

**COMMUNIQUÉ OF THE LAW MINISTERS' MEETING  
KINGSTOWN, ST VINCENT AND THE GRENADINES  
18 - 21 NOVEMBER 2002**

1. Commonwealth Law Ministers met in Kingstown, St Vincent & the Grenadines, from Monday 18 to Thursday 21 November 2002. The Meeting was chaired by the Honourable Judith Jones-Morgan, Attorney General of St Vincent & the Grenadines. The Honourable Dr Ralph Gonsalves, Prime Minister and Minister for Legal Affairs of St Vincent & the Grenadines served as Co-Chair of the Meeting and took the chair for certain items.

2. A striking feature of the agenda of the Meeting was the extent to which it advanced the principles set out by Commonwealth Heads of Government in their Coolum Declaration issued in March 2002. In that declaration, Commonwealth Heads of Government reaffirmed their commitment to democracy, the rule of law, good governance, freedom of expression and the protection of human rights. They committed themselves to respect for diversity and human dignity and reiterated their implacable opposition to all forms of discrimination. They were determined to work to eliminate poverty and promote people-centred and sustainable development and to strive for international peace and security, the rule of international law, and the elimination of terrorism.

3. Legal issues are central to this vision of the Commonwealth and the progress made during this Meeting underlined the great importance of the regular meetings of Law Ministers and of their Senior Officials in taking forward shared Commonwealth concerns.

**DEMOCRACY AND HUMAN RIGHTS**

4. Law Ministers reaffirmed the importance of the protection and promotion of the fundamental rights of citizens. They emphasised that mere 'paper rights' were not enough; their practical implementation was crucial. This was accomplished in their countries through a range of different mechanisms, including Human Rights Commissions, parliamentary committees and similar national agencies, the involvement of NGOs and the wider civil society, and the opportunities for individual recourse to legal remedies.

5. Ministers commended the introduction and continued development of mechanisms appropriate to the resources, culture and system of government of each Commonwealth member country to ensure that government legislative and policy proposals did not derogate from fundamental rights. They asked the Commonwealth Secretariat to assist in the training of national agencies, such as the police, to entrench respect for human rights in all their operations.

6. Law Ministers affirmed their commitment to the promotion of the fundamental Commonwealth values of freedom of assembly, association and expression, and welcomed the contribution made by the Commonwealth Expert Group that has developed guidelines on best practice in this field. Ministers recognised that there was always a need to balance individual rights with the responsibility of governments to guarantee the right of their citizens to security and public order. The Meeting acknowledged that the advancement of human rights had to be pursued hand in hand with development; economic and social rights were important considerations in that context.

7. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power seeks to ensure that the victims of crime receive proper consideration in national legal systems and proper support from law enforcement and other services. Law Ministers mandated Senior Officials to finalise their work on a Commonwealth Statement of Basic Principles of Justice for Victims of Crime and present a draft to Ministers for consideration at their next meeting.

#### **LATIMER HOUSE GUIDELINES ON PARLIAMENTARY SUPREMACY AND JUDICIAL INDEPENDENCE**

8. Law Ministers gave detailed consideration to a set of Guidelines on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights, drawn up by a conference sponsored by the Commonwealth Parliamentary Association, the Commonwealth Legal Education Association, the Commonwealth Magistrates and Judges Association and the Commonwealth Lawyers Association which was held at Latimer House, London, in June 1998 and revised by those Associations after their initial consideration by Law Ministers in Port of Spain in 1999 and further work by Senior Officials. Ministers fully endorsed the importance of the issues addressed in this document. They hoped that it would be possible for Commonwealth Heads of Government to agree a statement of principles which could assist reflection on those issues. They judged, however, that the text before them required further work before it could be submitted to Heads of Government. The Meeting invited the Commonwealth Secretary-General to convene a small group of Law Ministers to work with the Commonwealth Secretariat to review and develop principles based on the Latimer House Guidelines that take into account all the points made in the discussion at the Meeting. The resulting text received from the Secretary General's group is to be circulated to Law Ministers for approval before being submitted, through appropriate channels to Heads of Government.

#### **TERRORISM**

9. Sharing the determination expressed by Commonwealth Heads of Government at their 2002 meeting in Australia to combat terrorism, Ministers adopted the special statement which is Annex A to this Communiqué.

10. Ministers reported the progress that had been made in their countries to implement UN Security Council Resolution 1373 and the Commonwealth Plan of Action on Terrorism. They recognised that terrorism is a threat to small as well as large Commonwealth jurisdictions. They acknowledge that a proper response to this threat would strain the human and financial capacity of the smaller member countries. The meeting also noted the observation made on the need to identify the root causes of terrorism. Warm appreciation was expressed for the work of the Commonwealth Secretariat in providing guidance on the measures required for implementation of the UN Security Council Resolution and in preparing model legislative provisions and "implementation kits" for the twelve existing counter-terrorism conventions. They welcomed the holding of regional workshops on the development of legislation and the training of law enforcement agencies with particular focus on terrorist financing.

11. The Meeting underlined its belief that effective international co-operation was central to the legal response to terrorism. Ministers took note of the request by Heads of Government that member countries review national laws implementing the London Scheme on extradition

within the Commonwealth. They agreed to amend in accordance with international law, the Scheme's provisions on the political offence exception to ensure that extradition of a person for alleged terrorist activity could not be refused on that basis.

