

## **Section 1**

### **Exploring Key Issues Necessitating Reform**

#### Introduction

The movement of people across and within national boundaries remains an integral part of human existence. Whatever the pursuits, migration entails distinct, though complex, consequences for countries both of origin and destination and for the people involved in the process.

2. Based on international trends, elements of a country's public policy on migration would generally include:

- settling of non-nationals to bring in much-needed expertise and skills
- attracting genuine investors to contribute to a sound economic climate
- encouraging short-term visitors in order to maintain and improve the levels of foreign exchange earnings, and
- protecting citizens' rights and encouraging family reunification.

3. The Barbados Government, cognisant of the importance of proper management of certain sectors as critical to the development process, is taking steps to enunciate a new comprehensive policy for the Immigration Department, a key component of the economic services sector. Like many other countries, Barbados understands the significant role of immigration in furthering national development objectives, including the maintenance of peace and security. The need arises, therefore, to address current and emerging developments resulting from globalisation and the turbulent international environment.

4. The new policy has as its core the more pivotal role that the Immigration Department must play in national development and security and seeks to strike the appropriate balance between protecting the legitimate rights and expectations of citizens with the need to accelerate the pace and deepen the quality of economic growth, while attracting high-end foreign investment. It is grounded in the principles of equity, transparency and increased accountability, and recognises:

- the strategic role of the Immigration Department in attaining economic growth and investment targets by facilitating the growth and development of businesses while assisting them to meet key human resource needs
- the need to honour regional, hemispheric and international commitments with regard to the movement of capital and people, particularly the movement of natural persons, which is critical in the effective promotion of the services trade
- the changing role of the Immigration Department as it responds to the security challenges posed by the freer movement of people and the globalisation of terrorism, human trafficking, transnational crime and narco-trafficking, and
- the country's changing demographic profile to an aging society and the implications this has for other policies related to social security and the provision of established social services.

5. The need for change has become more crucial in light of the following:

- the full implementation of the CARICOM Single Market and Economy under the Revised Treaty of Chaguaramas which provides for the movement of community nationals into and within the jurisdiction of member states without restrictions or the imposition of impediments
- events in the aftermath of September 11, 2001 which have placed effective border control and the maintenance of domestic security as critical items on the national agenda

- an untidy legislative framework governing Immigration – for example, existing gaps and inconsistencies in the law which emerge in the processing of applications for various forms of status
- the desire to sharpen Barbados’ competitive advantage, by establishing effective programmes to attract highly qualified and skilled non-nationals, investors, as well as more visitors to increase foreign exchange earnings, thereby accelerating the pace of development, and
- an institutional inability to meet the rise in demand for services.

### **Exploring Key Issues Necessitating Reform**

6. The early years of the twenty-first century have presented small states with unparalleled opportunities and significant challenges for meaningful participation in the new world order. For Barbados, this means that areas like Immigration have been brought to the fore as creative responses are crafted to ensure continued prosperity and sustainable growth, while maintaining peace and security.

### **CARICOM Single Market and Economy (CSME)**

#### Freedom of Movement

7. Barbados is one of six CARICOM member states which adopted the Single Market with effect from January 01, 2006, and which signed on January 30, 2006, the formal declaration that signalled the launch of the CARICOM Single Market. The Caribbean Community (Movement of Skilled Nationals) Act (2004-13) was passed by Parliament and came into operation on January 24, 2005. This act allowed the five<sup>1</sup> categories of persons listed in Article 46 of the Caribbean Community Act, 2003-8 (which in Barbados makes provision for matters arising out of the Revised Treaty of Chaguaramas), the right to enter the country to seek and engage in employment,. This was a necessary step in implementing the provisions of that Article.

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<sup>1</sup> University Graduates, media workers, sports persons, musicians and artistes.

