

**IMPLEMENTATION OF THE OECS POLICY ON CONTINGENT RIGHTS:  
A LEGISLATIVE REVIEW AND COMPARATIVE FRAMEWORKS**

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## **Acronyms and abbreviations**

CARICOM	Caribbean Community
CCJ	Caribbean Court of Justice
CDEMA	Caribbean Disaster Emergency Management Agency
CJEU	Court of Justice of the European Union
CSME	Single Market and Economy
EAC	Economic Affairs Council
ECEU	Eastern Caribbean Economic Union
ECOWAS	Economic Community of West African States
EU	European Union
EUWGMOP	Economic Union Working Group on Movement of People
IGAD	Intergovernmental Authority on Development
Mercosur	Common Market of the South
OECS	Organisation of Eastern Caribbean States
OSPC	Open Society Policy Centre
RIU	Regional Integration Unit
RRM	Regional Response Mechanism
RTB	Revised Treaty of Basseterre
RTC	Revised Treaty of Chaguaramas
TFEU	Treaty on the Functioning of the European Union

## 1. Introduction

This document presents a review of domestic legislation in Protocol Member States of the Organisation of Eastern Caribbean States (OECS) with respect to the OECS Policy on Rights Contingent on the Right to Free Movement (“contingent rights policy”) and comparative research on freedom of movement agreements in other regions. Prepared at the request of the OECS Commission, it forms part of a collaboration between the OECS Commission and the Open Society Policy Centre (OSPC).<sup>1</sup> The aim of this collaboration is to develop model legislation to implement the contingent rights policy, which grants general and social rights<sup>2</sup> to OECS citizens, their spouses, and dependents across Protocol Member States of the OECS. While Protocol Member States have already made efforts to partially implement the policy, it is hoped that Protocol Member States will adopt the legislation in order to strengthen their implementation of the contingent rights policy following approval of the model text by the relevant organs of the OECS.

The proper implementation of the contingent rights policy constitutes a key element of the full realization of freedom of movement in the Eastern Caribbean as envisioned by the Revised Treaty of Basseterre (RTB). Its importance is heightened in the context of the impact of natural disasters and extreme weather events on the region. For example, most recently, in April 2021, Saint Vincent and the Grenadines was impacted by a series of eruptions of La Soufrière. This led to up to 20,000 people being evacuated from the island’s northern region, who may be displaced for several months depending on ongoing seismic activity and the level of destruction. As a result of their inherent physical characteristics, the Caribbean islands are particularly susceptible to the impacts of sea level rise and increasing extreme weather events.<sup>34</sup> Between 2008 and 2018, more than 8.5 million displacements were recorded across 21 Caribbean countries.<sup>5</sup> The ten countries with the highest expected annual displacement relative to population size in the world are all small island states in the Caribbean and the Pacific, with three Protocol Member States of the OECS featuring amongst them: Antigua and Barbuda, the Commonwealth of Dominica and Saint Kitts and Nevis.<sup>6</sup>

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<sup>1</sup> The Open Society Policy Center forms part of the Open Society Foundations network. The collaboration is being implemented with support from the International Migration Initiative and the Latin America Program as well as technical assistance from the Open Society Justice Initiative (OSJI), which was responsible for carrying out the research in this document. OSJI is an operational programme of the Open Society Foundations: It uses litigation, advocacy research and technical assistance to promote human rights and build legal capacity.

<sup>2</sup> The general and social rights accorded by the contingent rights policy are outlined in 1.1.

<sup>3</sup> Nurse et al., 2014. “Small Islands”, *Climate Change 2014: Impacts, Adaptation, and Vulnerability. Part B> Regional Aspects. Contribution of Working Group II to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, p. 1613-1654. Cambridge University Press. Cambridge, United Kingdom.

<sup>4</sup> The disastrous impact of the 2017 Atlantic hurricane season, including the destructiveness of Harvey, Irma and Maria leading to the displacement of approximately three million people within a single month, indicate a high climate risk for Caribbean island states. See Clarke et al., 2021. “Inventories of extreme weather events and impacts: Implications for loss and damage from and adaptation to climate extremes”. *Climate Risk Management*, Vol. 32.

<sup>5</sup> Caribbean Migration Consultations, 2019. Consultation towards a framework for regional cooperation on human mobility in the context of disasters and the adverse effects of climate change in the Caribbean. Port of Spain, Trinidad and Tobago, 6-7 June 2019. Available at <[https://caribbeanmigration.org/sites/default/files/report-climate\\_change\\_and\\_human\\_mobility\\_f\\_0.pdf](https://caribbeanmigration.org/sites/default/files/report-climate_change_and_human_mobility_f_0.pdf)>

<sup>6</sup> Internal Displacement Monitoring Centre, 2017, *Global Disaster Displacement Risk. A baseline for future work*. Available at <<https://www.internal-displacement.org/sites/default/files/publications/documents/201710-IDMC-Global-disaster-displacement-risk.pdf>>

Against this backdrop, the OECS contingent rights policy offers important protection to its citizens (and their spouse and dependents), particularly those affected by natural disasters and/or extreme weather events. While the Caribbean Disaster Emergency Management Agency (CDEMA) regulates the short-term response and relief operations as part of its Regional Response Mechanism (RRM), including across all OECS Protocol Member States, the Protocol of the Eastern Caribbean Economic Union (ECEU) grants individuals long-term access to the territory and the contingent rights policy grants the safety and protection of the general and social rights of citizens of OECS Protocol Member States when exercising their right to free movement.

Under the contingent rights policy, individuals have the right to access the labour market, health care, education (for dependents), and social security on equal terms as citizens of the host Protocol Member State. The OECS Free Movement of Persons Regime (“free movement regime”), along with the contingent rights policy, are thus designed to give persons in mobility not only access to the territory of neighbouring states but to lasting solutions.<sup>7</sup> However, Protocol Member States do not always respect in practice the principles and rights set out in the Protocol of the ECEU and the contingent rights policy.

This document has three main sections. The first section discusses comparative freedom of movement agreements from other regions. The second section looks at the present status of implementation of the contingent rights policy across Protocol Member States. The third section presents key considerations and conclusions derived from the first two sections. The findings are based on desk research, information submitted by as well as validation meetings with legal officers at the Attorney Generals’ Offices in Protocol Member States, and information shared by the Regional Integration Unit (RIU) and Legal Unit of the OECS Commission.<sup>8</sup>

### **1.1. Freedom of movement in the Eastern Caribbean Economic Union**

The Revised Treaty of Basseterre (RTB) Establishing the Organisation of Eastern Caribbean Economic Union (ECEU), signed on 18 June 2010, facilitates integration amongst Member States into a single economic and financial space. The RTB secures the right to freedom of movement of all citizens of Member States that are party to the Protocol of ECEU (“Protocol Member States”) through a broad framework that grants citizens equal access to the territory of Protocol Member States. The provisions are outlined in Art. 12 of the Protocol:

#### Article 12: Freedom of Movement

12.1 Freedom of movement for citizens of Protocol Member States shall be secured within the Economic Union Area.

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<sup>7</sup> The Platform for Disaster Displacement has outlined the benefits of freedom of movement agreements as a means of addressing the protection gap for disaster displaced persons in Africa, which include the broad eligibility, opportunities for access to employment and other livelihoods, and the scalability of freedom of movement agreements. See Wood, T., 2019, “The Role of Free Movement of Persons Agreements in Addressing Disaster Displacement”. Platform on Disaster Displacement. Available at <[https://disasterdisplacement.org/wp-content/uploads/2019/06/52846\\_PDD\\_FreeMovement\\_web-single\\_compressed.pdf](https://disasterdisplacement.org/wp-content/uploads/2019/06/52846_PDD_FreeMovement_web-single_compressed.pdf)>

<sup>8</sup> Throughout this document, reference will be made to the Protocol Member States of the OECS. These include Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines. The Associate Members of the OECS, namely Anguilla, The British Virgin Islands, Martinique and Guadeloupe, are not the subject of this document, as the contingent rights policies is limited in application to Protocol Member States. “OECS citizens” will be used to refer to citizens of Protocol Member States that have the right to freedom of movement. Where provisions also apply to citizens of Associate Member States, this will be specified.

12.2 Such Freedom of movement shall entail the abolition of any discrimination based on nationality between citizens of Protocol Member States as regards employment, remuneration and other conditions of work and employment.

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

12.4 The OECS Authority and the OECS Commission shall regularly monitor the implementation of this Article.

12.5 Notwithstanding any provisions of this Article, a Protocol Member State may, subject to the approval of the OECS Authority, regulate the movement of such citizens.

The implementation of Art. 12 is guided by policies that aim to guarantee the free movement of citizens. Following discussions by the Economic Union Working Group on Movement of People (EUWGMOP) on the need for a coherent policy on contingent rights agreed upon by the Member States, as outlined by Art. 12.3, the Policy on Rights Contingent on the Right to Freedom of Movement was approved by the 62<sup>nd</sup> Ordinary Meeting of the OECS Authority in November 2015.

The policy on contingent rights is based on three fundamental principles:

- (1) Maintaining the quality of life of OECS citizens exercising their right to freedom of movement within the economic union;
- (2) Protecting the unity of the family and the right to reside together; and
- (3) Upholding a rights-based approach to human and social development in accordance with international best practices.<sup>9</sup>

In addition, the policy takes into account the objectives of the economic union, including the “fair distribution of benefits throughout the Protocol Member States” (Art. 2(e)), the efficient allocation of labour (Art. 13(4)(b)), and the promotion of human and social development across Protocol Member States (Art. 23).

The first section of the policy lists general rights that are accorded to spouses and dependents<sup>10</sup> of OECS citizens who are third-country nationals,<sup>11</sup> i.e. not OECS citizens themselves, including:

- (1) The right of spouses and dependents to reside in a host Protocol Member State;
- (2) The right of the spouse to engage in gainful employment without a work permit,

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<sup>9</sup> This includes 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.

<sup>10</sup> The policy distinguishes between OECS citizens, who are referred to as principal beneficiaries, and their family members. Spouses are defined according to the national law of each Protocol Member State. Dependents include any unmarried children of an OECS citizen or their spouse, who are (i) under the age of 18, (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, are wholly dependent on a principal beneficiary; parents of a principal beneficiary or their spouse wholly dependent on such beneficiary; and any other natural person certified as a dependent by order of the court.

<sup>11</sup> The term third-country nationals is used throughout this document to refer to individuals that are not citizens of Member States party to the freedom of movement agreement in question.

- (3) The right of the spouse to remain in the host Protocol Member State in the event of the death, separation or divorce from the principal beneficiary subject to meeting certain requirements;<sup>12</sup> and
- (4) The right of dependents to remain in the host Protocol Member State upon reaching the age of 18 years.

The second section lists social rights that are granted to OECS citizens as well as their spouses and dependents, including:

- (1) Access to resources allocated through cash advances, labour market schemes, and other social safety net mechanisms;
- (2) The right of dependents to primary and secondary education on the same terms as citizens of the host state;
- (3) The right of dependents to access scholarships, bursaries and assistance;
- (4) The right to social security; and
- (5) The right to access health care on the same terms as citizens of the host state.

## **1.2. Regional freedom of movement agreement under CARICOM**

The freedom of movement agreement of the ECEU sits within a larger framework of the Caribbean Community (CARICOM). All OECS Protocol Member States are also Member States of CARICOM. In 2001, CARICOM Member States committed themselves to the goal of free movement in Art. 45 of the Revised Treaty of Chaguaramas (RTC) as part of the Caribbean Community (CARICOM) Single Market and Economy (CSME). The RTC identifies the movement of skilled professionals as a first step towards achieving freedom of movement in Art. 46. In addition, citizens of CARICOM Member States have the right to a six-month stay in other Member States. Freedom of movement under the OECS agreement is thus currently less restrictive than in the CSME, as it does not include any restrictions on skilled labour.

There are twelve categories of skilled professionals: University graduates, artists, musicians, media workers, sportspersons, teachers, nurses, those who hold associate degrees or equivalent qualifications, artisans with a Caribbean Vocational Qualifications (CVQ), households domestics with a CVQ or equivalent qualification, agricultural workers and security guards – with certain reservations attached to the last two categories.<sup>13</sup> CARICOM citizens that fall under the categories of skilled professionals enjoy freedom of movement. Though not yet fully realised, this is to be facilitated by eliminating the requirements for passports, the development of mechanisms for the recognition of equivalency degrees, and the portability

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<sup>12</sup> Upon approval of the contingent rights policy, the OECS Authority expressed reservations over the extent of such rights in so far as they relate to third-country spouses following the end of a marriage to the principal beneficiary. Based on a legal opinion requested on this subject, it was decided that the right of a third-country ex-spouse to maintain the right of residence in the host Protocol Member State is not automatic and will be assessed on a case-by-case basis. For example, the right of residence would be retained if (a) the third-country spouse retains legal custody of the children of the marriage, and (b) the children, who are citizens of a Protocol Member State, reside in the host Protocol Member State and are enrolled at an educational establishment, for the purpose of studying there, until the completion of their studies. The third-country spouse would also retain the right of residence if the child, having reached the age of majority, exercises their right to continue their education in the host Protocol Member State and continues to need the presence and care of that parent in order to pursue and complete their education. Whether a child needs the presence and care of that parent is a question of fact to be resolved on a case-by-case basis by the competent authorities of the Protocol Member States. Where the above-described circumstances are absent, the right of the third-country ex-spouse to freedom of movement in the ECEU will automatically cease.

<sup>13</sup> The categories of agricultural workers and security guards were added most recently at the 18<sup>th</sup> Special Meeting of the Conference of Heads of Government in December 2018.

of social security benefits.<sup>14</sup> Arts. 33-37 of the Treaty applies freedom of movement to service providers and entrepreneurs, supervisory and technical staff of businesses set up under the right of establishment, though provisions on freedom of movement in these cases are still being finalized.<sup>15</sup>

CARICOM's Protocol on Contingent Rights initiated the provision of rights of CARICOM citizens and their family to social services, including education and health care, under the free movement of skills regime in July 2018.<sup>16</sup> The Protocol grants principal beneficiaries – the CARICOM citizen moving under the skills regime – as well as their spouses and dependents,<sup>17</sup> the right to transfer capital into and from a host country. Spouses and dependents are granted the right to leave and re-enter. Spouses have the right to work without a work permit. Dependent children are able to access primary education on a non-discriminatory basis, though this does not extend to secondary education or eligibility for bursaries and scholarships. Principal beneficiaries and spouses have the right to access lands, buildings and other property for residential or business purposes on a non-discriminatory basis. The principal beneficiary moving under the skills regime has the right to import tools of trade duty-free.