12. Law Ministers identified two critical issues. The first was the threat posed by the misuse of technology and they asked the Commonwealth Secretariat to undertake further work. The second was the need to develop law enforcement networks for information exchange and cooperation and asked the Commonwealth Secretariat to arrange relevant training programmes.

13. Law Ministers recognised that their 1986 Harare Scheme for Mutual Assistance in Criminal Matters was crucial to the Commonwealth's efforts to combat terrorism. They acknowledged that all member countries must have in place comprehensive mutual assistance legislation. Law Ministers asked their Senior Officials to consider amendments to the Harare Scheme to strengthen it by including new provisions relating to the interception of communications (including computer communications) and to the preservation of computer data. They also asked Senior Officials to develop further proposals to enhance the Scheme's provisions on the seizure and forfeiture of criminal assets and encourage asset-sharing in ways which could lead to better compensation for the victims of terrorism. The Meeting asked the Commonwealth Secretariat to provide model legislative provisions dealing with the seizure and forfeiture of terrorist assets and for civil forfeiture regimes.

14. Law Ministers tasked their Senior Officials with considering how member countries could be assisted with training and capacity building in critical enforcement contexts such as border control and the prevention of counterfeiting of identity papers and travel documents. They were also asked to deal with the question of appropriate measures to prevent the abuse of the refugee system by those who commit or plan terrorist acts.

#### **COMMONWEALTH CO-OPERATION IN THE ADMINISTRATION OF CRIMINAL JUSTICE**

##### **(a) The London Scheme on Extradition within the Commonwealth**

15. The Commonwealth Plan of Action on Terrorism encouraged Law Ministers to give priority consideration to revision to the London Scheme for Rendition of Fugitive Offenders which under its new title is to be the London Scheme for Extradition within the Commonwealth. Law Ministers revised the Scheme to modernise and make more effective what has, for almost 40 years, been an important feature of Commonwealth co-operation. Apart from technical changes (adjustments in terminology to reflect changes in usage since the Scheme was first adopted in 1966) and the amendment concerning the political offence exception, the revision makes a number of significant amendments:

- The provisions dealing with double criminality are simplified and made consistent with the practice followed generally in the international community that dual criminality is a pre-condition for extradition.
- New provisions deal with extra-territorial offences which feature in a number of international conventions (including conventions dealing with torture, terrorism and drug-trafficking), and which are increasingly created in national legislation dealing with such matters as computer crime. The revised Scheme allows for refusal, at the discretion of the requested country, in cases of unacceptable jurisdictional claims.

- Provision is also included to allow the requested country to seek additional information where the extradition request is insufficient.
- The mandatory and discretionary grounds for refusing extradition are restated to give greater clarity. Recognising that persecution on the basis of sex is an important issue, Ministers have decided to add this as a ground for refusal of extradition.
- To minimise the possibility that a person whose extradition is refused on the ground that the person is a national or permanent resident of a Commonwealth country and may therefore wholly escape prosecution, the Scheme is amended to reflect recent international practice.

The Scheme as amended forms Annex B to this Communiqué.

**(b) The Harare Scheme**

16. Law Ministers agreed to make one immediate amendment to the Harare Scheme on Mutual Assistance in Criminal Matters, to clarify the position relating to the protection against self-incrimination and the process for determining questions of legal privilege. The Meeting asked that consideration be given by Senior Officials in the context of the review of the Scheme, to an amendment to encourage the provision of feedback to a country that had rendered assistance.

**LAW AND TECHNOLOGY**

17. In the course of their Meeting, Ministers agreed to commend a number of Model Bills for use by those member countries seeking assistance in the development of an appropriate legislative framework in particular areas. Three of these had been developed under a mandate given to the Commonwealth Secretariat for work on Law and Technology. The Model Law on Computer and Computer Related Crime takes into account recent international initiatives in this field, in particular, the Council of Europe Convention on Cyber Crime, and provides law enforcement agencies with effective and modern tools. The Model Law on Electronic Commerce responds to calls by Law Ministers at their last meeting in Port of Spain to develop legal rules which place no obstacles to countries taking full advantage of new technology. The model relies heavily on the UNCITRAL Model Law and provides a flexible and technologically neutral set of draft provisions. The Model Law on Electronic Evidence was specifically requested by Law Ministers and Attorneys General of Small Commonwealth Jurisdictions at their Meeting in 2000, to adopt system reliability as the basic test for admissibility of evidence. It also adapts the general rules of evidence to meet new technological possibilities.

18. Law Ministers mandated Senior Officials to keep the Model Law on Computer and Computer related Crime under review to ensure that the law is kept up to date with regard to emerging technology and investigative techniques. They asked the Commonwealth Secretariat to work with Senior Officials on other aspects of e-governance and also on the legal implications of technological developments in broadcasting. They supported the request of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions that the Commonwealth Secretariat monitor the work being done in the OECD on the issue of the taxation of e-commerce and provide advice to member countries on developments in this area.

## **THE LAW OF EVIDENCE**

19. Law Ministers welcomed the preparation, in response to requests made at their Meeting in Port of Spain and also by Law Ministers and Attorneys General of Small Commonwealth Jurisdictions, of a set of model legislative provisions dealing with a number of aspects of the Law of Evidence. The Meeting commended the Bill prepared by experts and Senior Officials as a valuable resource for those countries wishing to modernise their evidence laws. The Commonwealth Secretariat was asked to continue work on the law of evidence and to pay special attention to the operation of these laws to criminal proceedings. Senior Officials were asked to bring a further report to the next Law Ministers' Meeting.