8. The full operationalization of the free movement regime under the CARICOM Single Market and Economy (CSME) and subsequent developments in this regime have created numerous challenges for immigration policy and procedures in Barbados and other Member States. The review and modernization of policy must be effected in a manner which, while recognising national priorities and realities, must also take into account Barbados' obligations under the Revised Treaty of Chaguaramas. The following areas have therefore been incorporated for policy analysis:

- Freedom of Movement of CARICOM Skilled Nationals
- Freedom of Movement of Service Providers and Investors under the CSME
- Hassle Free Travel for all CARICOM Nationals

#### CARICOM Skilled Nationals

9. CARICOM Skilled Nationals (CSNs), as defined in Article 46 of the Revised Treaty, are accorded the right to seek employment in the identified jurisdictions of the Caribbean Community<sup>2</sup>. As a first step to achieving the goal of full free movement of all CARICOM Nationals (Article 45), the five categories mentioned earlier were identified for this dispensation. In subsequent decisions of the Conference of Heads of Government, the categories of non-graduate nurses teachers, artisans who possess Caribbean Vocational Qualifications, holders of Associate Degrees and domestics who possess Caribbean Vocational Qualifications were added.

10. The agreed operationalization of the movement of CSNs calls for the granting of six months stay on entry, on the provision of a CARICOM Skilled Certificate to the Immigration Officer at the port of entry. Provision is made for this at Section 3 of the Caribbean Community (Movement of Skilled Nationals) Act, 2004-13. This stay is regularized by the Immigration Department, after verification of qualifications by the Barbados Accreditation Council, granting the individual permission to reside

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<sup>2</sup> Only Member States participating in the CSME have agreed to receive Skilled Nationals and other qualifying CARICOM Nationals as provided by the Revised Treaty.

indefinitely in the country and engage in employment in accordance with Section 4 of the Caribbean Community (Movement of Skilled Nationals) Act, 2004-13. provided that the person is not a prohibited immigrant as specified the Fifth Schedule of that Act.

11. The Twenty-Sixth Meeting of the Conference of Heads of Government convened in July 2005, agreed that CARICOM Nationals entering with a Skills Certificate issued by another Member State should be allowed to work immediately, while the receiving Member State verifies the qualifications of the holder.

12. This procedure is strictly adhered to by the Department and appropriate arrangements have been put in place so that the CSN is permitted to work while his/her qualifications are being assessed by the Accreditation Council.

13. One of the areas of concern, which is not addressed by CARICOM is the status of persons who have not found employment within the six-month period. Due to the absence of the relevant administrative body (Free Movement Committee) and adequate monitoring mechanisms, Barbados has not been in a position to monitor CSNs who have had their stay regularized by the Immigration Department and granted indefinite stay. What obtains therefore is that CSNs, whether or not they gain employment are free to remain in Barbados along with their dependants. This is not the intent of the Revised Treaty of Chaguaramas. The intention is for community nationals to move to engage in employment.

14. The legislation and the current practice in Barbados calls for persons to have their status regularized, regardless of employment, as long as a skills certificate from the Barbados Accreditation Council is presented, and there is nothing of a security or criminal nature registered against the applicant. In its strictest interpretation, the purpose is to allow the CSN to seek employment for six months, within which time a job must be secured. If this does not occur, the CSN should be required to return to his/her country of origin. The aim of this measure is to prevent large numbers of unemployed CSNs remaining in Barbados indefinitely.

15. If the stricter interpretation is to be followed, then monitoring mechanisms must be implemented.

16. In a legal opinion on the matter, the Chief Parliamentary Counsel advised as follows:

***"Particular note should be made of paragraph 1 of the Fifth Schedule to the Caribbean Community (Movement of Skilled Nationals) Act as it clearly states that any Community national who will require benefits from public funds, such as the unemployed, can be required to leave Barbados. It is therefore submitted that unemployed Community nationals can be asked to leave Barbados on the basis that their unemployed status is liable to create a situation in which they are likely to become charges on the public purse."***

This opinion supports the stricter interpretation of the provisions.

17. While the Department would not be opposed to a reasonable extension of that initial six-month period, there should be some measure put in place to monitor persons moving to Barbados and to ensure that those persons who do not engage in employment are required to leave after a reasonable opportunity is granted to seek employment.

### **Freedom of Movement of Other CARICOM Nationals under the CSME**

18. Chapter Three of the Caribbean Community Act, 2003-8 like the Revised Treaty of Chaguaramas addresses the matter of "Establishment, Services, Capital and Movement of Community Nationals". Article 32 refers to the Right of Establishment and Article 37 to the Right of Provision of Services exercisable by CARICOM Nationals. These two Articles make provision for the free movement of CARICOM Nationals other than Skilled Nationals.

