

## THE POSITION WITH REGARD TO THE RENDITION OF FUGITIVE OFFENDERS IN LESOTHO

Memorandum by the Government of Lesotho

The extradition law of Lesotho contains a provision for the designation of countries for the reciprocal rendition of offenders. The list includes all Commonwealth countries but excludes South Africa.

2. Lesotho's law in this regard restricts returnable offences to those which are triable in the Kingdom, i.e. those which are recognised statutory or common law crimes. It is this provision which provides the bar to the recognition of South Africa as a country with which to extradite. For example so-called "mixed marriages" are an offence in South Africa but not in Lesotho. The plethora of wholly political crimes that are common in South Africa constitute another insurmountable barrier in the path of any proposed negotiation.

3. Extradition cases in which Lesotho was a party were:

- (a) the rendition by Lesotho of its citizen to Swaziland; and
- (b) Lesotho's application to Botswana to extradite a Mosotho wanted in connection with several crimes.

4. The following is a brief outline of the salient provisions of this legislation:

(i) *Reciprocity*

Before the provisions of this legislation can be put into operation, there must exist with the requesting state a reciprocal arrangement for the return of fugitive offenders.

(ii) *Double Criminality Criteria Must be Satisfied*

The alleged offence must be an offence according to the law of Lesotho as well, and must be punishable by imprisonment exceeding twelve months.

(iii) *A Request for a Relevant Offence*

The request for the return of a fugitive must be for the relevant offence in terms of the Act, and such request shall not be granted if the offence in respect of which the surrender is sought:

- (a) is of a political character; or
- (b) the application is an attempt to institute proceedings on account of religion, race, nationality or political opinion.

(iv) *No Request shall be granted unless . . .*

No request shall be granted unless the requesting state has made provision in its own law enabling it to arrange with the surrendering state (Lesotho) that the fugitive criminal shall not be tried for any other offence committed prior to

his surrender other than the offence for which he was requested and subsequently surrendered.

- (v) No person shall be surrendered if the court hearing the application for his return is satisfied that he shall in fact be prejudiced in his trial or that he might be detained or imprisoned on account of his race, religion or political opinion.

### Returnable Offences

5. The Lesotho Fugitive Offenders Act No. 38 of 1967 came into operation on 1st August 1970. In 1972 the schedule of returnable offences was amended to include "acts committed on board or in relation to aircraft which are declared to be offences by any treaty or other international instrument to which Lesotho is a party".

6. In 1977 the schedule was again amended to include "acts of violence committed in relation to the persons or property of an internationally protected person which acts are declared to be offences by any treaty or other international instrument to which Lesotho is a party".

7. In his discussion paper Professor Shearer raises the question whether in the light of unilateral action by some Commonwealth countries to add certain returnable offences, it would not be advisable to revise the 1966 annex of returnable offences and include a general category of "offences established under international conventions to which both the requesting and the requested parts of the Commonwealth are parties. Lesotho would have no objection to such addition as it would automatically include offences which will in future be created by any international conventions.

### Citizenship of the Fugitive

8. The Lesotho Fugitive Offenders Act makes it clear that the surrender of a Lesotho citizen for act committed outside Lesotho is on a discretionary basis.

Where a request for the return of a person claimed has been refused by reason of the fact that the person so claimed is a citizen of Lesotho he can be prosecuted in Lesotho with the approval of the Attorney-General. Under normal circumstances Lesotho Courts would have no jurisdiction for acts committed outside Lesotho but section 13B(1) of the Act provides jurisdiction to the courts for acts done outside Lesotho which constitute an offence for which a citizen would be liable to be returned.