

TRANSFER OF CONVICTED OFFENDERS

Written addendum to Guyana's intervention

Countries with Bills of Rights may need to consider possible Constitutional dimensions involved in giving effect to a transfer scheme.

In the case of Guyana and of countries with similar Constitutions, there are specific exceptions in the personal liberty clause and the freedom of movement clause which can accommodate the scheme.

One problem may, however, arise in so far as it may be sought to provide for a granting of clemency by the receiving State to a prisoner convicted abroad, but received by it. Take, for instance, section 90 of the Jamaican Constitution of 1962. This limits the prerogative of mercy to cases of persons convicted of

any offence against the laws of Jamaica. Prima facie that power, as it stands, is not exerciseable in relation to the case of a transferred prisoner. If it is sought to solve the problem by enacting ordinary law to deem the foreign conviction to be a local one, this may be open to the objection that it in effect amounts to an unauthorised amendment of the Constitution.

Perhaps the solution will be either to amend the constitution or to provide by ordinary statute for a clemency scheme similar to but separate from the constitutional one. We do wish to point out that we have not yet considered this aspect of the matter fully, and are consequently merely inviting attention to possible problems and to possible solutions.