## **PRIVACY AND FREEDOM OF INFORMATION**

20. The Meeting also considered three inter-related model Bills namely:-

- i. Freedom of Information Bill;
- ii. Privacy Bill;
- iii. Protection of Personal Information

The Freedom of Information Bill was prepared to assist those countries desiring to give effect to the Commonwealth Freedom of Information Principles set out by Commonwealth Heads of Government. Law Ministers acknowledged that such legislation could impose significant burdens on governments but recognised that the right to access information was an important aspect of democratic accountability and promoted transparency and encouraged full participation of citizens in the democratic process. The Privacy Bill is designed to protect personal information held by Governments and other public authorities and to ensure that such information is collected only for appropriate purposes and by appropriate means. Law Ministers commended both these model Bills as useful tools which could be adapted to meet the particular constitutional and legal positions in member countries. They acknowledged that the implementation of these laws had to take into account the resources available in each member country.

21. Law Ministers decided that the third model Bill on the Protection of Personal Information needed more reflection on the balance between the protection of privacy and the legitimate needs of Governments in respect of law enforcement and national security. They asked the Commonwealth Secretariat, in consultation with Senior Officials, to prepare an amended draft which would be considered at the next plenary meeting of Senior Officials.

## **STRATEGIES FOR ENHANCING DEMOCRACY BY ELIMINATING LEGAL BARRIERS TO DEVELOPMENT**

22. The 1999 Commonwealth Fancourt Declaration called for 'people-centred development'. Law Ministers acknowledged their important role in contributing to the development of a legal environment that fostered development. They expressed their appreciation for a stimulating and well-researched paper from the Commonwealth Secretariat which examined a range of inter-related issues concerning land, competition law, company law and corporate governance.

23. In their full debate on this topic, Law Ministers focused on issues concerning land, recognising the strong link between land and development and poverty reduction. Land issues

were of great significance in the history of Commonwealth countries and remain extremely sensitive in national political debates. Some member countries acknowledged that the land issue constitutes a veritable time bomb because of the tensions arising from human and historical factors. To stress the importance of the role of Law Ministers in addressing the relationship between land and development, they adopted the Kingstown Declaration which forms Annex C to this Communiqué.

24. The Meeting recognised that many Commonwealth countries found that independence did not in itself bring justice in terms of land rights. Some Governments face a major task of land reform if progress is to be made in creating a stable property-owning democracy. Such appropriate land reform, in some member countries, consumes financial and human resources. Where financial resources were available to compensate groups of people for the wrongful seizure of land in the past, there was still an issue as to the use of those resources, with a tension between the claims of commercial development and the more communal aspects of the culture of those groups.

25. The management of the multitude of land tenure systems found in some Commonwealth countries presents a major challenge to governments seeking to respond to the demands of modern society. Whilst significant progress has been made in recognising the rights of women and other disadvantaged groups to hold land in some Commonwealth countries, Ministers acknowledged that much more work needs to be done. The commercialisation of land could pose serious transitional difficulties to those who had occupied land for subsistence agriculture. The registration of title needed to be accurate and accessible and to take account of customary and traditional patterns of land ownership.

26. Law Ministers were able to report progress in addressing these issues through modernised constitutional provisions, major pieces of legislation and the work of Land Commissions and similar bodies. The diverse experience of Commonwealth countries precluded any single set of solutions, but the Meeting recognised the value of sharing the experience of Governments as each worked to address the circumstances of its own country. Law Ministers asked the Commonwealth Secretariat to continue its work in this area, and indicated their wish to keep this matter in their future agenda.

27. The Meeting considered a draft Model Law on Competition. Some Law Ministers recognised that traditional competition laws addressed the commercial environment in developed countries, and stressed the need for the drawing up of competition laws that take into account the economic reality of developing countries. Law Ministers asked the Commonwealth Secretariat, in consultation with Senior Officials, to examine the experiences of developing countries with a view to dealing with those situations in which a section of the community had in the past, been systematically excluded from areas of commercial activity. They acknowledged that existing competition laws were reflected in WTO policies and asked that the conflict between the interests of developing countries and existing WTO norms be addressed. They expressed their intention to consider a revised model law on competition at their next meeting.

28. A round table discussion enabled Law Ministers to share a range of current concerns.

**(a) Corruption**

29. Law Ministers recognised that political leaders had to ensure that Government, the public service and law enforcement agencies were honest, competent and incorruptible. This was all the more important at a time when there were frequent reports of fraud and corruption on an enormous scale in the major corporations of powerful nations. It was possible even for small states to mount successful prosecutions for corruption offences by officers of multinational corporations, and arrangements for mutual assistance such as the Harare scheme could support such law enforcement efforts. Further, Governments should be encouraged to facilitate the repatriation of the proceeds of corruption offences once due process requirements have been met.

30. In addressing the issue of corruption in the judiciary, Law Ministers noted the conclusions of a Colloquium held in Limassol, Cyprus in June 2002. They agreed that a judicial system free from corruption was an essential component of a truly democratic country. Judicial independence did not imply an absence of accountability and there was a need for further work on the development of appropriate mechanisms, reflecting both proper independence and due accountability, for dealing with cases of judicial corruption or misconduct.