The Conference of Heads of Government may extend the rights accorded by the Protocol in line with additional rights outlined in the Protocol on Contingent Rights that Member States undertake to agree upon as part of a phased approach by ratifying the Protocol. These are listed in the Protocol's "Build-in Agenda" and include:

- The right of a spouse to remain in the Member State following termination of a marital relationship;
- The right of dependent children to remain in a Member State on acquiring independent status;
- The right of dependent children to work without a work permit until they attain the age of majority;
- The right of dependent children to access pre-primary education, secondary education, as well as uniforms, meals, books and transportation on a non-discriminatory basis;
- The right of principal beneficiaries as well as spouses and dependents to access primary health care, scholarships and bursaries on a non-discriminatory basis;
- The right of principal beneficiaries to import household effects and a motor vehicle duty-free.

The Conference of Heads of Government monitors compliance with the Protocol. In addition, each Member State has a CSME focal point that serves to monitor and report on compliance with the free movement of skills regime more broadly and acts as a complaints mechanisms for persons moving under the regime.

The Caribbean Court of Justice (CCJ) recently issued an Advisory Opinion on opt-outs of obligations by Member States as well as the application of the principle of non-reciprocity to the CARICOM Single Market and Economy. The CCJ advised that it is lawful for Member States to request an opt-out of obligations

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<sup>14</sup> International Organization for Migration. 2019. Free Movement of Persons in the Caribbean: Economic and Security Dimensions. Available at <[https://publications.iom.int/system/files/pdf/free\\_movement\\_in\\_the\\_caribbean.pdf](https://publications.iom.int/system/files/pdf/free_movement_in_the_caribbean.pdf)>

<sup>15</sup> Ibid

<sup>16</sup> While the policy has been signed by the majority of Member States, only two Member States (Barbados and Saint Vincent and the Grenadines) have ratified it so far. It will enter into force upon ratification by all Member States.

<sup>17</sup> The policy does not state that spouses and dependents have to be citizens of a CARICOM Member States.

arising from the decision to add more categories of skilled workers eligible for free movement (“enlargement decision”), which Antigua and Barbuda and Saint Kitts and Nevis had done with reference to security guards and agricultural workers,<sup>18</sup> and for the Conference of Heads of Government to grant these opt-outs. The CCJ determined that the opt-outs did not prejudice the fundamental objective of freedom of movement of skilled nationals, defining a fundamental objective as “an issue that lies at the core of the spirit, nature and aspirations of the Community”.<sup>19</sup> In addition, the CCJ advised that the principle of non-reciprocity applies to enlargement decisions so that nationals of Antigua and Barbuda as well as Saint Kitts and Nevis continue to be entitled to enjoy the benefits of the enlargement decision, i.e. freedom of movement under the new categories, which is a positive outcome for persons exercising their right to freedom of movement.

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<sup>18</sup> These are the most recently added categories that have not yet been fully implemented. Antigua and Barbuda and Saint Kitts and Nevis have opted out of this enlargement.

<sup>19</sup> Caribbean Court of Justice, 2020, *CCJ issues its first advisory opinion on freedom of movement*. Available at <[https://ccj.org/wp-content/uploads/2020/03/Media-Release-Advisory-Opinion-20\\_03\\_20-1.pdf](https://ccj.org/wp-content/uploads/2020/03/Media-Release-Advisory-Opinion-20_03_20-1.pdf)>

## **2. Comparative frameworks from other regions**

This section discusses comparative frameworks from other regions that provide important models for the legislation, namely the European Union (EU), the Common Market of the South (Mercosur), and the Intergovernmental Authority on Development. The European Union was included as it already serves as a model for the realization and implementation of freedom of movement in the Eastern Caribbean more generally. The Common Market of the South was selected based on the rights accorded to citizens exercising their right to free movement by the Residence Agreement and the implementation mechanism necessitating legislative amendments in all Member States. Lastly, the Intergovernmental Authority on Development was chosen as a result of its specific mention of human mobility in anticipation or in the aftermath of disasters.

The aim of this comparative review is to explain: (1) The scope of rights, particularly social rights, that other regions have granted to persons exercising their right to freedom of movement, (2) the ways in which other regions have implemented free movement agreements, and (3) implementation challenges faced by other regions.

### **2.1. European Union**

The right to move and reside freely within the European Union is one of the four fundamental freedoms of European Union law along with the free movement of goods, establishment/services, and capital. The basic provision on the right to freedom of movement is set out in Art. 45 of the Treaty on the Functioning of the European Union (TFEU):

“[F]reedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment”.

The principal legislative instrument governing the freedom of movement of workers is Regulation 492/2011, which is supplemented by a host of regulations and directives as well as a body of soft law and supplementary guidance produced by the European Commission and the Network of Experts on the Free Movement of Workers.

#### **2.1.1. Scope of rights**

Right of residence and access to the labour market:

Directive 2004/38 outlines the right of EU citizens and their family members to move and reside freely within the territory of the European Union. Art. 6 gives EU citizens and their family the right of entry and residence for up to three months “without any conditions or any formalities other than the requirement to hold a valid identity card or passport”. EU citizens have the right of residence for a period over three months if they are workers or self-employed persons; have sufficient resources for themselves and their family in order not to become “a burden on the social assistance system of the host Member State” and hold health insurance; are in education and hold health insurance as well as sufficient resources; or are family members accompanying or joining EU citizens who meet the criteria outlined above. This extends to family members who are not EU citizens. Art. 23 also grants family members, irrespective of nationality, the right to employment and self-employment.

EU citizens who are no longer workers retain the status of worker if they are temporarily unable to work following an illness or accident, involuntarily unemployed after being employed for more than one year and registered as a job-seeker, or undertaking vocational training (Art. 7(3)). Following five years of continuous legal residence in another Member State, EU citizens and their families, including third-country nationals, have the right of permanent residence (Arts. 16-18).

Under Art. 24 of the Directive, workers enjoy equal treatment with nationals of the host Member States within the scope of the Treaty. This benefit is extended to third-country family members. Regulation 492/2011 prohibits discrimination between nationals and other EU workers on employment and work terms, which covers access to employment (Art. 2) including jobseekers' assistance by employment offices (Art. 5), working conditions such as pay, dismissal, reinstatement or re-deployment, and access to training including vocational school and retraining centres (Art. 7). Linguistic knowledge may be required for a job, though any such requirement must be reasonable and necessary for the job in question (Art. 2). Member States may also restrict access to a job where it involves the exercise of public authority and duties designed to safeguard the general interests of the state. The Regulation also provides for equality of treatment in relation to membership of trade unions (Art. 8). It also accords EU workers several social rights, including entitlement to the same social and tax advantages (Art. 7) as nationals of the host country, including the right to housing benefits (Art. 9).

#### Education:

Art. 10 of Regulation 492/2011 provides that "the children of a national of a Member State who is or has been employed in the territory of another Member State shall be admitted to that State's general educational, apprenticeship and vocational training courses under the same conditions as the nationals of that State, if such children are residing in its territory". Member States "shall encourage all efforts to enable such children to attend these courses under the best possible conditions". The Court of Justice of the European Union (CJEU) has applied a broad interpretation to the educational rights of workers' children in its jurisprudence to include benefits for disabled children in *Michel S* and educational grants in *Casagrande*. In *Gaal*, the Court held that the term "children" granted educational rights to children who are over the age of 21 and non-dependent, as the principle laid out in Art. 10 requires that the children of workers should be able to successfully complete their education in the Member State after having resided there with their parent. Art. 10 thus places children of workers in the same position as those of nationals of the Member State in terms of education.

#### Health care:

Member States establish which health care benefits are granted and under which conditions through national legislation. EU citizens exercising their right to freedom of movement as well as their spouses and dependents have the same rights and obligations in relation to health care as nationals of the host Member State. If a Member State charges fees for health care, EU citizens and nationals will pay the same amount. EU citizens are entitled to sickness benefits in kind, which provide, pay directly or reimburse the cost of medical care, related products and services, in the country where they reside according to the conditions applied there, regardless of where they are insured. They will receive benefits in cash, which are intended to replace an income that is suspended due to sickness or maternity/paternity or provided

in a specific situation such as dependence of a sick or disabled person, from the country where they are insured, regardless of where (in the EU) they live and the conditions which apply there.<sup>20</sup>

#### The rights of family members:

Directive 2004/38 includes in the definition of “family” the spouse, registered partner – in accordance with the national law of the Member State, direct descendants who are under the age of 21 or are dependents of the EU citizen or spouse or registered partner, and dependent direct relatives in the ascending line of the EU citizen or spouse or registered partner. Art. 13(1) provides that divorce, annulment, or termination of registered partnership does not affect the right of residence of family members who are EU citizens. Third-country nationals retain the right of residence where the marriage or registered partnership lasted at least three years, including one year in the host Member State, where the third-country national retains custody of the EU citizen’s children, where particularly difficult circumstances warrant the retention of the right of residence, or where the third-country national has the right of access to a minor child and where the court has ruled that such access must be in the host Member State (Art. 13(2)).

#### Restrictions of the right to freedom of movement:

Restrictions on the right to free movement and residence may be imposed on grounds of public policy, public security or public health. The scope of these measures, as outlined in the Directive, “should [...] be limited in accordance with the principle of proportionality to take account of the degree of integration of the persons concerned, the length of their residence in the host Member State, their age, state of health, family and economic situation and the links with their country of origin” (Preamble). The more integrated EU citizens and their families are in the host Member State, the greater the degree of protection against expulsion should be. EU citizens and their family who have been refused leave to enter or reside, according to the Directive, should have access to judicial redress procedures. Directive 2004/83 outlines the restrictions on the right of entry and residence that Member States may impose based on public policy, security or health in more detail.

### **2.1.2. Implementation of freedom of movement**

As outlined above, provisions on freedom of movement mainly take the form of regulations and directives.<sup>21</sup> Regulations apply automatically and uniformly in all Member States of the European Union as soon as they enter into force. They do not need to be transposed into national law and are binding in their entirety. Directives, on the other hand, must be transposed into national law in order to achieve the objectives set out in the directive. While Member States may choose the form and methods of transposition, they are bound by the terms of the directive and the deadline stipulated in the directive – usually two years. Member States notify the European Commission of the measures adopted at which point the European Commission verifies the completeness and correctness of transposition into national law.<sup>22</sup> The European Commission keeps a repository of measures adopted by Member States to transpose

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<sup>20</sup> The social security coordination provisions are outlined in Regulation 883/2004 and Regulation 987/2009.

<sup>21</sup> While the outline of the legislative process is beyond the scope of this document, it should be noted that National Parliaments are able to assess whether new legislative proposals comply with the principle of subsidiarity, i.e. that the EU does not take action unless it is more effective than action taken at the national, regional or local level.

<sup>22</sup> The requirements for transposition into national law are outlined [here](#) and [here](#).

acts, including directives, into national law. The Commission also publishes an annual report reviewing the application of Union law, which is shared with the European Parliament and national authorities.

The European Commission closely monitors the application of Union law across its Member States and will take steps if a Member State does not fully incorporate a directive into national law by the deadline or has not applied Union law correctly.<sup>23</sup> The Commission may launch a formal infringement procedure against a Member State and, should this not resolve the issue, refer the case to the European Court of Justice.<sup>24</sup> European Union citizens may lodge complaints about potential breaches of Union law with national bodies or authorities<sup>25</sup> or at EU level.<sup>26</sup>

Directive 2014/54 provides additional measures to facilitate the exercise of rights conferred on workers under the right to freedom of movement. It requires in Art. 3 that workers who have faced unjustified restrictions and obstacles to their right to free movement or a failure to apply the principle of equal treatment have recourse to competent authorities, including judicial procedures, with support from social partners and other relevant bodies. In addition, Member States are required to identify one or more national bodies to provide assistance to workers and their families (Art. 4) and facilitate the dissemination of information about the rights conferred by Union law on free movement of workers (Art. 6).

### **2.1.3. Implementation challenges**

The right to free movement in the European Union has not been without criticism. There are often tensions between the realization of free movement and a Member State's desire to restrict entry into its country, particularly in relation to family members of EU citizens who are third-country nationals. Political leaders have raised objections to the risk of "benefits tourism" under free movement and shown resistance to the full extension of free movement rights to the citizens of newer Member States. A perceived lack of restrictions on free movement also played a prominent role in Brexit. The European Commission<sup>27</sup> has defended the benefits of free movement of workers for all Member States in the face of such challenges and has supported Member States to tackle potential abuses of free movement, including 'marriages of convenience'. It has advanced free movement through the close monitoring of domestic implementation as well as awareness-raising, provision of information, and procedural support to Member States.

### **2.1.4. 'Marriages of convenience'**

At the first consultation with stakeholders from Protocol Member States as part of this collaboration in March 2021, immigration officers from several Member States raised the issue of potential instances of abuse and fraud, particularly in relation to marriages of convenience, and outlined various prevention and response mechanisms they had put in place. In light of this, this section briefly presents the ways in which the European Union has addressed marriages of convenience, which Directive 2004/38 defines as

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<sup>23</sup> The Communication from the European Commission "EU law: Better results through better application" (2017/C 18/02) sets out the Commission's role in the application, implementation and enforcement of EU law in more detail. Available at <[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119(01)&from=EN)>

<sup>24</sup> More information on the infringement procedure can be found [here](#).

<sup>25</sup> More information is available [here](#).

<sup>26</sup> More information is available [here](#).

<sup>27</sup> The European Commission (EC) is the executive branch of the European Union, responsible for proposing legislation, implementing decisions, upholding the EU treaties and managing the day-to-day business of the EU.

“marriages contracted for the sole purpose of enjoying the right of free movement and residence under the Directive”.

