

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

Memorandum By The Government Of Uganda

As yet, Uganda has not enacted a law to adopt the 1966 Commonwealth Scheme relating to the Rendition of Fugitive Offenders. However, we have constantly studied this Scheme and we are continuing to do the same to see whether we may, at the appropriate stage adopt it.

As preliminary observations our comments on the review of this Scheme as presented by Professor I. A. Shearer are on the following lines:—

1. *Reciprocal Application Of The Legislation*

In our view, as the terms of the 1966 Scheme are silent on the procedures for its application between those countries that have adopted it, for the sake of uniformity we consider that it would be desirable if a provision could be made for the automatic reciprocal application of the Scheme amongst Commonwealth countries that have adopted it. In the end it would then not be necessary for separate enactments by those states to bring about the application of the Scheme in their respective countries. It would further not be necessary to enact any legislation to define either "Commonwealth country" or a country in which the Scheme operates, hence cutting down on a multiplicity of legislation to be enacted giving effect to the Scheme within these States.

2. *Returnable Offences*

We support any proposal to include offences not listed in the Annex but which are returnable under the laws of both the requesting and the requested states of the Commonwealth. We believe that this would accommodate the desire by some Member States that would wish to see certain other offences included in the Annex. Uganda therefore calls upon the Meeting to consider the inclusion of certain economic crimes as returnable offences under the Scheme. These are crimes that need collective effort to minimize or to combat their occurrences. Such crimes as smuggling, foreign exchange violations, infringement of patents, trade marks and copyrights can only be effectively fought by a concerted and collective action of countries.

3. *Speciality Rule*

While noting some of the advantages mentioned in paragraph 22 of Professor Shearer's paper, there are some practical difficulties that need to be examined—

- (a) In clause 13.1 of the Scheme itself, the Speciality Rule relates to a fugitive "offender who has been returned from one part of the Commonwealth to another part thereof, so long as he has not had a reasonable opportunity of going back to the first mentioned part". It is suggested that this clause assumes that on acquittal or discharge of the prisoner, the prisoner will go back to the state

where he had been extradited from. This may not necessarily be the case. Suppose the prisoner following his discharge or acquittal had a reasonable opportunity of going to a third state (not the state where he had been extradited from) but failed to take such opportunity of going to that state, would the Speciality Rule not apply merely because the opportunity was not of going back to the country where he had been extradited from? For avoidance of doubt, we suggest that the phrase "going back to the first mentioned part" be replaced with the phrase "going to another part of the Commonwealth". This is because it might be possible that such a fugitive offender might not have had a reasonable opportunity of going back to the country where he had been extradited from but rather to another Commonwealth country.

- (b) What duration or time sequence would constitute a reasonable opportunity needs further elaboration especially as the fugitive is in most cases a citizen or a habitual resident of the requesting state. Without any specific guidelines the interpretation of this phrase would vary from state to state or from court to court and in the end it may not serve the interest of any party.
- (c) In clause 13.2 of the Scheme, consideration may be given to include "a returnable offence carrying the same penalty as the offence for which he was returned", as one of the offences for which the returned fugitive offender may be tried in the same manner that a returnable offence of the same nature as the offence for which he was returned is treated. This proposal is made on the understanding that offences of the same nature may not necessarily carry same penalties.

4. *Other Circumstances Precluding Return*

It is agreed that it would seem desirable to add a fourth sub-paragraph to the existing paragraph 3 of clause 9 of the Scheme, but it is asserted however, that such additional condition be confined only to concerns for the health and welfare of the prisoner and to exclude any other personal concerns of the prisoner. This was also the spirit of S.10 of the Fugitive Offenders Act, 1881.

We therefore propose a fourth sub-paragraph as follows:—

- (d) The "state of both the mental and physical health of the fugitive", it would, having regard to all the circumstances...

It is our view that the circumstances in this case is quite precise and its proof calls for a straight forward medical testimony. With respect, Professor Shearer's proposal in particular the phrase, "or other personal

circumstances of the fugitive”, is rather general and wide in scope and its application could run into difficulties. In a way it gives too much protection to the fugitive offender and considering that such a condition is merely to delay rather than a discharge, it should be restricted so as not to prolong or delay the prosecution of the case.

5. *Costs*

The question of costs is considered in paragraph 34 of the paper. In Uganda, extradition proceedings would normally be conducted by the State on behalf of the requesting country. This would be done in the hope that similar assistance would also be rendered by the requested country should Uganda file any extradition proceedings before any of its courts. In other words, Uganda government meets the costs of

extradition applications made within its territory. However, the requesting country would still be free to engage its own lawyer if it so wished.

As to whether the question of costs be written in any revision of the 1966 Scheme, we would prefer to leave this matter to bilateral arrangements between the parties when the occasion arises. A Scheme of this nature should not concern itself with the fine details of costs and disbursements.

6. *Legal Aid*

In any future revision of the Scheme, the question of legal aid to the fugitives should be left open such that it may be made available to the offender under the same conditions as it is provided to the citizens of the requested country.