehabilitation of the offender, should stand the cost of transfer.

It appears that both alternatives would be included in the scheme and that it would be a matter for the parties to a transfer treaty to decide which alternative to adopt. On this question it is felt that the responsibility to pay for the transfer should rest with the sending country unless both the sending and the receiving country agree otherwise.

7. Under clause 10(4) of the model Bill, an offender on parole in the sending country at the date of his transfer will be deemed to have been released by the Parole Board of the receiving country. It may well be however that conditions imposed by the Parole authorities in the sending country prove inappropriate in the receiving country. It seems necessary therefore to give the Parole authorities of the receiving country the necessary power to substitute their own parole conditions for those made in the sending country.

8. Clause 7 of the model Bill deals with the re-sentencing of transferred juveniles by the courts of the receiving country. It is not clear how this new sentence will take into account any period of sentence already served in the sending country. This seems to require some clarification.

9. There was discussion of the question of the exercise of the prerogative of mercy, as regards a transferred offender, in the receiving country. It is felt, bearing in mind that the transferred offender will be treated as having been convicted in the receiving country, that the relevant authorities of the receiving country should be able to exercise the prerogative of mercy so as to grant remission of sentence

or respite from the execution of any punishment imposed on the offender, or to substitute a less severe form of punishment for that imposed on the offender, but that the power to pardon should rest exclusively with the authorities of the sending

country. It is also felt that the power to pardon should be the only exercise of the prerogative of mercy which should rest with the sending country. Perhaps these questions could be highlighted for discussion.