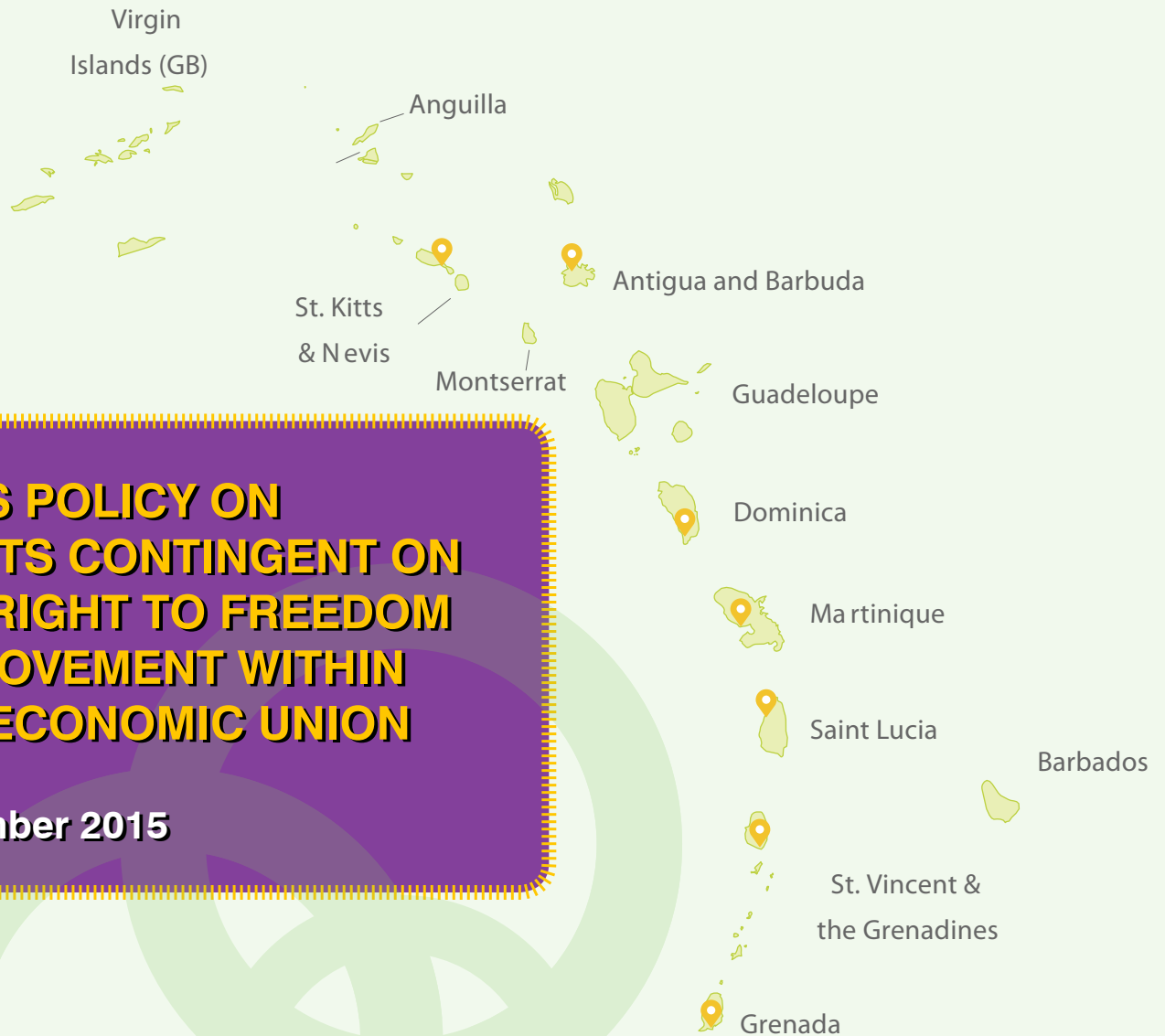




Organisation of Eastern Caribbean States



REGIONAL INTEGRATION UNIT



OECS POLICY ON RIGHTS CONTINGENT ON THE RIGHT TO FREEDOM OF MOVEMENT WITHIN THE ECONOMIC UNION

November 2015



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OECS Policy on Rights Contingent on the Right to Freedom of Movement Within the Economic Union