Directive 2004/38 provides that “to guard against abuse of rights or fraud, notably marriages of convenience or any other form of relationships contracted for the sole purpose of enjoying the right of free movement and residence, Member States should have the possibility to adopt the necessary measures” (Preamble). Article 35 states that Member States may adopt the necessary measures to “refuse, terminate or withdraw any right” conferred by the Directive in instances of fraud, including marriages of convenience. Any such measure has to be “proportionate and subject to the procedural safeguards” set out in the Directive (Arts. 30-31). This requires that national authorities base their decisions on individual assessments, which are derived exclusively from the personal conduct of the individuals involved in each case and cannot be inferred from justifications that are removed from the particulars of the case. The principle of proportionality on the grounds requires firstly to identify a legitimate objective pursued, secondly that the measure is suitable to achieve the objective, and thirdly that the measure is necessary to achieve the objective.<sup>28</sup>

There is no European Union-wide approach to the evidence required to prove that a marriage is one of convenience, though guidance by the European Commission stipulates that Member States must take a case-by-case approach and consider collective evidence in its entirety. The marriage under investigation “must be reviewed in a neutral, unbiased way so evidence both in favour and against the original suspicion is sought, collected and duly taken into account”.<sup>29</sup> The burden of proof to show that they are beneficiaries of EU law on free movement of EU citizens lies on non-EU spouses, while the burden of proof to show that a marriage is abusive is on national authorities. If national authorities have a well-founded suspicion, they can invite the couple to provide further evidence, thereby placing them under an obligation to cooperate with the authorities. Where a decision is made to restrict the right to free movement and residence on the grounds that the relationship in question is one of convenience, it must comply with several procedural safeguards under Directive 2004/83 and the Charter of Fundamental Rights of the European Union.<sup>30</sup>

## 2.2. Common Market of the South

Established in 1991 by the Treaty of Asunción, the Common Market of the South (Mercosur) is a trade bloc agreement between Argentina, Brazil, Paraguay and Uruguay. The bloc entered into a customs union with the Treaty of Ouro Preto in 1994. Venezuela, which joined in July 2012, has had its membership suspended since 2017.<sup>31</sup> Bolivia, Chile, Colombia, Ecuador and Peru are Associate Members, taking part in free trade agreements but not the customs union. Mercosur adopted the Residence Agreement in 2002 advancing a free movement of people policy to strengthen and deepen the regional integration process. The Agreement was fully implemented in 2009.<sup>32</sup>

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<sup>28</sup> In 2014, the European Commission published a handbook on addressing the issue of alleged marriages of convenience between EU citizens and non-EU nationals in the context of EU law on free movement of EU citizens. Available at < <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014SC0284&from=EN> >

<sup>29</sup> Ibid

<sup>30</sup> Ibid

<sup>31</sup> Bolivia’s accession to Mercosur is currently pending.

<sup>32</sup> Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru and Uruguay are signatory Member States.

### **2.2.1. Scope of rights**

#### Right of residence:

The Residence Agreement provides that citizens of Mercosur Member States, including Associate Member States, may reside and work in a host Member State for up to two years. Art. 4 of the Residence Agreement outlines the requirements to obtain temporary residence in a host Member State, including submission of valid identification and birth certificate, clean criminal record, and, if required by the host Member State, a certificate of psychophysical aptitude, as well as service fees in accordance with domestic law. Temporary residence may be turned into permanent residence after two years, which, in addition to the other requirements, requires proof of a lawful source of livelihood to support themselves and their family.

#### Equal treatment:

Art. 9(1) states that citizens of Member States who have obtained residence as per the Residence Agreement will “enjoy the same civil, social, cultural, and economic rights and freedoms as nationals in the receiving country, in particular the right to work; to conduct any lawful activities under the conditions provided by law; petition the authorities; enter, settle, transit, and exit the State’s territory; [the right to] associate with lawful intentions and freely profess his/her faith, in accordance with the laws regulating this”. According to Art. 9(3), “immigrants will enjoy, within the territory of any Member State, treatment no less favourable than that of the receiving country’s nationals regarding the application of labour laws, especially in terms of remuneration, working conditions, and social insurance”.

#### Rights of the family, including education:

In the name of family reunification, Art. 9(2) states that third-country family members of those exercising their right to free movement will be issued residence of the same validity as that of the person on whom they are dependent. Art. 9(5) holds that “immigrants’ children will enjoy the fundamental right to access education under conditions equal to the receiving country’s nationals”. This include pre-school teaching institutions and public schools. The Residence Agreement does not include any provisions relating to the rights of the spouse and/or dependents following divorce, separation, death, or the “aging out” of children.

### **2.2.2. Implementation of freedom of movement**

Mercosur agreements and norms do not have direct effect in Member States. As a result, the entry into force of the Residence Agreement is subject to its incorporation into the domestic legislation of all Member States. Argentina, Uruguay, Brazil, Bolivia, and Paraguay, Ecuador and Peru adopted domestic laws to give effect to the Residence Agreement over a 12-year period starting 2004. The timing was largely influenced by the Member States’ dates of accession to the Residence Agreement as well as domestic developments and changes to migration laws and whether these could easily incorporate the provisions of the Residence Agreement on “Mercosur nationality”.

Member States have incorporated the Residence Agreement into domestic laws in different ways. While Argentina, Uruguay and Brazil have incorporated the “Mercosur nationality” into their migration categories, Bolivia does not specifically reference Mercosur but puts all regular migrants on equal footing with nationals in terms of health, housing, education and work. Similarly, Peru does not refer to Mercosur and simply grants residence to all nationals of countries with whom Peru has an international agreement on residence. Chile currently only applies the Residence Agreement administratively through a temporary

visa for citizens from Brazil, Uruguay, Paraguay, Argentina and Bolivia. Colombia has issued ministerial decrees on visas for Mercosur nationals.<sup>33</sup>

### **2.2.3. Implementation challenges**

As outlined above, the Residence Agreement puts Mercosur citizens on equal footing in terms of civil, social, cultural, and economic rights and freedoms as nationals, though this is not defined in much more detail. In practice, however, Mercosur Member States have not actively implemented the right to health and education for individuals moving under the Residence Agreement. The result is that domestic laws mostly distinguish between regular and irregular migrants without a further distinction between Mercosur and non-Mercosur migrants. IOM has identified challenges in access to health care in relation to the adoption of regulations and procedural requirements in line with the Residence Agreement, a lack of awareness of the regulations for migrants under the Residence Agreement at the level of health care providers and migrants themselves, as well as equal treatment in access to health care, e.g. where a minimum residence period is required, and the quality of health care provided.<sup>34</sup> With regards to the right to education, the Residence Agreement has been supplemented by various regional mechanisms that regulate the recognition of studies carried out in other Member States. Access to education at primary and secondary level in the Member States is free of charge for foreign students regardless of their migration status, though IOM has identified a lack of awareness of the procedures and regulations applicable to Mercosur citizens and a need to promote unrestricted access to education.<sup>35</sup>

While the Residence Agreement grants Mercosur citizens access to the labour market on equal terms of national, several Member States have placed restrictions on their access to specific jobs. As IOM found in its study, in Chile, for example, the workforce of any employer must be made up of at least 85% Chilean nationals. Bolivia stipulates a 15% maximum quota of foreign workers for employers. Peru gives preference to the hiring of national personnel, though it has made the hiring of foreign workers more flexible in order to stimulate private investment. Mercosur citizens thus face challenges in access to the labour market in the absence of equal treatment and opportunities for foreign workers.<sup>36</sup>

The Residence Agreement does not set out a monitoring or complaints mechanism to address implementation challenges and gaps like those mentioned above. Art. 13 states that “conflicts arising regarding the scope, interpretation, and application of the [...] Agreement will be resolved according to the mechanism in force at the time when the problem arises, and which has been agreed upon by the [Member] States” without further specifications. Art. 16 gives Member States the option to denounce the Agreement at any time via written notification.

## **2.3. Economic Community of West African States**

Established by the Treaty of Lagos in 1975, the Economic Community of West African States (ECOWAS) is made up of fifteen countries in the Western African region.<sup>37</sup> The Preamble to the Treaty identifies as its

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<sup>33</sup> IOM, 2018. Evaluación del Acuerdo de Residencia del MERCOSUR y su incidencia en el acceso a derechos de los migrantes. Available at <<https://publications.iom.int/fr/books/estudio-sobre-la-evaluacion-y-el-impacto-del-acuerdo-de-residencia-del-mercosur>>

<sup>34</sup> Ibid

<sup>35</sup> Ibid

<sup>36</sup> Ibid

<sup>37</sup> Benin, Burkina Faso, Cape Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone and Togo. Mauritania was originally a member of ECOWAS but withdrew its membership in 2002.

key objective the advancement of economic development through the free movement of goods, capital and persons in the sub-region. Art. 27 of the Treaty outlines the long-term objective to establish Community citizenship that would automatically be acquired by all ECOWAS citizens, thereby creating a borderless West Africa. The Authority of Heads of States and Government of ECOWAS adopted the Protocol relating to Free Movement of Persons, Residence and Establishment (“the Protocol”) in 1979. The Protocol has been supplemented by four additional protocols.

### **2.3.1. Scope of rights**

The Protocol sets out a three-phased approach over fifteen years to achieve the “complete freedom of movement” envisaged by the Treaty of Lagos, made up of the following stages: (1) The right of entry and abolition of visas, (2) the right of residence, (3) the right to establish economic activities in the territories of Member States (Art 2). Each phase was designed to last five years. Under the Protocol, the right to enter a host Member State is contingent upon the possession of valid travel documents and international health certificates (Art. 3(1)). Member States reserve the right to refuse entry of ECOWAS citizens that are deemed inadmissible under domestic law (Art. 4) and may expel ECOWAS citizens subject to specific requirements (Art. 11). The Supplementary Protocol of 1985 obliges Member States to provide valid travel documents to their citizens (Art. 2(1)), establishes additional requirements for treatment of persons being expelled (Art. 3) and outlines protections for illegal immigrants (Art. 5). The Supplementary Protocol of 1986 requires Member States to grant ECOWAS citizens right of residence “for the purpose of seeking and carrying out income earning employment” (Art. 2) as well as the harmonization by Member States of rules pertaining to the issuance of residence cards and permits (Art. 9). It further prohibits “collective or “en masse” expulsion of ECOWAS citizens (Art. 13) and limits grounds for individual expulsion to national security, public order or morality, public health, non-fulfilment of essential conditions of residence (Art. 14). Art. 23 of the Supplementary Protocol stipulates equal treatment with nationals in areas such as employment, participation in social and cultural activities, re-employment and training. The Supplementary Protocol of 1989 outlines the obligations of Member States to resolve amicably any disputes regarding the interpretation and application of the Free Movement Protocol (Art. 2). The Supplementary Protocol of 1990 defines the right of establishment based on the non-discriminatory treatment of nationals and companies of other Member States except where justified on grounds of public order, security and health (Arts. 2-4).

### **2.3.2. Implementation of freedom of movement**

The above-listed protocols do not have direct effect in Member States and, as a result, have to be incorporated into domestic legislation. The first phase on the elimination of the need for visas for stays of up to ninety days in Member States for ECOWAS citizens in possession of valid travel documents and international health certificates has been fully implemented, though this provision is subject to restrictive inadmissibility laws on prohibited immigrants. Studies have shown that several Member States have recorded achievements and good practices in the implementation of the first phase, including knowledge about intra-regional migration flows amongst public officials and recognition of the economic contributions of ECOWAS immigrants.<sup>38</sup>

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<sup>38</sup> Awumbila et al. 2018. Assessment of the Implementation of the ECOWAS Free Movement Protocol in Ghana and Sierra Leone. ICMC Europe 2018 as part of the MADE West Africa project. Available at <<https://www.madenetwork.org/sites/default/files/CMS%20research%20Guinea%20Sierra%20Leone%20WA%202018.pdf>>

The second and third phases outlined by the Protocol to fully realise freedom of movement have been severely delayed. The second phase on the right of residence came into force in 1986 following its ratification by all Member States but has not been fully implemented. The third phase on the right of establishment has also not been implemented to date.<sup>39</sup> ECOWAS citizens have thus faced challenges when moving to other Member States, because of a “disjuncture between the protocols’ objectives and experiences on the ground”<sup>40</sup> as well as a lack of harmonisation between the Member States’ national laws and ECOWAS protocols.<sup>41 42 43</sup> This is reinforced by the lack of comprehensive migration policies in several Member States.<sup>44</sup>

### 2.3.3. Implementation challenges

As outlined in 2.3.2, the implementation of the Protocol has been delayed as a result of various factors, including political, security and economic challenges.<sup>45</sup> This has, for example, led to mass expulsions of ECOWAS citizens at times of socio-economic uncertainty and high unemployment in Nigeria and Ghana based on a fear of competition from successful immigrants.<sup>46</sup> Liberia, for example, introduced a compulsory exit visa for all residents, thereby violating the right of its citizens to free movement in and out of the country.<sup>47</sup> Other Member States, including Nigeria and Ghana, have used identity cards to effectively document and control the entry and stay of foreigners in their territories, which defeats the fundamental principle of freedom of movement. At Member State levels, there have been inconsistencies between the Protocol and domestic laws on employment. Migrants, many of whom lack valid travel documents, have also faced harassment at borders, where immigration officials have been shown to have low levels of knowledge about the Protocol.<sup>48</sup>

ECOWAS has made continuous efforts to advance freedom of movement following the adoption of the Protocol, including the Revised Treaty of 1992, which reiterated the right of ECOWAS citizens to entry and residence, mandating Member States to recognise these rights in their territories and take the required steps at national levels to facilitate the implementation of free movement provisions. In 2008, the 30<sup>th</sup> Ordinary Session of the Authority of Heads of State and Government of ECOWAS mandated the Executive Secretariat to define an ECOWAS Common Approach on Migration, which included a focus on the advancement of free movement. These efforts have had limited success in light of a lack of political will, political instability and border disputes in the sub-region.

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<sup>39</sup> Bolarinwa, O. 2015. The ECOWAS Free Movement Protocol: Obstacle or Driver of Regional Integration? *Insight on Africa* 7, no. 2: 154-68

<sup>40</sup> Yeboah et al. 2020. The ECOWAS Free Movement Protocol and Diversity of Experiences of Different Categories of Migrants: A Qualitative Study. *International Migration*.

<sup>41</sup> Dick, E. and Shraven, B. 2018. Regional migration governance in Africa and beyond: A framework of analysis. Deutsches Institut für Entwicklungspolitik

<sup>42</sup> Adepoju, A. 2022. Fostering Free Movement of Persons in West Africa: Achievements, constraints, and prospects for international migration. *International Migration*, 40(2): 4-28

<sup>43</sup> Okunade, S.K. and Ogunnubi, O. 2018. A “Schengen” agreement in Africa? African agency and the ECOWAS protocol on free movement. *Journal of Broderlands Studies*, 1-19.