## Right of Establishment

19. Article 32 provides for CARICOM Community Nationals to establish a business in another Member State. Administrative procedures agreed to by the Council for Trade and Economic Development at its Twenty-Third Meeting stipulated that CARICOM Nationals desirous of establishing a business should acquire and present the requisite documentation in order to gain six months on entry. This documentation consists of a valid passport, a return ticket and proof of financial resources for personal maintenance. CARICOM Nationals who are granted permission to enter are expected to seek to regularize their status within the six-month period once it has been proven that the business is registered in Barbados, at which time the applicant would be granted a further six months. The approved procedures indicate that the national should be given indefinite stay on reapplication if the business is established. Indefinite stay is rescindable if the business is no longer functioning.

20. The individual exercising the right of establishment is not permitted to seek employment in Barbados. The employees of that organization brought to the country as managerial, supervisory or technical staff, are only permitted to work with the specific firm which employed them prior to arriving in Barbados and which is now established in Barbados. **An amendment to the Immigration Act, Cap. 190 should specify this in order to remove discretionary elements and promote transparency.**

21. The Immigration Department currently grants CARICOM nationals exercising the right of establishment, six months on entry. A one-year, rather the suggested six-month, stay is then granted on presentation of evidence that the business is registered and evidence that there are no security issues. Persons are required to report to the Department one month before the expiry of that date in order to show that the business is still functioning. A period of three years is then granted on renewal and on provision of proof that the business is still subsisting. It is

recommended that this policy should remain as it provides a monitoring mechanism and ensures that CARICOM Nationals are performing only those functions for which they were granted permission on entry. After the three-year period and depending on the degree of establishment a period of ten years could be granted or indefinite if the business is satisfactorily established. The problem with granting indefinite stay after the initial grant of temporary status is the lack of a suitable monitoring body and the reality that the Immigration Department is not equipped to conduct the type of monitoring which is required.

#### Managerial, Technical and Supervisory Staff

22. Article 34 (d) (ii) provides that COTED shall establish measures to ensure the removal of restrictions on the right of establishment in respect of activities accorded priority treatment. These relate to -

***"the conditions governing the entry of managerial, technical and supervisory personnel employed in such agencies, branches and subsidiaries, including the spouses and immediate dependent family members of such personnel."***

The "Procedures Manual for the Implementation of the CSME" of 2004 indicates that the Immigration Department shall grant stay to this category of persons in accordance with the lengths of the employment contracts furnished by the company. The contracts should naturally not be for a period longer than the time granted the principal mover. It is recommended therefore that along with a furnished contract, evidence of continued employment with the company must be also presented at the time that the supervisory, managerial and technical staff are seeking renewal, to secure endorsement from the Immigration Department.

#### Temporary Service Providers

23. Article 37 of the Revised Treaty governs the movement of temporary service providers. These nationals move temporarily to provide a service and return to their

country of origin. Temporary service providers are to register in their home country and obtain a certificate issued by the Competent Authority. This certificate is to be presented at the port of entry along with the contract to offer service, or a letter of invitation from the client. The Immigration Department is to grant the individual sufficient time to provide the service and this should be consistent with the time indicated in the contract or letter. An extension should be granted on submission of proof that the service has not been completed.

#### Treatment of Spouses and Dependents of CARICOM Nationals Moving Under CSME

24. All qualifying CARICOM Nationals, with the exception of Temporary Service Providers, are permitted to have their spouses and dependents accompany them to the destination country and reside indefinitely, **so long as the CARICOM national exercising the right to move resides in Barbados**. Children, up to 18 years of age, will be granted student visas *gratis*. Primary education is free, but a student visa (*gratis*) is required.