*Articulating Rights Contingent on
the Right to Freedom of Movement
Conferred on OECS Citizens and
Their Families*



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OECS POLICY WITH RESPECT TO CONTINGENT RIGHTS WITHIN THE OECS ECONOMIC UNION

BACKGROUND

The entry into force of the Revised Treaty of Basseterre (RTB) Establishing the Organization of Eastern Caribbean States (OECS) Economic Union ushered in deeper integration in the Member States, creating a single economic and financial space. The RTB, among other things, provides for new governance structure, increased functional cooperation and strengthening of the customs union. The RTB secures the right to freedom of movement of all citizens of the Member States that are party to the Protocol of Eastern Caribbean Economic Union. Therefore, the RTB provides the broad framework that allows citizens' access to Member States and it is within this scope that policies must be developed to guide implementation.

The OECS Authority took the decision, at the 53rd Meeting of the OECS Authority, in May 2011 that OECS Citizens must be granted indefinite entry and would not be required to hold a work permit to work in Protocol Member States. The OECS Authority also decided that travel among Member States should be hassle-free; that other than the passport, any form of nationally issued photo identification showing the bearer's nationality may be used as a travel document; and that an OECS Citizen should not require a temporary driver's licence to drive in a Member State once he or she is a holder of valid driver's licence from another Member State.

Discussions within The Economic Union Working Group on Movement of Persons have emphasized the need to have a coherent policy in relation to rights contingent on the right to free movement. A draft policy was developed and was presented to the Council for Human and Social the Development and Economic Affairs Council. Both councils endorsed the policy and recommended that it be presented to the OECS Authority for approval.

The overall objective is to develop policies aimed at the elimination of obstacles to the movement of Citizens in keeping with the obligations under the RTB. The **OECS Policy on Rights Contingent on the Right to Free Movement Within the Economic Union** herein the **OECS Policy on Contingent Rights** is geared towards clearly articulating rights which would be conferred on OECS citizens and their families, who exercise the right of freedom of movement under the RTB.

Revised Treaty of Basseterre

Article 12.3 of the Protocol of Eastern Caribbean Economic Union provides *"Citizens of Protocol Member States shall enjoy in the Economic Union Area the rights contingent to the right of freedom of movement that are agreed by Protocol Member States."*

Further, Member States agree in Article 13.4 (b) of the said Protocol to coordinate policies toward *"...the mobilization, development and efficient allocation of labour across the Economic Union through education and skill training arrangements and the creation of an Economic Union wide labor Market."*

The RTB has been enacted into national law in seven (7) Protocol Member States, namely Antigua and Barbuda, The Commonwealth of Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines. Further, most of the legal and administrative provisions to facilitate the right to freedom of movement are in place in those Member States.

Article 23 of the Protocol, which articulates human and social development, in paragraph (f) objective is to *“provide the enabling legislative, policy and administrative environment needed to support social relations and cohesion for children, youth, men and women in the Economic Union Area, with particular attention to the consequences and impact of the free movement of peoples in shared family responsibility and economic stability”*.

Given that the above provision in the RTB must be taken into account as well as the core values of the OECS Social Safety Net and Social Protection Framework, *“... including individuals and families having security and general well-being in the face of vulnerabilities and having access to health care, education, employment and income generating activities, income transfers and working safety”*, the policy that is agreed to for the rights contingent to the right of freedom of movement must be in keeping with the spirit of the OECS integration process.

Background to the Development of the Policy

The development of the policy with respect to the rights contingent to the right of freedom of movement in the Economic Union Area was facilitated through discussions at The Economic Union Working Group on Movement of Persons. In developing the framework for the implementation of the regime for free movement, of OECS Citizens, consideration was given to the following fundamental principles:

- a) Maintaining the quality of life of Citizens of Protocol Member States that exercise the right to freedom of movement within the Economic Union Area.
- b) Protection of the unity of the family structure and the right of the family to live together
- c) The rights based approach to human and social development in keeping with international best practices

These important principles informs the approached taken to creating an inclusive policy.

Consideration was given to international instruments such as the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the United Nations Convention on the Rights of the Child, the United Nations Convention on Migrant Workers, and the Inter-American Convention on Human Rights.