<sup>44</sup> Ibid 39

<sup>45</sup> Ibid 40

<sup>46</sup> Ibid 43

<sup>47</sup> Ibid

<sup>48</sup> Ibid 44

While ECOWAS has instructed Member States to put in place working committees monitoring the implementation of the Protocol and ensure its full implementation, only a few Member States have done so. Where committees have been set up, their understanding of what the Protocol entails appears to be limited.<sup>49</sup> The Revised Treaty of ECOWAS established the ECOWAS Court of Justice in 1992. Art. 15 of the Revised Treaty stipulates that judgments of the Court of Justice are binding on Member States, Institutions of the Community, individuals and corporate bodies. The implementation of the Protocol has nonetheless suffered from a lack of effective mechanisms to deal with Member States that violate the rights of migrants under the Protocol, as the Court does not currently impose strict sanctions on Member States based on violations of the Protocol.<sup>50</sup>

## **2.4. Intergovernmental Authority on Development**

The Intergovernmental Authority on Development (IGAD) is a trade bloc in the Horn of Africa, Nile Valley and the African Great Lakes region made up of Djibouti, Ethiopia, Somalia, Eritrea, Sudan, South Sudan, Kenya and Uganda.

### **2.4.1. Scope of rights**

In February 2020, the Committee of Ambassadors, Ministers of Interior and Ministers of Labour of IGAD's Member States endorsed the Protocol on Free Movement of Persons in the IGAD Region.<sup>51</sup> The Protocol includes provisions on access to the labour market: "Member States shall not discriminate against citizens of another Member State with regard to entry, access to employment and occupation including recruitment, hiring and dismissal, terms and conditions of employment and remuneration, and the establishment of businesses or residence in their territory, on the basis of their nationality, race, ethnic group, colour, disability, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status" (Article 3(4)).

The Protocol sets out a timetable for progressive realization of freedom of movement starting with the right of entry and abolition of visa requirements by 2028, the right of movement of workers by 2031, the right of residence by 2034, and the right of establishment by 2037.<sup>52</sup> The roadmap for the implementation of the Protocol has outlined the necessary steps to develop, review and harmonize national laws, policies and procedures in relation to immigration procedures for IGAD citizens as well as their spouses and dependents, labour mobility, labour recruitment and admissions procedure, the right of establishment, business permits, property ownership, mutual recognition of education and training certificates, access to social security schemes, and portability of social security benefits.

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<sup>49</sup> Ibid 43

<sup>50</sup> Ibid 44, Ibid 43

<sup>51</sup> Communiqué of the Sectoral Ministerial Meeting on the Protocol on Free Movement of Persons in the IGAD Region, 26 February 2020, Khartoum, Republic of Sudan. Available at <<https://igad.int/attachments/article/2373/Communique%20on%20Endorsement%20of%20the%20Protocol%20of%20Free%20Movement%20of%20Persons.pdf>>

<sup>52</sup> The Protocol defines "right of establishment" as the right of a citizen of a Member State to take up and pursue economic activities such as business, trade, service, profession, vocation or as a self-employed person in the territory of another Member State and in accordance with the national law of the host Member State.

While the implementation of the IGAD framework on free movement is still in its infancy, it has been hailed as an important milestone due to its specific provisions on persons affected by natural disasters. Article 16 states that:

1. Members shall allow citizens of another Member State who are moving in anticipation of, during or in the aftermath of a disaster to enter into their territory provided that upon arrival they shall be registered in accordance with national law.
2. Member States shall take measures to facilitate the extension of stay or the exercise of other rights by citizens of other Member States who are affected by disaster in accordance with the provisions of this Protocol when return to their state of origin is not possible or reasonable.

The Protocol includes under the definition of disaster any “calamitous event or series of events not governed by the rules of international humanitarian law and resulting in widespread loss of life, great human suffering or distress, or large-scale material or environmental damage, thereby disrupting the functioning of society”.

#### **2.4.2. Implementation of freedom of movement**

Art. 27 of the Protocol states that Member States undertake to harmonize their national policies, laws and programs to facilitate the implementation of the Protocol. Specific reference is made to the review and harmonization of national security policies, laws and systems to provide social security for workers and self-employed persons. The IGAD Secretariat oversees the implementation of the Protocol and reports to the IGAD Council of Ministers, which in turn may issue regulations and directives or issue policies for the effective implementation of the Protocol (Art. 28). Art. 29 of the Protocol states that the IGAD Secretariat shall support the efforts of Member States to implement its provisions. It will monitor and evaluate the implementation of the Protocol by the Member States and submit regular reports to the organs of IGAD on the state of free movement of persons. The Secretariat shall develop and apply a mechanism for assessing the status of implementation of the Protocol.

As the Protocol has only recently been adopted, challenges in implementation cannot not be evaluated at this stage.

### **3. Review of domestic legislation**

This section outlines the steps taken by Protocol Member States to implement the contingent rights policy. The section is divided into short summaries of legislative amendments, regulations, decrees, orders and policies adopted by each Protocol Member State, including references to administrative practices that are commonplace but have not yet been formally adopted, and a comparative analysis of the different areas of immigration, right to work, the right to education and health, as well as other rights.<sup>53 54 55</sup>

#### **3.1. Country-by-country analysis**

##### **3.1.1. Antigua and Barbuda**

Antigua and Barbuda has adopted legislative provisions and orders in relation to immigration, the right to work, education, healthcare and landholding. Drivers' licenses obtained in other Protocol Member States are not yet recognized.

Immigration: OECS citizens have the right to enter and remain without any restriction or limitation as to time, though this does not extend to spouses and dependents. OECS citizens might be refused entry or expelled for a variety of reasons, including where immigration officers have reasons to believe that the person is or has:

- Been convicted of a serious offence, whether in Antigua and Barbuda or in any other jurisdiction;
- Likely to become a charge on public funds;
- Been deemed, by Order of the Cabinet by reasons of conviction of a serious offence, to be an undesirable resident or visitor to Antigua and Barbuda;
- Been engaged in activities that are, or are likely to be, prejudicial to the national security of Antigua and Barbuda or the maintenance of law, public order, public health, public morality and good Government in Antigua and Barbuda; or
- Not met the requirements for the grant of entry by any other provisions of the Immigration Act or falling under the provisions set out in Schedule 5 of the Act on "prohibited immigrants".

The list of "prohibited immigrants"<sup>56</sup> includes several additional categories to those listed above, including persons who are or have:

- Entered the territory of the Protocol Member State illegally;
- Addicted to drugs and/or implicated in the sale or purchase of drugs;
- A potential threat to national security, the maintenance of law, public order, public health, public morality or good government;
- Engaged in espionage, sabotage or other subversive activity detrimental to the security of Antigua and Barbuda;

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<sup>53</sup> Annex I provides a full breakdown of the relevant legislative amendments adopted by Member States to implement the policy. Where legislative provisions are referenced in this section, these are shortened for brevity and do not represent a complete summary.

<sup>54</sup> This review does not include a discussion of social security, as the OECS is already in the process of developing model legislation on the portability of short-term social security benefits to complement the CARICOM Agreement on Social Security.

<sup>55</sup> This review is limited to relevant provisions adopted in order to implement the contingent rights policy. It does not give a full overview of challenges faced by OECS citizens and their family when exercising the right to freedom of movement, e.g. instances of discriminatory treatment.

<sup>56</sup> The full list is included in Annex I.

- Publicly supported violent resistance to or abolition of government, assassination or destruction of property;
- A dependent of prohibited immigrants and not a citizen of Antigua and Barbuda.

Right to work: OECS citizens have the right to work in Antigua and Barbuda without a work permit, though this does not extend to spouses and dependents.

Education: Antigua and Barbuda puts citizens of OECS Member States, including Associate Member States, on equal footing in access to education. No tuition fees are payable for educational programs at public schools. Antigua and Barbuda also deems the children of citizens of OECS Protocol Member States to be eligible for scholarships, if their parents are resident in Antigua and Barbuda and their country of citizenship “has enacted legislation in terms materially identical to this section and does not discriminate against the citizens of Antigua and Barbuda in the award of [...] scholarships” (The Education Act 2008, 151(1)(d)(ii)).

Health care/social protection: Antigua and Barbuda has included OECS Member States, including Associate Members, in the provision of social protection assistance programs. This includes categories such as school support, healthcare, pharmaceuticals and family planning for persons who are enrolled in one or more social protection assistance programmes and mental healthcare for persons certified by a registered medical practitioner as a person with a disability. While this shows that OECS citizens receive equal treatment in access to these social protection programs, this is limited to persons that meet certain other requirements and does not grant OECS citizens and their family access to health care more broadly. Other programs under the Social Protection Act include work and training for the unemployed, support and counselling, as well as cash and food assistance, though these programs are only available to those who have been legal residents for at least three years.

Landholding: The Government of Antigua and Barbuda decreed that OECS citizens need not apply for non-citizen landholding licenses and, as such, are entitled to possess and transfer land in the same manner as citizens of Antigua and Barbuda.

### **3.1.2. Commonwealth of Dominica**

Dominica has adopted legislative provisions in relation to immigration, the right to work, education, landholding and the recognition of drivers’ licenses. No relevant provisions have been adopted on health care yet.

Immigration: Dominica does not currently have legislative provisions granting OECS citizens indefinite stay to remain. Instead, OECS citizens hold permits to remain that need to be renewed every twelve months, which will be granted where an OECS citizen is not considered a prohibited immigrant or the permit is not otherwise revoked.<sup>57</sup> Thus, OECS citizens have the right to remain in Dominica indefinitely upon regular renewal of their permits, though they may in practice also receive a stamp of indefinite stay upon arrival. This does not currently extend to spouses and dependents, though, as shown below, they may have the right to enter and remain depending on the OECS citizens establishing economic enterprises.

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<sup>57</sup> The Immigration and Passport Act does not define “prohibited immigrant”.

Right to work: OECS citizens have the right to work in Dominica without a work permit. Where OECS citizens establish economic enterprises or provide a service in Dominica, their spouse and immediate dependent family members; managerial, technical and supervisory staff; as well as the spouse of the managerial, technical and supervisory staff have the right to work without a work permit.

Education: Nationals of CARICOM Member States have access to free tuition in Dominica. Students are eligible for scholarships if they have been educated in Dominica for the preceding three years and were either born in Dominica or are the children of a parent who was born in Dominica or has been ordinarily resident in Dominica for ten years.

Landholding: OECS citizens are placed on equal footing as nationals, as they are not considered to be “aliens” under the Alien Landholding Act.

Drivers’ licenses: Dominica recognizes drivers’ licenses issued by other Member States as valid.

### **3.1.3. Grenada**

Grenada has adopted legislative provisions in relation to immigration, the right to work, education, and the recognition of drivers’ licenses. No relevant provisions on health care and landholding have been made.

Immigration: Grenada grants OECS citizens indefinite stay to remain, though this does not extend to spouses and dependents. The right to enter and remain may be revoked if a person falls under the category of a prohibited alien, which includes a person who has or is:

- Likely to become a public charge by reason of infirmity of body or mind or who is not in possession of sufficient means to support themselves and their dependents;
- Of unsound mind or a mentally defective person;
- Certified by a medical practitioner to be suffering from a contagious or infectious disease which makes their entry into Grenada undesirable;
- Not have received a free pardon, been in any country convicted of an offence for which a sentence of imprisonment has been passed and who for this reason appears to be an undesirable person;
- A prostitute or a person who may have lived on or received proceeds of prostitution;
- From information or advice received from the government of any other country through official or diplomatic channels, deemed to be an undesirable inhabitant or visitor.

Right to work: While OECS citizens do not have to obtain a work permit, this does not extend to spouses and dependents. In addition, the Employment Act prohibits discrimination against employees on the basis of national extraction and social origin.

Education: Citizens of OECS Member States, including Associate Member States, do not have to pay tuition fees or other costs associated with the attendance of public schools. Children who are OECS citizens or the child of an OECS citizen are eligible to apply for scholarships, though they have to have been educated for three years in Grenada.

Drivers’ licenses: Grenada has also recognized drivers’ licenses from other OECS Member States.

#### **3.1.4. Montserrat**

Montserrat has adopted legislative provisions in relation to immigration, the right to work, education, landholding and the recognition of drivers' licenses. The provisions on health care put OECS citizens at a disadvantage in relation to fees.

Immigration: OECS citizens are granted indefinite stay to remain upon entry to Montserrat, though this does not extend to their spouses and dependents. Montserrat has a list of prohibited immigrants, which include a person who is or has:

- Suffering from a mental illness;
- Suffering from a contagious or infectious disease, which poses a danger to the community;
- Not having received a free pardon, been in any country convicted of an offence for which a sentence of imprisonment has been passed;
- Worked as a prostitute or received proceeds of prostitution;
- A dependent of a prohibited immigrant.

Citizens of Protocol Member States shall not be prohibited immigrants on the ground that they are likely to become a public charge.

Right to work: Citizens of OECS Member States are exempt from the requirements of a work permit, though this does not extend to their spouses or dependents. The Labour Code states that "the legitimate employment interests of Montserratians shall be paramount and shall override all other competing expressions on national policy" (2(a)), which brings into question whether OECS citizens have equal access to the labour market in Montserrat.

Health care: While Montserrat grants all CARICOM citizens access to healthcare, CARICOM residents pay 1.5 times the rates applied to citizens.

Education: In relation to education, the Montserrat Constitution Order provides that "every child of the appropriate age, as provided by law, shall be entitled to receive primary and secondary education which shall [...] be free". Children are eligible for scholarships if they have been educated in Montserrat for at least three years and one of their parents has been ordinarily resident in Montserrat for at least five years.

Landholding: Where the country of citizenship has made reciprocal provisions, citizens of OECS Member States are not required to obtain a license to acquire shares in companies registered in Montserrat or hold land in Montserrat, though they have to pay fees specifically stipulated for OECS citizens.

Drivers' licenses: Montserrat recognizes drivers licenses issued in other Member States.

#### **3.1.5. Saint Kitts and Nevis**

Saint Kitts and Nevis has adopted legislative provisions in relation to immigration, the right to work and the recognition of drivers' licenses. No provisions have been made on education, health care or landholding yet.