25. Until recently if the spouse of the principal beneficiary wished to engage in employment in Barbados, a work permit was sought before commencing employment. At the 30<sup>th</sup> Meeting of the Conference of Heads of Government of CARICOM held 2 – 4 July 2009, the Heads of Government agreed that the spouse of the principal beneficiary who has exercised the right of free movement of skills, provision of services or right of establishment, have the right to work without the need to obtain a work permit. There will still be the need to register with the Department in order to maintain administrative control. It is expected that arrangements will be put in place with input from all participating countries and CARICOM. Clarification is needed on this issue as the dependants of temporary service providers would generally not move with the principle service provider, since he/she generally enters, performs the service and leaves. These arrangements will also be implemented with input from all participating countries.

## Concluding Comments on the Movement of Persons Under the CSME

26. The movement of CARICOM Nationals should be informed by Barbados' immigration policy. That is, with a clear objective policy, Barbados can articulate its position during the course of deliberations regarding future developments, given the legal commitments to extend access to qualifying CARICOM Nationals seeking to enter the local labour market, the domestic commercial marketplace and to explore investment opportunities.

27. A complicating factor is the absence of appropriate monitoring bodies for each category of movement. CARICOM had suggested a consultative system, which, if institutionalized, would greatly assist the work of the Immigration Department. Once functioning in this capacity, the role of the Immigration Department would be limited to participation in the consultations and performing the security functions.

### **Recommendation:**

28. **In order to enable Barbadian authorities to maintain some measure of control, it is proposed that:**

- **the recognition of CSNs as residents, should be renewable every ten years upon presentation of proof of the following:**
  - **continuous residence**
  - **a steady income, and**
  - **non-dependence on the state's social system**
  
- **the recognition so granted and the attendant benefits would lapse during any period that the CSN resides out of Barbados continuously for a year.**

## Facilitation of Travel

29. Hassle free travel refers to the freedom of CARICOM nationals to travel into and within the jurisdiction of any member state without harassment or the imposition of impediment. The notion of hassle free travel is intended to foster a greater sense of community and to encourage greater intra-CARICOM tourism. It does not grant the right to earn an income. This initiative has thus far led to a Common Embarkation and Disembarkation (E/D) Card; common lines for all CARICOM Nationals at ports of entry; the introduction of the CARICOM Passport; and the grant of six months on entry. The CARIPASS, the CARICOM travel card, is another such initiative.

## Six Months on Entry

30. The Conference of Heads of Government at its Twenty Eighth Meeting, held in Barbados on 1 – 4 July 2007, agreed that -:

***"all CARICOM Nationals should receive a definite entry of six months upon arrival in a Member State in order to enhance their sense that they belong to, and can move in the Caribbean Community, subject to the rights of Member States to refuse undesirable persons' entry and to prevent persons from becoming a charge on public funds."***

31. The implementation of this decision has had the effect of removing to a large extent the discretionary powers of immigration officers in determining the length of stay of nationals of CARICOM member states. Mindful of the need for an effective system to manage the risks which are likely to be incurred and the adoption of appropriate measures to eliminate or reduce them, Government agreed to vary the automatic right to a six month stay on arrival by granting nationals of CARICOM member states the right to a three month stay which is renewable automatically for a further three months where the usual requirements are satisfied by the applicant.

The adoption of this policy will enable the Immigration Department to more effectively monitor the problem of “over-stayers” and to apply stricter enforcement measures as the situation warrants.

32. Persons seeking to benefit from the right to a three-month stay subject to automatic renewal for a further three months are required to be in possession of a valid passport and to provide proof of the means of maintenance for the period in question. It was agreed that persons using other travel documents for example, travel permits, should be granted such time as the Immigration Officer considers appropriate.

### CARIPASS

33 The CARIPASS is the CARICOM travel card with built in biometric features which will allow CARICOM nationals and legal residents to be processed electronically through Immigration check points when entering and exiting participating states. It is being spearheaded by the CARICOM Implementation Agency for Crime and Security (IMPACS). Implementation is in process, with the first gates scheduled to be installed in Barbados by the end of the 2009.