Consideration was also given to the objective of the Economic Union relating to *“fair distribution of benefits throughout the Protocol Member States”* and Article 23 the Protocol to RTB on human and social development in the Economic Union Area. Member States diverse institutional structures and resource capabilities to support an inclusive policy were deliberated on when making the determination on the best approach. An examination of Member States’ laws and policies revealed that similar policy exist across the Economic Union Area. In most cases it is unclear whether the policies are inclusive, given that in certain cases state officials are by law granted the right to exercise discretion in carrying out their duties. Their practices would therefore reveal whether social policy are inclusive or not.

POLICY PROPOSALS FOR CONTINGENT RIGHTS WITHIN THE OECS ECONOMIC UNION

Within the context of the Economic Union, contingent rights must be considered in two spectra:

- a) Rights that are accorded to OECS Citizens taking advantage of the Right of Freedom of Movement, who are termed the principal beneficiaries.
- b) Rights accorded to persons who are not Citizens of the OECS but are moving with the principal beneficiaries.

The Economic Union Working Group on Movement of Persons considered and recommend the following approaches for the governance of rights contingent to the right of freedom of movement:

Where Member States have existing national policies, legislation and regulations regarding access accorded to OECS Citizens and Non-OECS citizens, that are more beneficial than that of the OECS policy and are non-discriminatory, these should be maintained.

Definitions

a) "OECS Citizen"

An OECS Citizen is a person who is regarded as a citizen under the laws of a Protocol Member State of the Organization of Eastern Caribbean States.

b) "Principal beneficiary"

A Principal beneficiary means of a citizen of a Protocol Member State exercising the right of freedom of movement under the Protocol of Eastern Caribbean Economic Union.

c) "Spouse"

A spouse shall be defined according to the national law of each Protocol Member State

d) "Dependents" include:

1. Any unmarried child of an OECS Citizen or his or her spouse:
 - i. under the age of 18 years;
 - ii. under the age of 25 years attending school or full time tertiary institution;
 - iii. over the age of 18 years who, due to disability, is wholly dependent on a principal beneficiary;
2. Parents of a principal beneficiary and his/or his or her spouse wholly dependent on such beneficiary; or
3. Any other natural person certified as a dependent by order of the court.

e) “Family”

Family shall be defined according to the national laws of each Protocol Member State.

f) “Host Member State”

Means a Protocol Member State where the right of freedom of movement is being exercised.

g) “Contingent Rights”

These are the rights to which an OECS citizen, spouse and dependants are entitled, contingent on the right of freedom of movement as articulated in Article 12 of the Protocol to the RTB.

SPECIFIC CONTINGENT RIGHTS

The specific contingent rights are highlighted below

i. General rights

- The right of the spouse and dependants of the principal beneficiary to reside in a host Protocol Member State and to leave and re-enter that Member State and to be granted the same status as the principal beneficiary;
- The right of the spouse to engage in gainful employment in the host Protocol Member State without the need to obtain a work permit;
- The right of the spouse to remain in the host Protocol Member State in the event of a death, separation, divorce or end of relationship with the principal beneficiary;
- The right of dependents to remain in the host Member State upon attaining age 18;

ii. Social Rights

- Access to the resources allocated through cash advances, labour market schemes, and the other social safety net mechanisms to protect the vulnerable members of the principle beneficiary, spouse, and dependents;
- The right to primary and secondary education on the same terms and conditions as citizens of the host Protocol Member State;
- The right of children of the principal beneficiary, whether above or below the age of majority, to access scholarships, bursaries and assistance offered by the Government of the host Protocol Member State;
- The right to Social Security;
- The right to healthcare on the same terms and conditions as citizens of the host Protocol Member State country, including:
 - a. the right of access to specialized treatment;
 - b. the right to treatment by drugs where programmes exist;
 - c. the right to hospitalization on referral by a medical practitioner.

RIGHTS ACCORDED

In keeping with a number of objectives articulated in the OECS Economic Union Protocol and policy documents, the following are further recommended in shaping the extent and nature of the Protocol on Contingent Rights:

a) OECS Citizens

A Citizen of a Protocol Member State who exercises the right to freedom of movement within the Economic Union area shall enjoy equal rights and privileges as a citizen of the host Member State. Therefore, all rights, general and social highlighted above, should be accorded to OECS citizens.

b) Spouses and Dependents of OECS Citizens

The right of an OECS citizen to move and reside freely within the OECS Economic Union Area and to enjoy rights and privileges as citizens, should also be accorded to their family irrespective of nationality.



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