Immigration: OECS citizens may enter and remain in Saint Kitts and Nevis for a stay of indefinite duration, though this does not extend to spouses and dependents. The right to enter and remain may be revoked

if a person is deemed to be a prohibited person. The list of prohibited persons includes persons who are or have:

- Likely to become charges on public funds;
- Paupers, vagrants or professional beggars;
- Suffering from communicable diseases;
- Prostitutes or whose behaviour offends morality;
- Addicted to drugs or have engaged in the sale/purchase of drugs;
- Been convicted of a criminal offence punishable with imprisonment for a term of five years or longer;
- Entered Saint Kitts and Nevis illegally or have aided, encouraged, or procured other persons to enter Saint Kitts and Nevis illegally;
- Supported violent resistance to or abolition of government, assassination or destruction of property;
- Engaged in espionage, sabotage or other subversive activity directed at the security of Saint Kitts and Nevis;
- Dependents of prohibited persons.

Right to work: OECS citizens do not require a work permit to engage in gainful employment in Saint Kitts and Nevis, though this does not extend to spouses and dependents.

Drivers' licenses: Saint Kitts and Nevis recognizes drivers' licenses issued in other OECS Member States.

### **3.1.6. Saint Lucia**

Saint Lucia has adopted legislative provisions in relation to immigration, the right to work, landholding and the recognition of drivers' licenses. No relevant provisions have been adopted on education and health care yet.

Immigration: OECS citizens are entitled to enter and remain for a stay of indefinite duration, though this does not extend to spouses and dependents. This right may be revoked for reasons of national security or where they are a prohibited immigrant.

Right to work: OECS citizens have the right to work in Saint Lucia without having to obtain a work permit first, though this does not extend to spouses and dependents.

Landholding: Saint Lucia exempts CARICOM citizens from obtaining alien landholding licenses, where the laws of their country of citizenship make the same provisions for citizens of Saint Lucia.

Drivers' licenses: Saint Lucia recognizes drivers' licenses obtained in other Member States.

### **3.1.7. Saint Vincent and the Grenadines**

Saint Vincent and the Grenadines has adopted legislative provisions in relation to immigration, though only to a limited extent, and education.

Immigration: Unlike other Protocol Member States, Saint Vincent and the Grenadines only allows OECS citizens to enter and remain for up to six months. This does not extend to spouses and dependents. It should be noted, however, that Saint Vincent and the Grenadines has passed a legislative amendment to grant OECS citizens indefinite stay to remain, though this has not yet entered into law. In practice, OECS citizens are already granted indefinite stay to remain upon entry to Saint Vincent and the Grenadines. The right to enter and remain may be refused to prohibited immigrants, including a person who is or has:

- Likely to become a public charge by reason of infirmity of body or mind or who does not have sufficient means to support themselves and their dependents;
- An “idiot or epileptic”, or any person who is insane or mentally deficient, or any person who is deaf and dumb or deaf and blind, or dumb and blind, unless in any such case he, or a person accompanying him or some other person, gives security to the satisfaction of the Chief Immigration Officer for his permanent support in Saint Vincent and the Grenadines or for his removal therefrom whenever required by the Chief Immigration Officer;
- Suffering from a contagious or infectious disease and thereby poses a danger to the community;
- Not having received a free pardon, been in any country convicted of an offence and received a sentence of imprisonment;
- Worked as a prostitute or received proceeds from prostitution;
- A dependent of a prohibited immigrant;
- Based on information received by any government, deemed to be an undesirable immigrant or visitor (not right of appeal);
- Deemed on economic grounds or standards or habits of life to be undesirable immigrants, including as part of a class of persons (no right of appeal).

Education: Saint Vincent and the Grenadines provides that citizens of CARICOM Member States do not pay tuition fees or other costs for the attendance of public schools and assisted private schools. Citizens of Member States of the OECS and their children are eligible for scholarships if they are resident in Saint Vincent and the Grenadines and their country of citizenship has adopted legislation in terms materially identical to the one in question and does not discriminate against citizens of Eastern Caribbean States in the award of scholarships.

### **3.2. Comparative analysis**

While section 3.1 has outlined the steps taken by each Protocol Member State to implement the contingent rights policy, this section provides a comparative analysis split into the different thematic areas of the policy. As outlined in the table below,<sup>58</sup> several Protocol Member States have made significantly more progress than others in terms of legislative provisions, with Dominica and Saint Vincent and the Grenadines currently lagging the farthest behind in some areas. The table also points to the lack of provisions adopted in relation to spouses and dependents of OECS citizens as provided in the contingent rights policy as well as limited provisions on health care for both principal beneficiaries as well as spouses and dependents. It should be noted that the table does not reflect administrative practices that grant OECS citizens and their family contingent rights. As such, the table reflects the fact that, for instance, while OECS citizens and their family have access to education and healthcare in practice, the Protocol Member States may not have adopted legislative provisions to this effect yet and, as a result, OECS citizens and

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<sup>58</sup> Ticks in parentheses indicate that Protocol Member States have adopted provisions which only go part of the way towards implementing the contingent rights policy.

their family may fall under separate fee schedules, which may also be subject to the discretion of the education and health care provider.

Overview of rights accorded in Protocol Member States								
Rights	Beneficiary	Antigua and Barbuda	Commonwealth of Dominica	Grenada	Montserrat	St. Kitts and Nevis	St. Lucia	St. Vincent and the Grenadines
Indefinite stay to remain	OECS citizens	✓	(✓)	✓	✓	✓	✓	(✓)
	Spouses and dependents							
Right to work	OECS citizens	✓	✓	✓	✓	✓	✓	
	Spouses and dependents		(✓)					
Education	Dependents	(✓)	(✓)	(✓)	(✓)			(✓)
Health-care	OECS citizens	(✓)						
	Spouses and dependents							
Land-holding	OECS citizens	✓	✓		✓		✓	
	Spouses and dependents							
Recognition of driver's licence	OECS citizens		✓	✓	✓	✓	✓	
	Spouses and dependents							

Table 1: Overview of steps taken by Protocol Member States to implement the contingent rights policy

### 3.2.1. Immigration

Art. 12 of the Protocol to the RTB states that freedom of movement shall be secured for citizens of Protocol Member States within the Economic Union Area. The contingent rights policy extends the freedom of movement to spouses and dependents of OECS citizens, giving them the same status as the principal beneficiary in the host Protocol Member State with the right to reside, leave and re-enter. Spouses have the right to remain in the host Protocol Member State in the event of the death, separation divorce or end of relationship with the principal beneficiary<sup>59</sup>; dependents have the right to remain in the host Protocol Member State upon attaining the age of 18.

Section 3.1 has shown that the majority of Protocol Member States have adopted relevant provisions to grant OECS citizens the right to indefinite stay to remain, namely Antigua and Barbuda, Grenada, Montserrat, Saint Kitts and Nevis, and Saint Lucia. Dominica and Saint Vincent and the Grenadines have

<sup>59</sup> See footnote 12 above.

not yet adopted legislative provisions on the right to indefinite stay to remain but grant OECS citizens this right in practice, hence the provision is administratively implemented.

Where Protocol Member States have granted OECS citizens indefinite stay to remain through the “OECS Free Movement – Indefinite Stay” immigration stamp, they have applied the categories of prohibited immigrants to them. Only Montserrat explicitly excludes OECS citizens from the prohibition of persons entering on the grounds that they are likely to become a public charge. It is questionable whether the application of these categories to OECS citizens is in line with the freedom of movement agreement, though the right of OECS citizens to indefinite stay to remain has generally been well protected by Protocol Member States to date. The Protocol to the RTB and the contingent rights policy do not place restrictions on the freedom of movement of citizens of Protocol Member States. While Art. 12.5 of the Protocol allows Protocol Member States to regulate the movement of such citizens subject to approval by the OECS Authority, the extensive list of prohibited persons poses a potential obstacle to the implementation of freedom of movement.

The Protocol Member States have not included provisions on the rights of spouses or dependents to indefinite stay to remain in their immigration laws. In meetings with the OECS Commission, the Chiefs of Immigration from several Protocol Member States have stated that there is currently no special treatment in place for third-country spouses and dependents of OECS citizens and that they decide on the right to indefinite stay to remain and the right to work of those individuals on a case-by-case basis.<sup>60</sup>

The Chief of Immigration from Saint Kitts and Nevis pointed to the lack of guidelines on how to deal with third-country spouses and dependents of OECS citizens as a result of which applications by spouses and dependents for indefinite stay to remain and/or work permits have thus far been assessed on a case-by-case basis with spouses having been granted work permits in the end. The Chief of Immigration from Grenada, on the other hand, stated that spouses will be treated as third country nationals until they become a resident or citizen of Grenada. They would have the options to become a resident or citizen in accordance with the regulations for third-country nationals. According to the Chief of Immigration from Montserrat, a third-country spouse or dependent of an OECS citizen may be granted the right to work in Montserrat through an exemption, which is at times granted by Cabinet via the Labour Commissioner, the Passport Office or the police. Spouses may also be given a “Belonger Status” stamp, which is processed by the Labour Commissioner to give them the right to work. This discussion shows the inconsistency of the application of the contingent rights policy, particularly with regards to its application to third-country spouses and dependents of OECS citizens.

### **3.2.2. The right to work**

Art. 12 states that freedom of movement shall entail “the abolition of any discrimination based on nationality between citizens of the Protocol Member States as regards employment, remuneration and other conditions of work and employment”. In addition, the right of OECS citizens to work in other Protocol Member States is anchored in Art. 13.4(b) of the Protocol to the RTB, which identifies the “mobilisation, development and efficient allocation of labour across the Economic Union through education and skill training arrangements, and the creation of an Economic Union wide labour market” as an area for coordinated policy-making amongst Protocol Member States. Under Art. 27 Protocol Member States may not impose or maintain restrictions on the freedom of establishment of those exercising their

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<sup>60</sup> Meeting Report on Harmonized Procedures for Indefinite Stay of OECS Citizens’ Spouses and Dependents from 9 July 2020

right to freedom of movement that do not apply to their own nationals. This includes the establishment of agencies, branches or subsidiaries, the right to take up and pursue activities as self-employed persons and the right to set up and manage undertakings.

OECS citizens have the right to work without a work permit in Antigua and Barbuda, Dominica Grenada, Montserrat, Saint Kitts and Nevis and Saint Lucia. Saint Vincent and the Grenadines have not yet adopted legislative provisions to this effect. Dominica has made provisions for the spouses and dependents for OECS citizens that move to Dominica to establish an economic enterprise or provide a service. Spouses and dependents do not currently have the right to work in any of the other Protocol Member States. As shown by the discussion in 3.2.1, Protocol Member States may grant spouses work permits on a case-by-case basis.

In addition, Protocol Member States have not adopted legislation to grant OECS citizens and their family access to the resources allocated through cash advances, labour market schemes, and other social safety net mechanisms as per the social rights provided by the policy. The legislative developments do not go beyond the removal of the requirement of a work permit to put those exercising their right to freedom of movement on equal footing as nationals of the host Protocol Member State in terms of access to the labour market through equal treatment in recruitment or recognition of training or studies completed in other Protocol Member States. Protocol Member States may have, however, included measures in their legislation that prohibits discrimination on the basis of nationality more generally, without a specific reference to OECS citizens.

### **3.2.3. Education and health**

Art. 22 of the Protocol to the RTB sets out the Protocol Member States' goal of "creating fair and equitable access to inclusive education and training opportunities for all citizens", which includes the harmonisation and accreditation of educational and vocational programmes, the harmonisation of curricula and assessments for learning and training institutions, and the establishment of procurement services for core school texts and supplies. The right to education and health for OECS citizens and their family is further reflected in Art. 23, which outlines provisions on human and social development, including the objective to "provide the enabling legislative, policy and administrative policy and 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". Similarly, the OECS Social Safety Net and Social Protection Framework states the importance of "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".

Antigua and Barbuda, Dominica, Grenada, Montserrat and Saint Vincent and the Grenadines have adopted relevant provisions on access to education for OECS citizens and their dependents on equal terms as citizens of the host country, though these are largely subject to residence requirements with regards to the eligibility to scholarships. In addition, Antigua and Barbuda and Saint Vincent and the Grenadines have outlined reciprocity requirements to the eligibility for scholarships, as a result of which OECS citizens are only eligible for scholarships if their countries of citizenship have adopted provisions to the same effect. Saint Lucia and Saint Kitts and Nevis have not yet adopted relevant provisions on education.

The review of legislation on the provision of public health care and access to health services only led to relevant findings in Antigua and Barbuda, where citizens of OECS Member States are included in the provision of social protection assistance programmes, as outlined in more detail in 3.1.1. The Montserratian regulations show that CARICOM residents, including OECS citizens, have to pay higher rates to access health care. Anecdotal evidence from the OECS Commission suggests that similar practices are in place in other Protocol Member States.

#### **3.2.4. Other rights**

While these rights do not specifically form part of the contingent rights policy, the right to landholding and the recognition of drivers' licenses have been included here for the sake of completion.

Antigua and Barbuda, Dominica, Montserrat and Saint Lucia have made provisions in relation to landholding. In Montserrat, CARICOM and OECS citizens may acquire shares in companies registered in Montserrat and hold land without a licence provided that their country of citizenship has adopted reciprocal provisions, though OECS citizens are required to pay a fee in respect of each parcel of land, mortgage or lease held. Similarly, CARICOM citizens do not have to obtain an alien landholding licence in Saint Lucia if their country of citizenship has enacted legislation to the same effect. In Antigua and Barbuda, OECS citizens do not need to apply for a non-citizen landholding license in order to possess and transfer land. Dominica does not include OECS citizens in the category of "aliens".

In addition, Dominica, Grenada, Montserrat, Saint Kitts and Nevis and Saint Lucia recognize drivers' licenses issued in other Protocol Member States.

#### 4. Findings and conclusions

As shown above, the incorporation of the contingent rights policy into domestic legislation has been uneven across Protocol Member States. This has led to implementation challenges in practice, particularly as it relates to the application of the contingent rights policy to third-country spouses and dependents of OECS citizens, and Protocol Member States making decisions on the rights of OECS citizens and their family on a case-by-case basis.