**(b) Legislative drafting**

31. Despite many initiatives over the years, there continue to be problems in many parts of the Commonwealth in attracting, training and retaining legal drafting staff. The quality of legislation, which often addresses matters of great complexity, suffered and law reform programmes could be delayed. The length of the existing training courses was seen as disadvantageous, and the hope was expressed that shorter courses could be arranged to supplement in-house training. The Meeting noted that the Commonwealth Secretariat was working with the Commonwealth of Learning to expand its distance learning programme and that an on-line version would soon become available. Law Ministers heard with pleasure of bilateral co-operation between some countries and an offer made at the Meeting on behalf of the Lord Advocate of a training placement in Scotland. They hopes that long-term solutions could be found to fund new initiatives and improved terms of service, possibly by the creation of a trust fund administered by the Secretariat and voluntarily contributed to by member countries.

**(c) Intellectual property: protecting traditional and cultural knowledge**

32. Much interest was expressed in this issue. Law Ministers heard of the action by the Pacific Forum island countries to agree a Model law on the protection of traditional knowledge and expressions of culture, and its continuing work on a Model law on the protection of traditional ecological knowledge and practices. Law Ministers invited WIPO to consider the need to have international recognition and protection of traditional knowledge and related rights. Law Ministers shared the view that the wider subject of intellectual property in the international arena was one which could very usefully be addressed in their future work. It was of particular concern to smaller jurisdictions.

**(d) Regional courts**

33. A number of regional courts have already been established and others are in contemplation. They have varying jurisdiction, original and appellate, and may have authority to give authoritative interpretations of regional agreements. Some courts were replacing the

Judicial Committee of the Privy Council. This was seen as another topic which could be examined with a view to sharing experience on the operation of these courts and facilitating the transition to new appellate courts so as to ensure uniformly high standards of justice. Attention was drawn to the importance of Commonwealth countries ratifying the Rome Treaty establishing the International Criminal Court.

**(e) United States Patriot Act**

34. Law Ministers noted the provisions of recent legislation in the United States of America which authorizes the seizure of, and forfeiture actions in respect of, funds held in correspondent accounts in the United States of foreign banks. The legislation applies United States law to govern the forfeiture of funds corresponding in amount to those deposited in accounts in the foreign bank's own country, whether or not there be any traceable connection between those funds and the funds held in the correspondent account. The foreign bank cannot rely on the innocent owner defence. Ministers noted that the provisions of the US legislation have the potential to circumvent mutual legal assistance treaties between member countries and the United States.

35. Law Ministers recognised that the application of the Patriot Act subpoena power could place a bank in a situation of conflicting legal obligations and the loss of the correspondent account relationship and expressed their belief that the loss of such relationships can have significant effects on national economies, particularly those of small jurisdictions. They acknowledged and shared the concerns of Law Ministers and Attorneys-General of Small Commonwealth Jurisdictions that banks operating in their territories retain their status as correspondent banks while at the same time being afforded appropriate national protection.

**(f) Freedom of the Press**

36. The hope was expressed that the legal issues concerning the freedom of the Press, especially in relation to legal proceedings, could be examined in the future work of the Commonwealth Secretariat.

**COMMONWEALTH LAW CONFERENCE**

37. The Attorney-General of Australia drew the attention of the Meeting to the Commonwealth Law Conference due to take place in Melbourne in April 2003. This Conference is attended by many Ministers, judges, academics and legal practitioners. The Australian Attorney-General offered to host a gathering of Law Ministers during the Conference. It was agreed that the Secretary-General would canvass all Law Ministers as to how the opportunity could be given to them for much needed inter-sessional dialogue.

**LAW MINISTERS' MEETINGS**

38. This Meeting has made a very significant contribution to the advancement of core Commonwealth values of democracy, the rule of law, human rights, and sustainable development in a world of peace and security. Law Ministers are convinced that their regular Meetings are essential to maintain progress in carrying forward the priorities identified by

Commonwealth Heads of Government, and recommend that Heads of Government ensure that Law Ministers' Meetings continue to be a regular feature of Commonwealth activity.

#### **NEXT LAW MINISTERS MEETING**

39. Law Ministers accepted with pleasure the invitation by the government of Ghana to host their next meeting which is due to be held in 2005. They look forward to gathering in Accra and continuing their important work in support of Commonwealth values.

#### **APPRECIATION**

40. Law Ministers share the pride of St Vincent and the Grenadines at being the smallest Commonwealth member country ever to host a ministerial Meeting. They record their admiration and gratitude for the success of all the arrangements which had been made, and offer their warmest thanks to the Prime Minister, Government and people of St Vincent and the Grenadines for their friendly welcome, generous hospitality and attention to the Meeting's needs. They express their appreciation for the gracious chairing of their discussions by the Prime Minister and the Attorney General of St Vincent and the Grenadines and for the work of the Commonwealth Secretariat in preparation for and support of the Meeting.

Kingstown  
St Vincent and the Grenadines  
21 November 2002

## COMMONWEALTH KINGSTOWN STATEMENT ON TERRORISM

Commonwealth Law Ministers recognize the need for legal reform in support of the Commonwealth Plan of Action on Terrorism developed by the Commonwealth Committee on Terrorism and endorsed by Heads of Government at their meeting in Coolum in March 2002.

Law Ministers condemn terrorism in all its forms. They stress that terrorism constitutes a threat to all countries and their peoples irrespective of faith, nationality, culture or community.

From a legal perspective Law Ministers acknowledge that common and combined action is essential in the fight against terrorism and recognize that Commonwealth countries are collectively as vulnerable as the weakest link amongst them. They noted the Statement of the Heads of Government in Coolum that: "There is no justification for terrorism. While terrorist activities are unconscionable and should be eradicated forthwith, the challenge is to understand the root causes of those despicable acts and to deal with them appropriately."

