



## **The World Today**

### **Contingent Rights: The 'Secret' Challenge To The CSME**

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For a single market to be truly effective, the free movement of people is a fundamental prerequisite. Under the CSME, CARICOM has mandated that this will be done on a phased basis in which University graduates, media workers, musicians, artistes, sportspersons, nurses and teachers will be allowed to initially enter any Member State for a period of six months to work within the agreed parameters.

One of the most prominent challenges facing the Free Movement of People within CARICOM is the issue of National Treatment, for which there is no agreed definition. Neither is there established legislation to state exactly how this term will be applicable. Since under National Treatment, if a state grants a particular right, benefit or privilege to its own citizens, it must also guarantee those advantages to the citizens of other states whilst in the host country. This principle is therefore intended to prohibit CARICOM Member States from discriminatory actions against non-nationals.

#### **Contingent Rights**

Within the context of National Treatment, there is the issue of contingent rights. Contingent rights refer to the entitlement of rights to a non-national when they exercise their option to work in another CARICOM Member State. Presently, the Revised Treaty of Chaguaramas only considers contingent rights as they relate to the Free Movement Act which allows business persons non-discriminatory access to capital and physical infrastructure. This definition caters solely for business development but not for the workers themselves. Therefore, the fundamental rights of the worker to access the social arrangements and institutions within a country remain unacknowledged. Included in these rights is the ability for a spouse to gain employment; for children to easily enter the educational system; and, for effortless access to social services for dependants.

Currently, a consultancy project is being undertaken within CARICOM to develop a supplementary Protocol to address these issues within the context of the Revised Treaty of Chaguaramas. In the absence of such, the enjoyment of these social rights would be subject to administrative discretion due to the limited capacity of some state institutions.

Even though our various Member States adhere to the same treaty regime of CARICOM each country exhibits its own diversity. The 13 CSME compliant countries have varying land areas, population sizes and GDP per capita. Economically, their economies are either service oriented or are currently in transition. Also, most of the countries are independent liberal democracies with either a Westminster or a Presidential Model of

government. However, socially, disparities are evident when analysing the collective social transformation and development policies of the region. The average life expectancy ranges from 63.6 years in Guyana to 76.8 years in Barbados; unemployment from 7% in Antigua to 28.2% in St. Vincent and the Grenadines, and the average total years of compulsory education ranges from 6 years in Jamaica and Suriname to 13 years in Trinidad and Tobago.

The disparities regarding the delivery of social services, provides a useful insight into the existing state of Contingent Rights in CARICOM member states. Since 1962, successive Barbados governments have continued to view the universal access to social services as rights, which all citizens should, by law, enjoy. Hence, the government offers its citizens several social services such as education and healthcare either free or at a subsidized cost. Accordingly, non-national permanent residents in Barbados benefit from these social services at the same cost as citizens. Again, however, the cost for access to social services is not standardised across the region, as for instance, the full cost of education is borne in St. Lucia.

With respect to the social security provisions, there is the 1997 CARICOM Social Security Agreement which caters for long-term benefits such as Invalidity, Retirement, Survivor Pensions and Disablement. This agreement considers the provision of pensions to CARICOM nationals, no matter where they reside, once the requisite qualifying contributions are made to the scheme within a Member State. Pension claims can then be made in any CARICOM that is signatory to the agreement. However, action still needs to be taken to standardise Unemployment Compensation across the region.

As regards to the housing allowances across the region, some national governments create and provide a variety of housing initiatives for low income nationals. However, under CSME this will have to be reviewed as it would inhibit the Right of Establishment, Free Movement of Persons as well as the principle of National Treatment. Within all legislation in the region, the Alien Landholding Act presents a restriction to non-nationals, as many Member States' governments are currently experiencing severe pressure from the electorate to provide adequate low-income housing for nationals, regardless of gender, race, religion or political affiliation.

### **Can the CSME effectively exist without Contingent Rights?**

The question must, therefore, be asked whether persons who move as CARICOM Skilled Nationals within the Region will be provided with the same benefits as the citizens of the host country, in accordance with the relevant provisions of the Revised Treaty, which seeks to prevent discrimination on the grounds of nationality. Or, will they be sidelined and subjected to the administrative discretion of the national government?

It is therefore necessary for CARICOM Heads of Government to immediately standardize the principle of National Treatment. This would enable the creation of legislation to allow persons to benefit from access to free or subsidized social services. Indeed, what is needed is the immediate creation of comprehensive CARICOM Social

Services Agreement. As a result of the social issues embodied in Contingent Rights, such an Agreement must be finalized to ensure the viability of the CSME.