The review of domestic legislation has revealed significant gaps in the implementation of both general and social rights as stipulated in the contingent rights policy. On general rights, Protocol Member States have for the most part adopted provisions on the right of OECS citizens to enter and remain in their territory, though this has not been extended to third-country spouses and dependents. In addition, the majority of Protocol Member States have set out a long list of restrictions on “prohibited immigrants” that may potentially limit the free movement of OECS citizens, including the likelihood of relying on public funds. This raises the question whether such restrictions are in line with the objectives of the Protocol to the RTB and the contingent rights policy, particularly as it pertains to human mobility in the context of natural disasters and extreme weather events. All Protocol Member States grant OECS citizens the right to work, though this is subject to limitations in Dominica and only implemented administratively in Saint Vincent and the Grenadines. Spouses and dependents do not have the right to work in the majority of the Protocol Member States with only Dominica having introduced relevant provisions in specific instances. No other provisions on recruitment or recognition of qualifications have been put in place by Protocol Member States.

On social rights, Protocol Member States have not gone beyond the removal of work permits for OECS citizens, if at all, to grant equal treatment and access to labour market schemes to those exercising their right to freedom of movement. Similarly, access to education and scholarships for OECS citizens and their family has not been granted by all Protocol Member States and is partially subject to residence and/or reciprocity requirements in Member States where relevant provisions have been adopted. The review of domestic legislation did not bring out any findings on access to health care beyond the social protection programs in place in Antigua and Barbuda.

In light of the above-mentioned implementation gaps, the discussion of comparative frameworks currently in use or being implemented in Europe, South America and East Africa provides a useful basis to derive key findings that will inform the drafting of the model legislation for the adoption of Protocol Member States within the ECEU. In addition, the discussion of comparative frameworks also raises several questions that will need to be addressed as part of the drafting process.

##### 4.1.1. Scope of rights

I. The restrictions applied by Protocol Member States to categories of “prohibited immigrants” reflects the challenges faced by Protocol Member States in relation to public funds. The example of ECOWAS has shown how Member States have relied on such categories to collectively expel ECOWAS citizens at times of economic hardship. Other regional freedom of movement frameworks have placed limits on the scope of rights granted to their citizens, including being able to stay in a host Member State for a longer period only if they are in employment or full-time education or have the means to support themselves. These restrictions are made in recognition of the limitations of public funds available to each Member State to prevent potential imbalances between sending and receiving Member States. **Protocol Member States must therefore consider whether freedom of movement across the OECS region will be feasible in the**

**long-term without any restrictions as to the availability of funds to OECS citizens to support themselves and, as a result, whether the rights accorded to OECS citizens and their family need to be defined more narrowly.** The question of feasibility should be evaluated in the context of current practice. According to the RIU of the OECS Commission, there have been no reports of OECS citizens being refused entry or facing removal on economic grounds to date. Protocol Member States currently only restrict the right of OECS citizens to enter and remain based on national security in practice, taking account of the criminal record of persons under the free movement regime.

II. The number of directives and regulations adopted in order to secure the implementation of freedom of movement across the European Union shows the need for a careful and detailed delineation of rights accorded to citizens and their family. The example of Mercosur also shows that Member States have interpreted the Residence Agreement differently based on the vague provisions on civil, social, cultural, and economic rights and freedoms. **Protocol Member States must ensure that the model legislation is used as a means to address any ambiguities and uncertainties in the contingent rights policy.**

III. The example of IGAD shows the importance of including provisions on moving in anticipation or the aftermath of disasters. In light of the vulnerability of OECS Protocol Member States to natural disasters and/or extreme weather events, this reinforces the **potential value of including references to disasters in the model legislation, which were not included in the contingent rights policy itself.**

#### **4.1.2. Implementation of freedom of movement**

I. Freedom of movement agreements have been implemented differently across the regions depending on whether relevant provisions have direct effect in Member States or not. **As Protocol Member States will have to incorporate the legislation on contingent rights into domestic law, the importance of a clearly defined timeline for this process should be noted, particularly in recognition of reciprocal provisions, in order to avoid uneven implementation.**

II. The implementation of contingent rights and freedom of movement provisions more generally should be carefully monitored. Art. 12 of the Protocol to the RTB states that the OECS Authority and the OECS Commission shall regularly monitor implementation. **Monitoring should involve engagement with relevant bodies both at national and regional levels as well as the Economic Union Working Group on Movement of Persons, the OECS Commission, the Economic Affairs Council (EAC) and the OECS Authority and follow a clearly defined format, such as annual reports on implementation.**

III. **Persons exercising their right to free movement should have recourse to a complaint mechanism at national and regional levels if they believe that the rights accorded to them have been infringed.** The complaints mechanisms should be in a position to liaise with Protocol Member States and to enforce the application of the contingent rights policy.

IV. **Protocol Member States should agree on shared approaches to avoid potential instances of fraud, including marriages of convenience.** Such approaches should take care not to unduly infringe on the rights of persons exercising their right to free movement as well as their family. The OECS Commission is currently in the process of finalising guidelines for the treatment of third-country spouses and dependents at ports of entry in Protocol Member States, which would serve as a basis for this.

V. In light of the question of opt-outs and non-reciprocity in the CARICOM free movement of skills national regime, **Protocol Member States should agree that they cannot opt-out of rights granted by the**

**contingent rights policy.** Protocol Member States should take note of Art. 12 of the Protocol to the RTB, which states that Protocol Member States may only regulate the movement of OECS citizens subject to the approval of the OECS Authority. As such, Protocol Member States may not make such decisions unilaterally. In addition, **rights granted under the policy and implemented through domestic legislation should not be subject to reciprocity provisions.**

#### **4.1.3. Implementation challenges**

I. As the example of Mercosur shows, it is important to clearly delineate the rights accorded to OECS citizens and their family exercising their right to free movement and other categories of regular migrants, e.g. CARICOM citizens, to ensure the rights accorded to OECS citizens and their family are in line with the Protocol to the RTB and the contingent rights policy. **The model legislation should therefore clearly articulate the rights granted to OECS citizens and their family.**

II. The implementation of freedom of movement agreements is an ongoing process, as gaps and failures in implementation as well as criticism of relevant provisions may arise. As shown by the examples of the European Union and ECOWAS, this requires continuous efforts, particularly where there may be changing or declining political will at Member State levels. **The identification of partners at the Member State level to advance and facilitate the implementation of these provisions will be critical, as is ensuring that rights-holders and rights-providers alike are aware of them.** OECS Commissioners and their respective regional integration units should play an important role in the implementation process so that Protocol Member States recognise their obligations to further this process.

III. Where natural disasters and/or extreme weather events have an impact on individuals exercising their right to free movement in the ECEU, **regional rapid response mechanisms should be integrated and linked with freedom of movement provisions.** Where migration flows in such instances lead to an increased burden on one or more of the Protocol Member States, this should be addressed at the regional level to avoid challenges to freedom of movement more generally.

## 5. Annex I

### 1.1. Immigration

<p>Antigua and Barbuda, <a href="#">Immigration and Passport Act 2014, No. 6 2014</a></p>	<p>14. Right of entry in Antigua and Barbuda The following persons or classes of persons have the right of entry and landing in Antigua and Barbuda- [...] (vi) citizens of Member States of the Organisation of Eastern Caribbean States seeking to enjoy rights conferred under the Revised Treaty of Basseterre</p> <p>21. Citizens of OECS Member States (1) A citizen of- (a) a Member State of the Organisation of Eastern Caribbean States lawfully landing in Antigua and Barbuda from any place outside Antigua and Barbuda, is entitled to enter and remain in Antigua and Barbuda for a period of 6 months; and (b) a Protocol Member State lawfully landing in Antigua and Barbuda from any place outside Antigua and Barbuda is entitled to enter and remain in Antigua and Barbuda, without any restriction or limitation as to time, unless the permission to remain in Antigua and Barbuda is revoked by the Chief Immigration Officer in accordance with this Act and the Regulations. (2) Notwithstanding subsection (1) but subject to section 10, an immigration officer may refuse entry in Antigua and Barbuda to a citizen of a Member State of the Organisation of Eastern Caribbean States landing in Antigua and Barbuda from any place outside Antigua and Barbuda if the immigration officer has reasons to believe that the citizen— (a) has been convicted of a serious offence, whether in Antigua and Barbuda or in any other jurisdiction; (b) is likely to become a charge on the Consolidated Fund; (c) is deemed, by Order of the Cabinet by reasons of conviction of a serious offence, to be an undesirable resident or visitor to Antigua and Barbuda; (d) falls or is determined to fall within any of the classes or descriptions of persons specified in Schedule 5; (e) is, or has been, engaged in activities that are, or are likely to be, prejudicial to the national security of Antigua and Barbuda or the maintenance of law, public</p>
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order, public health, public morality and good Government in Antigua and Barbuda; or  
(f) has not met the requirements for the grant of entry by virtue of any other provision of this Act.

Schedule 5

Prohibited Immigrants

1. Persons who have become, or are likely to be become, a charge on the Consolidated Fund.
2. Persons who become convicted of committing a serious offence or have been associated with unlawful conduct.
3. Persons who otherwise treated as undesirable visitor, immigrant or resident.
4. Persons who—
  - (a) are addicted to the use of any drug;
  - (b) are or have been at any time engaged or reasonably suspected of being likely to engage in the unlawful giving or using, the offering or exposing for sale, or the buying of, or the trading or trafficking in, any drug; or
  - (c) have been convicted of an offence under an enactment relating to dangerous or narcotic drugs, other than persons-
    - (i) who have been convicted of one offence only of the possession of cannabis, the amount of which was less than a trafficable quantity; and
    - (ii) whose sentence in respect of that offence was a non-custodial sentence.
5. Persons who—
  - (a) have been convicted of, or admit to having committed, a criminal offence which, if committed in Antigua and Barbuda, is punishable with imprisonment for a term of one year or longer;
  - (b) knowingly or for profit aid, encourage or procure other persons who are not citizens of Antigua and Barbuda, to enter Antigua and Barbuda, illegally; or
  - (c) are stowaways or seek to enter Antigua and Barbuda, illegally.
6. Persons who are or have been at any time advocates of—
  - (a) the overthrow by force or violence of the Government or any other country or of all forms of law;
  - (b) the abolition of organised Government; or
  - (c) the assassination of a person or the unlawful destruction of property.

	<p>7. Persons who are or have been members of or affiliated to an organisation which entertains or teaches any doctrine or practice specified in sub-paragraphs (a) to (c) of paragraph 5.</p> <p>8. Persons in respect of whom there are reasonable grounds for believing that they are likely to engage in espionage, sabotage or other subversive activity directed against or detrimental to the security of Antigua and Barbuda.</p> <p>9. Persons against whom deportation orders have been made.</p> <p>10. Persons seeking to enter Antigua and Barbuda who are without proper documentation of identity.</p> <p>11. A person not being a citizen of Antigua and Barbuda who is declared by the court prohibited.</p> <p>12. A person not being a citizen of Antigua and Barbuda who is ordered by the court to be removed.</p> <p>13. The dependants of prohibited immigrants who are not citizens of Antigua and Barbuda.</p> <p>14. A person or class of persons prohibited from entering Antigua and Barbuda under the provisions of section 9.</p> <p>15. A person who, not having received a free pardon, has been in any country convicted of an offence for which a sentence of imprisonment has been passed and who, for this reason, appears to be an undesirable immigrant.</p> <p>16. A person who is likely to become a public charge by reason of infirmity of body or mind or who is not in possession of sufficient means to support himself and such of his dependants as he shall bring with him to Antigua and Barbuda.</p> <p>17. A person who, since attaining the age of fourteen years, has been convicted in any place of murder or an offence of a nature punishable in Antigua and Barbuda with imprisonment for a term of three years or more and who by reason of such conviction is deemed by an immigration officer to be an undesirable immigrant.</p>
<p>Dominica, Immigration and Passport Act, Act of 1995, Amended by 16 of 2007 and 17 of 2015</p>	<p>Visitors and passengers in transit</p> <p>19. (1) Where a person desires to remain in the State as a visitor or passenger in transit for a period not exceeding twelve months, an immigration officer may, if so requested and without deciding whether that person is or is not a prohibited immigrant, grant him a permit to remain in the State for such period not exceeding twelve months as may be specified in the permit.</p>

- (2) If the permit is for a period less than twelve months, it may be extended from time to time by the Commissioner of Police up to a maximum twelve months from the date of entry.
- (3) If a visitor or passenger in transit desires to remain in the State after the expiration of his permit, he shall before the expiration present himself in person to an immigration officer and shall be dealt with as if he were an immigrant entering the State for the first time.
- (4) If a visitor or passenger in transit fails to leave the State on or before the expiration of the permit without having presented himself as aforesaid, he shall be deemed to be a prohibited immigrant and may be dealt with as such.
- (5) Notwithstanding anything contained in this section, a citizen of or belonging to a Member State of the Organisation of Eastern Caribbean States or the Community shall be entitled to enter or remain in Dominica except where such a citizen or belonging is a prohibited immigrant under this Act or where his permit to enter or remain in Dominica is revoked under section 22.