Law Ministers resolve to ensure that no Commonwealth country be used as a safe haven for terrorists and that no terrorist is able to evade extradition by invoking the political offence exception to extradition. In accordance with international law, they therefore removed from the London Scheme for Extradition the political offence exception to extradition when a fugitive is accused of a terrorism crime, and urged their governments to consider amending their domestic legislation as soon as possible.

Law Ministers note the commitment of Heads of Government in their statement of October 2001 to implement fully United Nations Security Council Resolution 1373 and emphasize the critical importance of international cooperation in combating terrorism, including terrorist financing. In this regard they reaffirm their commitment to strengthen the existing Commonwealth schemes for cooperation and to ensure their implementation in accordance with their domestic legal framework.

Law Ministers reaffirm their commitment to work together and assist each other to strengthen the capacity of Members to combat terrorism and protect and ensure the security of all peoples.

**THE LONDON SCHEME FOR EXTRADITION WITHIN THE COMMONWEALTH**  
*incorporating the amendments agreed at Kingstown in November 2002.*

1. (1) The general provisions set out in this Scheme will govern the extradition of a person from the Commonwealth country, in which the person is found, to another Commonwealth country, in which the person is accused of an offence.
- (2) Extradition will be precluded by law, or be subject to refusal by the competent executive authority, only in the circumstances mentioned in this Scheme.
- (3) For the purpose of this Scheme a person liable to extradition as mentioned in paragraph (1) is described as a person sought and each of the following areas is described as a separate country:
  - (a) each sovereign and independent country within the Commonwealth together with any dependent territories which that country designates, and
  - (b) each country within the Commonwealth, which, though not sovereign and independent, is not a territory designated for the purposes of the preceding sub-paragraph.

**EXTRADITION OFFENCES AND DUAL CRIMINALITY RULE**

2. (1) A person sought will only be extradited for an extradition offence.
- (2) For the purpose of this Scheme, an extradition offence is an offence however described which is punishable in the requesting and requested country by imprisonment for two years or a greater penalty.
- (3) In determining whether an offence is an offence punishable under the laws of both the requesting and the requested country, it shall not matter whether:
  - (a) the laws of the requesting and requested countries place the acts or omissions constituting the offence within the same category of offence or denominate the offence by the same terminology;
  - (b) under the laws of the requesting and requested countries the elements of the offence differ, it being understood that the totality of the acts or omissions as presented by the requesting country constitute an offence under the laws of the requested country.
- (4) An offence described in paragraph (2) is an extradition offence notwithstanding that the offence:
  - (a) is of a purely fiscal character; or
  - (b) was committed outside the territory of the requesting country where extradition for such offences is permitted under the law of the requested country.

## **WARRANTS, OTHER THAN PROVISIONAL WARRANTS**

3. (1) A person sought will only be extradited if a warrant for arrest has been issued in the country seeking extradition and either -
  - (a) that warrant is endorsed by a competent judicial authority in the requested country (in which case, the endorsed warrant will be sufficient authority for arrest), or
  - (b) a further warrant for arrest is issued by the competent judicial authority in the requested country, other than a provisional warrant issued in accordance with clause 4.
- (2) The endorsement or issue of a warrant may be made conditional on the competent executive authority having previously issued an order to proceed.

## **PROVISIONAL WARRANTS**

4. (1) Where a person sought is, or is suspected of being, in or on the way to any country but no warrant has been endorsed or issued in accordance with clause 3, the competent judicial authority in the destination country may issue a provisional warrant for arrest on such information and under such circumstances as would, in the authority's opinion, justify the issue of a warrant if the extradition offence had been an offence committed within the destination country.
- (2) For the purposes of paragraph 1, information contained in an international notice issued by the International Criminal Police Organisation (INTERPOL) in respect of a person sought may be considered by the authority, either alone or with other information, in deciding whether a provisional warrant should be issued for the arrest of that person.
- (3) A report of the issue of a provisional warrant, with the information in justification or a certified copy thereof, will be sent to the competent executive authority.
- (4) The competent executive authority who receives the information under paragraph (3) may decide, on the basis of that information and any other information which may have become available, that the person should be discharged, and so order.

## **COMMITTAL PROCEEDINGS**

5. (1) A person arrested under a warrant endorsed or issued in accordance with clause 3(1), or under a provisional warrant issued in accordance with clause 4, will be brought, as soon as practicable, before the competent judicial authority who will hear the case in the same manner and have the same jurisdiction and powers, as nearly as may be, including power to remand and admit to bail, as if the person were charged with an offence committed in the requested country.
- (2) The competent judicial authority will receive any evidence which may be tendered to show that the extradition of the person sought is precluded by law.
- (3) Where a provisional warrant has been issued in accordance with clause 4, but within such reasonable time as the competent judicial authority may fix:

- (a) a warrant has not been endorsed or issued in accordance with clause 3(1), or
  - (b) where such endorsement or issue of a warrant has been made conditional on the issuance of an order to proceed, as mentioned in clause 3(2), no such order has been issued,
- the competent judicial authority will order the person to be discharged.
- (4) Where a warrant has been endorsed or issued in accordance with 3(1) the competent judicial authority may commit the person to prison to await extradition if -
    - (a) such evidence is produced as establishes a prima facie case that the person committed the offence; and
    - (b) extradition is not precluded by law
 but, otherwise, will order the person to be discharged.
  - (5) Where a person sought is committed to prison to await extradition as mentioned in paragraph (4), notice of the fact will be given as soon as possible to the competent executive authority of the country in which committal took place.