### **Recommendations**

**34. In each of the above areas of migration, secure means of monitoring the movement into and out of the country are needed. The examination of passports or other forms of identification, such as the Skills Certificates, must be recorded properly at the border and conveyed promptly to the relevant domestic and international authorities where fraud is suspected.**

**35. It is recognized that the efficient enforcement of existing legislation will require the enhancement of monitoring mechanisms and a strengthening of the Enforcement Division in the Immigration Department to counter the increasing incidence of persons remaining in the island**

**illegally. There are currently 6 persons in this unit. This number should be increased by at least 5 individuals by year-end at the end of the period of amnesty for CARICOM nationals.**

### The EU Treaty and Approximation of law Relating to Free Movement

36. A look at the experience of the European Union (EU), which also has freedom of movement as an objective, is instructive. In the EU, the right of citizens to move freely from one country to another is **not absolute**. It is limited by considerations of public security, public health and public policy.

37. Article 8A of the Treaty of Rome<sup>3</sup> states that "every citizen of the Union shall have the right to move and reside freely within the territory of Member States subject to the limitations and considerations laid down in this Treaty." Article 48 (3) provides for some of those limitations "justified on grounds of public policy, public security and public health". Protection is offered only to employed persons and those seeking employment. This protection has been extended to students and pensioners, so long as proof of steady income is provided, and proof that they do not intend to rely on the social services of the host country. No protection is offered to the unemployed or those without a steady income in the country in which they plan to relocate. The practice of no discrimination in contributory social security does not extend to public assistance.

38. Citizens of the EU have the right of residence, for a period of six months, in an EU country of which they are not nationals. This is facilitated by the presentation of an identity card or valid passport. However, the right to reside for longer periods is subject to the following conditions:

- involvement in some lawful revenue-earning activity, either employed or self-employed;

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<sup>3</sup> The Treaties of Paris and Rome and the Single European Act were modified and updated in the Treaty of the European Union (Treaty of Maastricht) in 1992. The Treaty of Maastricht established the European Community.

- possession of adequate resources and health insurance, negating the need to rely on social services or public assistance;
- enrolment as a student in occupational training; or
- Residence with a family member.

### **Responding to the Needs of Business**

39. Successful participation in a highly competitive global economy dictates that Barbados must enhance its attractiveness as a destination of choice in which to conduct business. Part of this attractiveness rests on having a readily available pool of highly qualified and skilled human resources on which businesses can draw. A flexible and creative immigration policy which understands and responds to the dynamics of business and the international market place is a critical element in achieving the desired level of competitiveness.

40. Government's policy, therefore, must enable it to attract and retain the requisite numbers of highly qualified and skilled immigrants in enough time to make a critical difference to the country. It must be borne in mind that the country is competing with developed countries for this limited pool of resources, especially in the area of information and newly emerging technologies.

41. In order to better shape policy outcomes, a study should be undertaken to ascertain Barbados' optimal carrying capacity in terms of numbers of persons and skill sets needed to accelerate development. The study should be a collaborative effort by the Ministries of Finance and Economic Affairs, Labour and the Prime Minister's Office. The outcome of this study could result in:

- emphasis on the selection process shifting from that based purely on occupational grounds to a system that embraces and rewards flexible and transferable skills thereby allowing faster transformation into a knowledge based economy
- the design of a flexible, rapid response system to facilitate the entry of highly skilled temporary workers to address short-term human resource needs of business
- priority being given to investors who not only plan to make a significant monetary investment in the country, but are also able to contribute to the transfer of essential skills and technology. Investment must be aligned more closely to national strategic objectives.

42. The above would be underpinned by a points-based system reflecting national development priorities, which would guide admission to the country. The system should be designed in such a way that it is easily understood and made public, thereby allowing proposed immigrants and citizens alike to understand how and why decisions about entry have been made.

### **Managing Labour Migration (The Guest Worker Programme)**

43. There is an increasing recognition of the role that migration plays in meeting the demographic deficit and labour shortages in the more advanced economies, in global exchanges of technology and know-how, and in stimulating development through remittance flows and investments, especially from diaspora communities<sup>4</sup>.

44. The challenge is how to manage migration so that it can serve as a force for growth and development, and not lead to clandestine flows and trafficking and the dangers these pose for established institutions and the respect for labour standards and human rights.<sup>5</sup>

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<sup>4</sup> International Labour Conference, 92<sup>nd</sup> Session, 2004 – Report VI: Towards a fair deal for Migrant Workers in the Global Economy.