Examination of immigrants and declaration to be made

3. (1) The examination of persons in accordance with section 11 of the Act shall be conducted by an immigration officer on the vessel by which such persons arrived, or at any other place convenient for the purpose as the immigration officer may direct. Every person before being permitted to enter or remain in the State shall, if so required to do by the immigration officer, complete a declaration in the Form B in the Schedule, and the immigration officer may require every person to declare thereto before himself, and shall satisfy himself where he has any doubt that the signatory thereto is sufficiently educated to understand the declaration; or, if the person is unable to fill in the Form, the officer shall question him, through an interpreter if necessary, and shall himself fill in or cause to be filled in the Form of declaration, and shall thereupon require the person to sign the declaration.
- (2) Where the person referred to in subregulation (1) is a citizen of or a belonging to a Member State of the Organisation of Eastern Caribbean States, such person before being permitted to enter or remain in the State shall, if required to do so by the immigration officer, complete a declaration in Form BB in the Schedule; and where permission is granted to such a person upon arrival at the port of entry such permission shall be for a period not exceeding six months if under the

	<p>corresponding law of that Member State reciprocal treatment is given to citizens of Dominica. The provisions of subregulation (1) shall apply mutatis mutandis to such a person.</p>
<p>Grenada,  <a href="#">Immigration (Amendment), Act No. 7 of 2012</a></p>	<p>Section 4</p> <p>4A (1) Subject to section 4, an immigration officer shall grant a permit for a citizen of a Protocol Member State to enter and remain in Grenada for a stay of indefinite duration.</p> <p>(2) The right to enter and remain in Grenada under subsection (1) may be revoked if a person is deemed to be a prohibited alien in accordance with the procedures for due process set out in this Act.</p> <p>4. Prohibited aliens</p> <p>(1) Except with the authority of the Minister and subject to such conditions as to duration and place of residence, occupation, or any other matter or thing as the Minister may think expedient, an immigration officer shall not grant leave to an alien to enter Grenada if the alien is a prohibited alien that is to say—</p> <p>(a) a person who is likely if he or she entered Grenada to become a public charge by reason of infirmity of body or mind or who is not in possession of sufficient means to support himself or herself and such of his or her dependants as he or she shall bring with him or her to Grenada;</p> <p>(b) a person of unsound mind or a mentally defective person;</p> <p>(c) a person certified by a medical practitioner to be suffering from a contagious or infectious disease which makes his or her entry into Grenada undesirable;</p> <p>(d) a person who, not having received a free pardon, has been in any country convicted of an offence for which a sentence of imprisonment has been passed and who for this reason appears to be an undesirable person;</p> <p>(e) a prostitute or a person who may be living on or receiving or may have lived on or received the proceeds of prostitution;</p> <p>(f) a person who, from information or advice received from the government of any other country through official or diplomatic channels, is deemed by the Minister to be an undesirable inhabitant of or visitor to Grenada;</p>
<p>Montserrat,  Immigration Act</p>	<p>Who are not prohibited immigrants</p>

<p>Revised Edition showing the law as at 1 January 2013</p>	<p>11(2) Despite section 9(a), for the purpose of section 22(5)(a), a citizen of a protocol Member State shall not be a prohibited immigrant on the ground that he is likely to become a public charge. <i>(Substituted by Act 10 of 2012)</i>  <i>(Substituted by Act 18 of 1970 and amended by Acts 24 of 1982)</i></p> <p>Passports</p> <p>17(3) Notwithstanding subsection (1), a citizen of any Member State of the Organisation of Eastern Caribbean States landing in Montserrat from any place beyond Montserrat shall be in possession of either a passport or other recognised photo identification card satisfactorily establishing the national status and identity of the person to whom it relates and shall produce the same to the immigration officer on demand.</p> <p>Control of entry</p> <p>22(5) Despite this section, an immigration officer shall grant a permit-</p> <p>(a) for a citizen of protocol Member State to enter and remain in Montserrat for an indefinite period; or</p> <p>(b) for a citizen of any other member state of the Organisation of Eastern Caribbean States landing in Montserrat from any place beyond Montserrat to enter and remain in Montserrat for a period of six months. <i>(Substituted by Act 10 of 2012)</i></p> <p>Exemption</p> <p>2(1) The following persons are hereby declared to be exempt from the provisions of section 17(1) of the Immigration Act (which requires them to be in possession of passports)-</p> <p>[...]</p> <p>(2) Any document or combination of documents which provide the information as is generally contained in the passport of a person being a person who is a national of a Member State of the Organisation of the Eastern Caribbean States or a Member State of the Caribbean Community shall be acceptable in lieu of a passport for immigration purposes. <i>(Inserted by S.R.O. 55 of 1993)</i></p> <p>Enumeration of prohibited immigrants</p> <p>9. The following persons, not belonging to Montserrat, are prohibited immigrants—</p>
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	<p>(a) subject to section 11(2), any person who is likely if he entered Montserrat to become a public charge by reason of infirmity of body or mind or who is not in possession of sufficient means to support himself and such of his dependants as he shall bring with him to Montserrat;</p> <p>(b) any person who, after entry into Montserrat, has become or is determined to have become a public charge; (Insert by Act 10 of 2012)</p> <p>(c) any person certified by a medical officer to be suffering from—</p> <p>(i) a mental illness; or</p> <p>(ii) a contagious or infectious disease, which makes his or her entry into Montserrat dangerous to the community;</p> <p>(Inserted by Act 8 of 1999 and amended by Act 10 of 2012)</p> <p>(d) any person who, not having received a free pardon, has been in any country convicted of an offence for which a sentence of imprisonment has been passed and who for this reason appears to be an undesirable immigrant;</p> <p>(e) any prostitute or any person who may be living on or receiving or may have lived on or received the proceeds of prostitution;</p> <p>(f) any alien or class of aliens prohibited from entering Montserrat under the provisions of section 8;</p> <p>(g) any person declared by order under section 11(1) to be a prohibited immigrant; (Inserted by Act 5 of 1962)</p> <p>(h) the dependants of a prohibited immigrant.</p>
<p>Saint Lucia, Immigration (Amendment) Act 2014</p>	<p>Section 6 of the principal Act is amended as follows:</p> <p>6(1) Notwithstanding anything contained in this Act, the Minister may, for reasons of national security, public health or disaster or emergency or other reasonable cause prohibit the entry of any person who is not a citizen of Saint Lucia.</p> <p>6(2) Subject to subsection (1) a citizen of a Protocol Member State shall be entitled to enter or remain for a stay of indefinite duration in Saint Lucia, except where such person is a prohibited immigrant or for reasons of national security.</p> <p>‘citizen of a Protocol Member State’:</p> <p>(a) means a person, other than a citizen of Saint Lucia, who is a citizen of a member state of the Organisation of Eastern Caribbean States that is a party to the Protocol of the Eastern Caribbean Economic Union;</p>

	<p>(b) does not apply to a person who becomes a citizen of a Protocol Member State under an economic or honorary citizenship programme of that Protocol Member State, unless that programme is comparable to an economic or honorary citizenship programme in force in Saint Lucia and approved as such by the Minister responsible for external affairs.</p>
<p>Saint Kitts and Nevis, Immigration (Amendment) Act, 2012, No. 1 of 2012</p>	<p>Section 4 Right to enter Saint Christopher and Nevis</p> <p>2A Subject to Section 8 and pursuant to Article 12 of the Protocol, an immigration officer shall grant a permit for a citizen of a Protocol Member State to enter and remain in Saint Christopher and Nevis for a stay of indefinite duration.</p> <p>2B The right to enter and remain in Saint Christopher and Nevis under subsection (2A) may be revoked if a person is deemed to be a prohibited person in accordance with the procedures for due process set out in this Act.</p> <p>First Schedule Prohibited Persons</p> <ol style="list-style-type: none"> <li>1. Persons who are,       <ol style="list-style-type: none"> <li>(a) likely to become charges on public funds; or</li> <li>(b) paupers, vagrants or professional beggars.</li> </ol> </li> <li>2. Persons suffering from communicable diseases within the meaning of any regulations to such diseases made under the Health Services Act.</li> <li>3. Persons who,       <ol style="list-style-type: none"> <li>(a) are prostitutes or whose behaviour offends morality; or</li> <li>(b) seek to enter Saint Christopher and Nevis to engage in immoral behaviour.</li> </ol> </li> <li>4. Persons who,       <ol style="list-style-type: none"> <li>(a) are addicted to the use of any drug; or</li> <li>(b) have been, at any time, engaged in, or reasonably suspected of being likely to engage in unlawful giving, using, offering, exposing for sale, buying, trading or trafficking in, any drug; or</li> <li>(c) have been convicted of an offence under any enactment relating to dangerous or narcotic drugs.</li> </ol> </li> <li>5. Persons who,       <ol style="list-style-type: none"> <li>(a) have been convicted of or admit to having committed a criminal offence which, if committed in Saint Christopher and Nevis, is punishable with imprisonment for a term of five years or longer;</li> </ol> </li> </ol>

	<p>(b) knowingly or for profit, aid, encourage, or procure other persons who are not citizens of Saint Christopher and Nevis, to enter Saint Christopher and Nevis illegally;</p> <p>(c) are stowaways or seek to enter Saint Christopher and Nevis illegally.</p> <p>6. Persons who are or have been at any time before or after the commencement of this Act, advocates of,</p> <p>(a) the overthrow by force or violence of the Government of Saint Christopher and Nevis or any other country or of all forms of law;</p> <p>(b) the abolition of organized government;</p> <p>(c) the assassination of any person or the unlawful destruction of property.</p> <p>7. Persons who are or have been members of or affiliated to any person who entertains or teaches any doctrine or practice specified in sub-paragraphs (a) to (c) of paragraph 6.</p> <p>8. Persons who are reasonably believed are likely to espionage, sabotage or engage in other subversive activity directed against the security of Saint Christopher and Nevis.</p> <p>9. Persons in respect of whom deportation orders have been made.</p> <p>10. Any dependent accompanying a person who has been prohibited from entering, refused entry into, or deported from Saint Christopher and Nevis.</p> <p>11. A person who is a terrorist.</p>
<p>Saint Vincent and the Grenadines, Immigration (Restriction) (Amendment) Act 2002</p>	<p>4. Prohibited immigrants</p> <p>(1) The following persons, not belonging to Saint Vincent and the Grenadines, are prohibited immigrants—</p> <p>(a) any person who is likely, if he entered Saint Vincent and the Grenadines, to become a public charge by reason of infirmity of body or mind or who is not in possession of sufficient means to support himself and such of his dependants as he shall bring with him to Saint Vincent and the Grenadines;</p> <p>(b) any idiot or epileptic, or any person who is insane or mentally deficient, or any person who is deaf and dumb or deaf and blind, or dumb and blind, unless in any such case he, or a person accompanying him or some other person, gives security to the satisfaction of the Chief Immigration Officer for his permanent support in Saint Vincent and the Grenadines or for his removal therefrom whenever required by the Chief Immigration Officer;</p>

- (c) any person certified by a medical officer to be suffering from a contagious or infectious disease which makes his entry into Saint Vincent and the Grenadines dangerous to the community;
  - (d) any person who, not having received a free pardon, has been in any country convicted of an offence for which a sentence of imprisonment has been passed and who for this reason appears to be an undesirable immigrant;
  - (e) any prostitute, or any person who may be living on or receiving, or may have lived on or received, the proceeds of prostitution;
  - (f) any person who from information or advice received from any government, whether Commonwealth or foreign, through official or diplomatic channels is deemed by the Governor-General to be an undesirable immigrant or visitor to Saint Vincent and the Grenadines;
  - (g) the dependants of a prohibited immigrant, provided, in the case of his children, step-children and adopted children, that they are under the age of sixteen;
  - (h) any person or class or persons deemed by the Governor-General on economic grounds or an account of standard or habits of life to be undesirable immigrants;
  - (i) any undesirable person.
- (2) No appeal shall lie against the decision of the Governor-General in regard to any of the persons mentioned in subsection (1)(f) or (h), unless such appeal be directed to identity only of the person affected by the decision.

#### 5. Passports

(4) Notwithstanding the provisions of subsection (2), a citizen of any Member State of the Organisation of Eastern Caribbean States may establish his identity and nationality with an identity card in the form of a driver's licence, National Identification Card, Voter's Registration Card or Social Security Card, each with a photograph and duly issued, or renewed, and valid at the date of his entry into Saint Vincent and the Grenadines.

#### 18. Visitors and passengers in transit

(5) Notwithstanding anything contained in this section, a citizen of any Member State of the Organisation of Eastern Caribbean States shall be entitled to enter or remain for a period of six months in Saint Vincent and the Grenadines except where he is a prohibited immigrant under the Act or where his permit to enter or

remain in Saint Vincent and the Grenadines has been revoked under section 21 of the Act.

#### Immigration (Passport Exemption) Regulations

##### 3. Passport exemption

The following persons are exempt from the provisions of the Immigration (Restriction) Act, 1939, which requires the possession of a valid passport by persons entering Saint Vincent and the Grenadines—

- (a) citizens of an independent country which is a Member State of—
  - (i) the Organisation of Eastern Caribbean States, as set out in Part I of the First Schedule, or
  - (ii) the Caribbean Community (CARICOM); as set out in Part II of the First Schedule,

and who are in possession of a valid return ticket issued by a steam ship company or an airline company providing for their return to the country to which they belong;

##### 5. Documents establishing identity

It is hereby declared that for the purposes of the Immigration (Restriction) Act, 1939, citizens or belongers of a Member State of the Organisation of Eastern Caribbean States or of the Caribbean Community (CARICOM) may use any of the following documents, in lieu of a valid passport, to land at a port in Saint Vincent and the Grenadines—

- (a) a valid drivers licence issued in a Member State of the Organisation of Eastern Caribbean States or the Caribbean Community with a photograph of the person to whom it relates affixed thereto;
- (b) a valid identification card issued in a Member State of the Organisation of Eastern Caribbean States or the Caribbean Community for the purpose of voter identification, social security or national insurance with a photograph of the person to whom it relates affixed thereto.