### **OPTIONAL ALTERNATIVE COMMITTAL PROCEEDINGS**

- 6. (1) Two or more countries may make arrangements under which clause 5(4) will be replaced by paragraphs 2-4 of this clause or by other provisions agreed by the countries involved.
- (2) Where a warrant has been endorsed or issued as mentioned in clause 3(1), the competent judicial authority may commit the person sought to prison to await extradition if -
  - (a) the contents of a record of the case received, whether or not admissible in evidence under the law of the requested country, and any other evidence admissible under the law of the requested country, are sufficient to warrant a trial of the charges for which extradition has been requested; and
  - (b) extradition is not precluded by law,
 but otherwise will order that the person be discharged.
- (3) The competent judicial authority will receive a record of the case prepared by an investigating authority in the requesting country if it is accompanied by -
  - (a) an affidavit of an officer of the investigating authority stating that the record of the case was prepared by or under the direction of that officer, and that the evidence has been preserved for use in court; and
  - (b) a certificate of the Attorney General of the requesting country that in his or her opinion the record of the case discloses the existence of evidence under the law of the requesting country sufficient to justify a prosecution.
- (4) A record of the case will contain -
  - (a) particulars of the description, identity, nationality and, to the extent available, whereabouts of the person sought;
  - (b) particulars of each offence or conduct in respect of which extradition is requested, specifying the date and place of commission, the legal definition of the offence and the relevant provisions in the law of the requesting country, including a certified copy of any such definition in the written law of that country;

- (c) the original or a certified copy of any document of process issued in the requesting country against the person sought for extradition ;
- (d) a recital of the evidence acquired to support the request for extradition; and
- (e) a certified copy, reproduction or photograph of exhibits or documentary evidence.

#### **SUPPLEMENTARY INFORMATION**

- 7. (1) If it considers that the material provided in support of a request for extradition is insufficient, the competent authority in the requested country may seek such additional information as it considers necessary from the requesting country, to be provided within such reasonable period of time as it may specify.
- (2) Where a request under paragraph (1) is made after committal proceedings have commenced the competent judicial authority in the requested country may grant an adjournment of the proceedings for such period as that authority may consider reasonable for the material to be furnished, which aggregate period should not exceed 60 days.

#### **CONSENT ORDER FOR RETURN**

- 8. (1) A person sought may waive committal proceedings, and if satisfied that the person sought has voluntarily and with an understanding of its significance requested such waiver, the competent judicial authority may make an order by consent for the committal of the person sought to prison, or for admission to bail, to await extradition.
- (2) The competent executive authority may thereafter order extradition at any time, notwithstanding the provisions of clause 9.
- (3) The provisions of clause 20 shall apply in relation to a person sought extradited under this clause unless waived by the person.

#### **RETURN OR DISCHARGE BY EXECUTIVE AUTHORITY**

- 9. After the expiry of 15 days from the date of the committal of a person sought, or, if a writ of habeas corpus or other like process is issued, from the date of the final decision of the competent judicial authority on that application (whichever date is the later), the competent executive authority will order extradition unless it appears to that authority that, in accordance with the provisions set out in this Scheme, extradition is precluded by law or should be refused, in which case that authority will order the discharge of the person.

#### **DISCHARGE BY JUDICIAL AUTHORITY**

- 10. (1) Where after the expiry of the period mentioned in paragraph (2) a person sought has not been extradited an application to the competent judicial authority may be made by or on behalf of the person for a discharge and if -
  - (a) reasonable notice of the application has been given to the competent executive authority, and

- (b) sufficient cause for the delay is not shown, the competent judicial authority will order the discharge of the person.
- (2) The period referred to in paragraph (1) will be prescribed by law and will be one expiring either -
  - (a) not later than two months from the person's committal to prison, or
  - (b) not later than one month from the date of the order for extradition made in accordance with clause 9.

## **HABEAS CORPUS AND REVIEW**

- 11. (1) It will be provided that an application may be made by or on behalf of a person sought for a writ of habeas corpus or other like process.
- (2) It will be provided that an application may be made by or on behalf of the government of the requesting country for review of the decision of the competent judicial authority in committal proceedings.

## **POLITICAL OFFENCE EXCEPTION**

- 12. (1) (a) The extradition of a person sought will be precluded by law if the competent authority is satisfied that the offence is of a political character;
- (b) Sub paragraph (a) shall not apply to:
  - (i) offences established under any multilateral international convention to which the requesting and the requested countries are parties, the purpose of which is to prevent or repress a specific category of offences and which imposes on the parties an obligation either to extradite or to prosecute the person sought;
  - (ii) offences for which the political offence or offence of political character ground of refusal is not applicable under international law.
- (c) If the competent executive authority is empowered by law to certify that the offence of which a person sought is accused is an offence of a political character, and so certifies in a particular case, the certificate will be conclusive in the matter and binding upon the competent judicial authority for the purposes mentioned in this clause.
- (2) (a) A country may provide by law that certain acts shall not be held to be offences of a political character including:
  - (i) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State or any related offence (i.e. aiding and abetting, or counselling or procuring the commission of, or being an accessory before or after the fact to, or attempting or conspiring to commit such an offence),
  - (ii) an offence against the life or person of a Head of Government, or of a Minister of a Government, or any related offence as described above,
  - (iii) murder, or any related offence as described above,