## 1.2. Access to labour market

<p>Antigua and Barbuda, The Antigua and Barbuda Labour Code (Non Application of Division F) (No. 3) Order, 2017</p>	<p>Schedule Persons to whom Division F does not apply [...] G. Citizens of Protocol Member States of the Organisation of Eastern Caribbean States Economic Union.</p>
<p>Dominica, Immigration and Passport Act, Act of 1995, Amended by 16 of 2007 and 17 of 2015</p>	<p>Work permit 27C. (1) Any person, not being a citizen of Dominica, shall not— (a) engage in any occupation in Dominica for profit or reward; (b) be employed in Dominica for a wage, salary or other remuneration; or (c) engage or take part in any musical, dramatic or artistic performance of any kind, whether for gain or otherwise, or use any instrument or device whatsoever in either or any such performances aforesaid save in a Church or in such institution or for such purposes specifically approved by the Minister of Tourism or the Minister responsible for Cultural Affairs or Education, unless there is in force in relation to such person a valid work permit, and such person so engages, performs or is so employed in accordance with the terms and conditions which are specified in such permit.</p> <p>Exemption 27D. (1) The provisions of section 27C shall not apply to— (ea) citizens of Protocol Member States; (Inserted by Act 24 of 2013)</p> <p>Person exempted from work permit 3. A national of a Member State establishing an economic enterprise in Dominica or who will be providing a service in Dominica and— (a) his spouse and immediate dependent family members; (b) his managerial, technical and supervisory staff; and (c) the spouse of his managerial, technical and supervisory staff,</p>

	are exempt from the provisions of section 27C of the Immigration and Passport Act.
Grenada, <a href="#">Work Permit Exemption (Citizen of a Protocol Member State) Order, 2015</a>	3. Exemption. (1) Subject to subparagraph (2), a citizen of a Protocol Member State is declared to be exempt from the provisions of the Act in relation to the requirement to obtain a work permit, provided that such citizen has gained lawful entry into Grenada in accordance with the provisions of the Immigration Act, Chapter 145 or any other enactment which entitles him or her to enter and remain in Grenada. (2) Subparagraph (1) does not apply to a person who becomes a citizen of a Protocol Member State under an economic or honorary citizenship programme of the Protocol Member State, unless this programme is comparable to an economic or honorary citizenship programme in force in Grenada and is approved as such by the Minister with responsibility for matters relating to citizenship.
Grenada, Employment Act, No. 14 of 1999	26. Prohibition of discrimination (1) No person shall discriminate against any employee on the grounds of race, colour, national extraction, social origin, religion, political opinion, sex, marital status, family responsibilities, age or disability, in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment relationship.
Montserrat, Labour Code and Subsidiary Legislation	National policy underlying the Code 2. The following expressions of national policy shall be used in interpreting the Code- (a) the legitimate employment interests of Montserratians shall be paramount and shall override all other competing expressions on national policy in this section.  Application for work permit Exemption 127(2) The following persons are exempt from the requirements of a work permit- [...] (e) a citizen of a member state of the Organisation of Eastern Caribbean States
Saint Kitts and Nevis, Immigration	Section 17 Work permits 17(1) A person, other than a citizen, an approved CARICOM citizen or a citizen of a Protocol Member State, shall not, while in Saint Christopher and Nevis, engage in

(Amendment) Act, 2012, No. 1 of 2012	any occupation or accept employment without having first obtained a written permit granted by the Minister for that purpose. 17(2) A person shall not engage or employ another person who is not a citizen, resident, an approved CARICOM citizen or a citizen of a Protocol Member State unless there is a work permit in force in relation to that other person for the purpose of that engagement or employment.
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### 1.3. Access to education and healthcare

Education	Antigua and Barbuda, <a href="#">The Education Act 2008, No. 21 of 2008</a>	<p>16. Free tuition</p> <p>(1) No tuition fees consequent to the student's attendance in an educational programme at a public school under section 27 shall be charged to the student or the parents of the student.</p> <p>(2) Notwithstanding subsection (1)-</p> <p>(a) tuition fees may be payable in such amounts, for such purposes and by such persons or classes of persons who are not citizens of any Member State or Associated Member State of the Organisation of the Eastern Caribbean States as the Minister may prescribe by order published in the Gazette;</p> <p>(b) other charges may be imposed at a public school or assisted private school with the approval of the Minister.</p> <p>151. Qualifications for scholarship</p> <p>(1) A student shall be eligible to compete for a scholarship if the student-</p> <p>[...]</p> <p>(d) is a citizen of Antigua and Barbuda or the child of a citizen of a Member State of the Organisation of Eastern Caribbean States who is either-</p> <p>(i) employed in Antigua and Barbuda by the Secretariat of the Organisation of Eastern Caribbean States; or</p> <p>(ii) resident in Antigua and Barbuda and the country of citizenship has enacted legislation in terms materially identical to this section and</p>
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		does not discriminate against the citizens of Antigua and Barbuda in the award of the scholarships established by this Part.
	Dominica, Education Regulations 2011	<p>Free tuition</p> <p>16. (1) Tuition fees consequent to the student's attendance for an educational programme at a public school under section 27 shall not be charged to the student or the parents of the student.</p> <p>(2) Notwithstanding subsection (1)—</p> <p>(a) tuition fees may be payable in such amounts, for such purposes and by such persons or classes of persons who are not citizens of any Member State or Associated Member State of the Caribbean Community, as the Minister may prescribe by Order;</p> <p>(b) other charges may be imposed at a public school or assisted private school with the written approval of the Minister.</p> <p>Admission of students</p> <p>23(1) Subject to these Regulations, a person is entitled to be admitted as a student of a school, if the person is a —</p> <p>[...]</p> <p>(b) national of a Member State of the Community</p>
	Dominica Scholarship Act, Act 13 of 1942	<p>Qualifications of candidates and conditions of scholarship</p> <p>3. The Dominica Scholarship may be awarded—</p> <p>(a) to such persons;</p> <p>(b) for such amount;</p> <p>(c) for such period;</p> <p>(d) tenable at such institutions; and</p> <p>(e) in accordance with such other conditions as the Minister may prescribe by Rules made under section 4:</p> <p>(Substituted by Act 11 of 1994)</p> <p>Provided that such scholarship may be awarded only to persons who—</p> <p>(a) have been educated at a school in the State for three years next preceding the last day of the month in the year in which the examination of candidates for the scholarship is held; and</p>

		(b) have been born in the State, or are children of parents one of whom was born in the State or has been ordinarily resident in the State for ten years next preceding the last day of the month in the year in which such examination is held.
	Grenada, Education Act, Act No.1 of 2002	168. Qualifications for scholarship (1) To be eligible to compete for a scholarship a student must- (a) have for three years immediately preceding the competition referred to in section 176 (2) have been bona fide receiving education in Grenada; (b) have passed the Caribbean Examinations Council examination or any other equivalent examination prescribed by the regulations in three or more subjects at 'A' level, in addition to the General Paper; (c) have satisfied the standards of conduct and deportment established by the institution which the student attends, or by the Ministry; (d) (i) be a person who is, or be the child of a person who is a citizen of Grenada or of a Member State of the Organisation of Eastern Caribbean States, or (ii) be a person who is, or be the child of a person who is— (aa) employed in Grenada by the Government or by the Secretariat of the Organisation of Eastern Caribbean States, or (bb) resident in Grenada if the person's country of citizenship has enacted legislation in terms similar to this Part and does not discriminate against citizens of the O.E.C.S in the award of scholarships of the kind established by this Part.
	Montserrat, Constitution of Montserrat and Related Legislation, showing the law as at 1 January 2013	Protection of right to education 12. (1) This section is without prejudice to section 11. (2) Every child of the appropriate age, as provided by law, shall be entitled to receive primary and secondary education which shall, subject to subsection (3), be free. (3) Every person who is the parent or legal guardian of a child shall be entitled to have his or her child (of whatever age) educated, at his or her own expense unless a law otherwise provides, in a private school (that is to say, a school other than one established by a public

		<p>authority) and, in such a school, to ensure the religious and moral education of his or her child in accordance with his or her own convictions.</p> <p>(4) Nothing in any law or done under its authority shall be held to contravene subsection (3) to the extent that it is reasonably justifiable in a democratic society and to the extent that the law makes provision requiring private schools, as a condition of their being allowed to operate and on terms that are no more onerous than are applicable to schools established by a public authority, to satisfy—</p> <p>(a) such minimum educational standards (including standards relating to the qualifications of teaching staff and other staff) as may be prescribed by or under that or any other law; and</p> <p>(b) such minimum standards imposed in the interests of public order, public morality or public health as may be so prescribed.</p>
	<p>Montserrat, Montserrat Scholarship Act, Acts 41 of 1961 and 9 of 2011</p>	<p>Qualifications of candidates and conditions of scholarship</p> <p>3. The Montserrat Scholarship may be awarded—</p> <p>(a) to such persons;</p> <p>(b) for such amount;</p> <p>(c) for such period;</p> <p>(d) tenable at such institutions; and</p> <p>(e) in accordance with such other conditions as the Governor acting on the advice of Cabinet may prescribe by rules made under the provisions of section 4:</p> <p>Provided that, such scholarship may be awarded only to persons who—</p> <p>(a) shall have been educated at a school in Montserrat for three years next preceding 31 December in the year in which the examination of candidates for the scholarship is held; and</p> <p>(b) shall have been born in Montserrat, or shall be the child of parents one of whom was born in Montserrat or has been ordinarily resident in Montserrat for five years next preceding 31 December in the year in which such examination is held.</p> <p>(Amended by Act 9 of 2011)</p>

	<p>Saint Vincent and the Grenadines, Education Act, Act No. 34 of 2006</p>	<p>16. Free tuition at schools Neither a student nor his or her parents may be charged tuition fees or other costs for attendance at a public school or an assisted private school except that—</p> <p>(a) a student who is not a citizen of a Member State of CARICOM or of a Commonwealth country may be charged tuition fees and other costs as the Minister may prescribe by an order published in the Gazette;</p> <p>(b) students at a public school or an assisted private school may be charged for books, specialised services and other items as the Minister may specify by notice published in the Gazette.</p> <p>131. Conditions for scholarships, etc. (1) The following persons are eligible for consideration for scholarship- [...]</p> <p>(d) a citizen of a Member State of the Organisation of Eastern Caribbean States or the child of such a person who is—</p> <p>(i) employed in Saint Vincent and the Grenadines by the Government or the Secretariat of the Organisation of Eastern Caribbean States, or</p> <p>(ii) resident in Saint Vincent and the Grenadines, and the country of citizenship has enacted legislation in terms materially identical to this provision and does not discriminate against citizens of Eastern Caribbean States in the award of scholarships.</p>
<p>Healthcare</p>	<p>Antigua and Barbuda, <a href="#">Social Protection Act 2020</a>, <a href="#">No. 22 of 2020</a></p>	<p>Schedule 3 Assistance Categories and Specific Eligibility Criteria To qualify for assistance under this Act an applicant must- [...]</p> <p>(b) satisfy the following additional requirements- [...]</p> <p>iii. be a member state citizen</p> <p>Schedule 6 Member States</p>

		Anguilla, Antigua and Barbuda, British Virgin Islands, Commonwealth of Dominica, Grenada, Martinique, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines
	Montserrat, Public Health Act and Subsidiary Legislation, Revised Edition showing the laws as at 1 January 2013	Schedule of Fees Part 1 (Amended by S.R.O. 16/1988 and 29/2009) These rates are for residents of Montserrat; Caricom residents shall pay 1½ times the rates set out; Non-Caricom Residents shall pay two times the rates set out.

#### 1.4. Other rights

Recognition of driver's licence	Dominica, Vehicles and Road Traffic (Amendment) Act 2013	49A(1) A valid driving permit issued by another member state of the Organisation of the Eastern Caribbean States is a valid driving licence for the purposes of this Act.
	Grenada, <a href="#">Road Traffic (Amendment) 2015, Act No. 18 of 2015</a>	Section 54 (7) The holder of a driving licence issued in an OECS member state shall, while such licence remains valid, be deemed to be the holder of a licence to drive in Grenada. (8) A person to whom sub-section (7) applies shall only be entitled to drive in Grenada a motor vehicle of the class or classes for which he or she holds an authorization to drive in the other OECS member state in which his or her driving licence was issued.
	Montserrat, Road Traffic Act and Subsidiary and Related Legislation Revised Edition, 1 January 2013	OECS Driver's Licence 42. (1) Notwithstanding section 31, 32 and 41, a citizen of an OECS member territory who possesses a valid driver's licence issued by an OECS member territory may drive a motor vehicle in Montserrat of the type that his licence authorises him to drive.

		<p>(2) Upon expiration of the driver’s licence issued by the OECS member territory, the driver may either –</p> <p>(a) renew the driver’s licence in the OECS member territory in which it was issued; or</p> <p>(b) apply for a driver’s licence in accordance with this Part.</p> <p>(Inserted by Act 17 of 2011)</p>
	Saint Lucia, Motor Vehicles and Road Traffic (Amendment) Act 2014	30A(1) A citizen of a Protocol Member State who holds a valid driver’s licence that confirms his or her nationality issued by a Protocol Member State shall, while such licence remains valid, be exempted from any requirement to obtain a visitor’s driving permit to drive in Saint Lucia.
	Saint Kitts and Nevis, Vehicles and Road Traffic (Amendment) Act, 2011 No. 40 of 2011	<p>Section 26</p> <p>(4) Notwithstanding subsection (1), a citizen of an OECS Member State who holds a driver’s licence issued in any other OECS Member State shall, while such licence remains valid and unexpired, be exempt from any requirement to hold a driver’s licence issued under this Act to drive in Saint Christopher and Nevis.</p> <p>(5) A person to whom subsection (4) applies shall only be entitled to drive in a motor vehicle of the class for which he holds an authorization to drive in the Member State in which his driver’s licence was issued.</p>
Landholding	Antigua and Barbuda	The Government of Antigua and Barbuda has decreed by Cabinet Decision dated 19th November 2016 that an OECS national need not apply for a non-citizen land holding licence and, as such, they are entitled to possess and transfer land in the same manner as citizens of Antigua and Barbuda. Accordingly, this policy decision supplements the right of OECS citizens to landholding within Antigua and Barbuda.
	Dominica, Aliens Land Holding Regulation Act, Act 17 of 1995,	<p>Interpretation</p> <p>2. (1) In this Act—</p> <p>“alien” means—</p>

Amended by 16 of 2007 and 17 of 2015	(a) an individual who is not a citizen of one of the Member States and in the case of Montserrat an individual who does not have the status of “Belonger” under the law in force in Montserrat regulating immigration;
Montserrat, Landholding Control Act 2015	<p>Art. 22 Special provisions for Organisation of Eastern Caribbean States and Caribbean Community nationals</p> <p>(1) Despite sections 3 and 16(1)(c), if the Governor acting on the advice of Cabinet is satisfied that reciprocal provisions have been made by the legislature of any member state of the Caribbean Community or the Organisation of Eastern Caribbean States to permit Montserratians to acquire shares or debentures in companies registered in that state or to hold land in that state without obtaining a licence, the Governor acting on the advice of Cabinet may, by Order, declare that the nationals of that member state may-</p> <p>(a) acquire shares in companies registered in Montserrat; or</p> <p>(b) hold land in Montserrat, without obtaining a licence.</p> <p>(2) A national of the Organisation of Eastern Caribbean States or the Caribbean Community who is waived from the requirement for a licence under subsection (1) shall pay a fee of \$500 in respect of each-</p> <p>(a) parcel of land he intends to hold as owner;</p> <p>(b) mortgage he intends to hold as mortgagee; and</p> <p>(c) lease he intends to hold as tenant.</p>
Saint Lucia, Alien Landholding (Licensing) Act No. 1 of 2020	<p>Exemption</p> <p>25(1) Where the laws of a Member State (CARICOM), exempts a citizen of Saint Lucia from the requirement of obtaining an alien landholding licence to own, acquire or lease land in that Member State, Cabinet may by order published in the Gazette, exempt a national of the Member State from the requirement of obtaining an alien landholding licence.</p>