- (iv) any other offence that a country considers appropriate.
  - (b) A country may restrict the application of any of the provisions made under sub paragraph (b) to a request from a country which has made similar provisions in its laws.
13. (1) The extradition of a person sought also will be precluded by law if -
- (a) it appears to the competent authority that:
    - (i) the request for extradition although purporting to be made for an extradition offence was in fact made for the purpose of prosecuting or punishing the person on account of race, religion, sex, nationality or political opinions, or
    - (ii) that the person may be prejudiced at trial or punished, detained or restricted in personal liberty by reason of race, religion, sex, nationality or political opinions.
  - (b) the competent authority is satisfied that by reason of
    - (i) the trivial nature of the case, or
    - (ii) the accusation against the person sought not having been made in good faith or in the interests of justice, or
    - (iii) the passage of time since the commission of the offence, or
    - (iv) any other sufficient cause,
 it would, having regard to all the circumstances be unjust or oppressive or too severe a punishment for the person to be extradited or, as the case may be, extradited before the expiry of a period specified by that authority.
  - (c) the competent authority is satisfied that the person sought has been convicted (and is neither unlawfully at large nor at large in breach of a condition of a licence to be at large), or has been acquitted, whether within or outside the Commonwealth, of the offence for which extradition is sought.

#### **DISCRETIONARY BASIS FOR REFUSAL OF EXTRADITION**

14. (1) A request for extradition may be refused in the discretion of the competent authority of the requested country if -
- (a) judgment in the requesting country has been rendered in circumstances where the accused was not present; and
    - (i) no counsel appeared for the accused; or
    - (ii) counsel instructed and acting on behalf of the accused was not permitted to participate in the proceedings;
  - (b) the offence for which extradition is requested has been committed outside the territory of either the requesting or requested country and the law of the requested country does not enable it to assert jurisdiction over such an offence committed outside its territory in comparable circumstances;

- (c) the person sought has, under the law of either the requesting [or requested] country become immune from prosecution or punishment because of [any reason, including] lapse of time or amnesty;
- (d) the offence is an offence only under military law or a law relating to military obligations.

### **DISCRETIONARY GROUNDS OF REFUSAL**

- 15. (1) Any country may adopt the provisions of this clause but, where they are adopted, any other country may in relation to the first country reserve its position as to whether it will give effect to the other clauses of the Scheme or will give effect to them subject to such exceptions and modifications as appear to it to be necessary or expedient or give effect to any arrangement made under clause 23(a).
- (2) A request for extradition may be refused if the competent authority of the requested country determines -
  - (a) that upon extradition, the person is likely to suffer the death penalty for the extradition offence and that offence is not punishable by death in the requested country; and
  - (b) it would be, having regard to all the circumstances of the case and to the likelihood that the person would be immune from punishment if not extradited, unjust or oppressive or too severe a punishment for extradition to proceed.
  - (c) In determining under paragraph (a), whether a person would be likely to suffer the death penalty, the executive authority shall take into account any representations which the authorities of the requesting country may make with regard to the possibility that the death penalty, if imposed, will not be carried out.
- (3) (a) A request for extradition may be refused on the basis that the person sought is a national or permanent resident of the requested country.
- (b) For the purpose of sub paragraph a, a person shall be treated as a national of a country that is -
  - (i) a Commonwealth country of which he or she is a citizen; or
  - (ii) a country or territory his or her connection with which determines national status.
- (c) The assessment under paragraph (b) should be at the date of the request.

### **ALTERNATIVE MEASURES IN THE CASE OF REFUSAL**

- 16 (1) For the purpose of ensuring that a Commonwealth country cannot be used as a haven from justice, each country which reserves the right to refuse to extradite nationals or permanent residents in accordance with clause 15 paragraph (3), will take, subject to its constitution, such legislative action and other steps as may be necessary or expedient in the circumstances to facilitate the trial or punishment of a person whose extradition is refused on that ground.
- (2) The legislative action necessary to give effect to paragraph (1) may include –

- (a) providing that the case be submitted to the competent authorities of the requested country for prosecution;
- (b) permitting:
  - (i) the temporary extradition of the person to stand trial in the requesting country on condition that, following trial and sentence, the person is returned to the requested country to serve his or her sentence; and
  - (ii) the transfer of convicted offenders; or
- (c) enabling a request to be made to the relevant authorities in the requesting country for the provision to the requested country of such evidence and other information as would enable the authorities of the requested country to prosecute the person for the offence.

### **COMPETENT AUTHORITY**

- 17 (1) The competent authorities for the purpose of clauses 12, 13, 14 and 15 will include
  - (a) any judicial authority which hears or is competent to hear an application described in clause 11, and
  - (b) the executive authority responsible for orders for extradition.
- (2) It will be sufficient compliance with sub paragraphs 12, 13, 14 and 15 if a country decides that the competent authority for those purposes is exclusively the judicial authority or the executive authority.

### **POSTPONEMENT OF EXTRADITION AND TEMPORARY TRANSFER OF PRISONERS TO STAND TRIAL**

- 18. (1) Subject to the following provisions of this clause, where a person sought -
  - (a) has been charged with an offence that may be tried by a court in the requested country or
  - (b) is serving a sentence imposed by a court in the requested country, then until discharge (by acquittal, the expiration or remission of sentence, or otherwise) extradition will either be precluded by law or be subject to refusal by the competent executive authority as the law of the requested country may provide.
- (2) Subject to the provisions of this Scheme, a prisoner serving such a sentence who is also a person sought may, at the discretion of the competent executive authority of the requested country, be extradited temporarily to the requesting country to enable proceedings to be brought against the prisoner in relation to the extradition offence on such conditions as are agreed between the respective countries.

### **PRIORITY WHERE TWO OR MORE REQUESTS MADE**

- 19. (1) Where the requested country receives two or more requests from different countries for the extradition of the same person, the competent executive authority will determine which request will proceed and may refuse the other requests.
- (2) In making a determination under paragraph (1), the authority will consider all the circumstances of the case and in particular -
  - (a) the relative seriousness of the offences,

- (b) the relative dates on which the requests were made, and
- (c) the citizenship or other national status and ordinary residence of the person sought.

## **SPECIALTY RULE**

20. (1) This clause relates to a person sought who has been extradited from one country to another, so long as the person has not had a reasonable opportunity of leaving the second mentioned country.
- (2) In the case of a person sought to whom this clause relates, detention or trial in the requesting country for any offence committed prior to extradition (other than the one for which the person was extradited or any lesser offence proved by the facts on which extradition was based), without the consent of the requested country, will be precluded by law.
  - (3) When considering a request for consent under paragraph (2) the executive authority of the requested country may seek such particulars as it may require in order that it may be satisfied that the request is otherwise consistent with the principles of this Scheme
  - (4) Consent under paragraph (2) shall not be unreasonably withheld but where, in the opinion of the requested country, it appears that, on the facts known to the requesting country at the time of the original request for extradition, application should have been made in respect of such offences at that time, that may constitute a sufficient basis for refusal of consent.
  - (5) The requesting country shall not extradite a person sought who has been surrendered to that country pursuant to a request for extradition, to a third country for an offence committed prior to extradition, without the consent of the requested country .
  - (6) In considering a request under paragraph (5) the requested country may seek the particulars referred to in paragraph (3) and shall not unreasonably withhold consent.
  - (7) Nothing in this clause shall prevent a court in the requesting country from taking into account any other offence, whether an extradition offence or not under this Scheme, for the purpose of passing sentence on a person convicted of an offence for which he or she was surrendered, where the person consents.

## **RETURN OF ESCAPED PRISONERS**

21. (1) In the case of a person who -
- (a) has been convicted of an extradition offence by a court in any country and is unlawfully at large before the expiry of the sentence for that offence, and
  - (b) is found in another country,

the provisions set out in this Scheme, as applied for the purposes of this clause by paragraph (2), will govern extradition to the country in which the person was convicted.

- (2) For the purposes of this clause this Scheme shall be construed, subject to any necessary adaptations or modifications, as though the person unlawfully at large were accused of the offence for which there is a conviction and, in particular -
  - (a) any reference to a person sought shall be construed as including a reference to such a person as is mentioned in paragraph (1); and
  - (b) the reference in clause 5(4) to evidence that establishes a prima facie case shall be construed as a reference to such evidence as establishes that the person has been convicted.
- (3) The references in this clause to a person unlawfully at large shall be construed as including reference to a person at large in breach of a condition of a licence to be at large.

### **ANCILLARY PROVISIONS**

22. Each country will take, subject to its constitution, any legislative and other steps which may be necessary or expedient in the circumstances to facilitate and effectuate -
  - (a) the transit through its territory of a person sought who is being extradited under this Scheme;
  - (b) the delivery of property found in the possession of a person sought at the time of arrest which may be material evidence of the extradition offence; and
  - (c) the proof of warrants, certificates of conviction, depositions and other documents.

## **ALTERNATIVE ARRANGEMENTS AND MODIFICATIONS**

23. Nothing in this Scheme shall prevent -
- (a) the making of arrangements between Commonwealth countries for further or alternative provision for extradition, or
  - (b) the application of the Scheme with modifications by one country in relation to another which has not brought the Scheme fully into effect.

## KINGSTOWN DECLARATION ON LAND AND DEVELOPMENT

Commonwealth Law Ministers, meeting in Kingstown, St Vincent and the Grenadines, welcomed the opportunity, in this their first meeting in the 21<sup>st</sup> Century, to debate the strong link between the use, access to, and ownership of land and development and poverty reduction.

Ministers recognized that land sustains both the souls and the bodies of all peoples of the Commonwealth. As a finite resource, land must be able to be used productively for the current generation and at the same time preserved and protected for future generations and accordingly they resolved to keep this subject on future meeting agendas so that they could continue to contribute to the development of positive national strategies involving the law governing land.

Law Ministers stressed the need for the law, where appropriate, to deal with the issues arising from corporate development of land resources and the ensuing need to ensure that corporate governance principles recognized the responsibility of companies to adhere to national standards for the preservation and protection of land and its natural resources.

They conclude that the law must ensure that lawful access to land is promoted and protected and at the same time recognized the very important role played in many Commonwealth countries by systems of customary and community land use and ownership laws. Law Ministers recognize the need in some countries to address appropriately, and within the framework of the law, the concerns of those communities and groups who have been and remain dispossessed of their land and they acknowledged the need in various member countries to reconcile common law concepts of land ownership with the customary law concepts of the sharing of the collective benefits of land.

Law Ministers recognize that there may be tension between developed country concepts of land tenure that are expected by major corporations based in those countries and the needs of developing countries to address their special land development needs and agree to work on this issue at future meetings.