<sup>5</sup> Ibid

45. Indeed failure to manage migratory flows, and to find viable solutions to migration and forced displacement issues, will result in chaos, with states becoming overburdened, social services taxed and even irregular migrants being denied their basic human rights. Effective rights-based management of migrant labour requires a coherent, transparent and comprehensive national policy that enjoys broad public support as well as cooperation between the origin and host states.

46. It is therefore necessary that appropriate conditions be prescribed to permit the cross-border movement of workers to be mutually beneficial to all: the countries of employment and origin, and to the migrants themselves.<sup>6</sup>

47. Economic migrants living in a host country illegally have either entered the country illegally or they came in legally as temporary “guest workers” or as legitimate students or tourists and remained in the host country after their contract elapsed or time expired.

48. The problem of illegality is likely to be more prevalent for persons at the lower end of the skills distribution, such as agriculture, construction, or domestic services. The large numbers of illegal migrants have resulted in social and political tensions and have changed attitudes towards immigration in a number of host countries. A more orderly form of “guest workers” programme is therefore essential.

49. In recent years, Barbados has experienced a noticeable upsurge of applications on behalf of both skilled and unskilled workers. A significant number of visitors to the island overstay the time granted without seeking an extension and proceed to engage in employment, biding their time until they can approach the Immigration Department to legitimise their status without fear of being asked to leave. This has created a challenge in seeking to determine an accurate number of non-national workers in the country. Nevertheless, work permits are issued to those persons who present themselves to the Department.

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<sup>6</sup> Ibid

50. There are concerns over the impact of this situation on the country's social services in view of the high numbers of non-national children entering the schools. Reports from the Ministry of Education suggest that an inordinate level of school fees remain unpaid. The Queen Elizabeth Hospital has also reported an increase in the general abuse of its medical and health care facilities, with an increase in cases of fees for services also remaining unpaid.

51. In order to alleviate these problems, it is proposed that a regulatory system be instituted involving a Guest Worker Registration Scheme. This would allow for the movement of genuine skilled labour in the region until such time as the CSME movement of skilled nationals is opened up to all categories of workers, and could remain in place for extra-regional workers, depending on the demand.

52. Precise details of the conditions and requirements of the Worker Registration Programme are provided in Section 11I.

### **Citizenship**

53. Citizenship is any country's highest form of status normally ascribed to an individual at birth, establishing a relationship in which the individual owes allegiance to the state and in turn is entitled to the state's protection of common and fundamental civil and political rights. These rights are founded on such principles as individual freedom, social equality and democracy. In Barbados Citizenship may also be granted through descent from a parent who is a citizen by birth, by marriage to a citizen, by registration, or by naturalization, having resided in the country continuously for a qualifying period.

54. In the Barbados post-independence era, the country has had to amend its constitutional provisions governing citizenship in order to remove certain anomalies and correct some injustices inherited from the colonial era that were fundamentally disadvantageous to many of its rightful citizens. These included certain biases that created unequal rights on the bases of gender or marital status; deprivation of

citizenship entitlements in circumstances where children were born outside Barbados, out of wedlock to male Barbadians or in wedlock to female Barbadians; or to Barbadians serving overseas in a diplomatic or consular capacity; or adopted by persons born in Barbados.

55. In terms of shaping Government's policy on immigration, provision must be made for systems that allow the requirements for acquisition of immigrant status and ultimately citizenship to be subject to a less onerous process. This is deemed appropriate especially in cases where there is a need to attract persons from overseas who have much needed skills and expertise as well as investors who have the requisite capital to contribute to the country's development.

#### Economic Citizenship

56. Barbados does not subscribe to the concept of economic citizenship, and pursues a policy of not granting such status to non-nationals in return for financial contributions or economic benefits. The legislation should therefore be amended to reflect this.

#### **Recommendation:**

**57. The Barbados Citizenship Act should be amended to state that under no circumstances will such citizenship be granted. Similarly the Caribbean Community (Movement of Skilled Nationals) Act, 2004-13 should be amended to state that economic citizenship will not be recognized as part of the definition of "national", to correspond with the amendment already made to the Immigration Act, Cap. 190.**

**58. The term "Economic Citizenship" should be defined for all relevant legislation.**

59. Citizenship is fully addressed in Section III including modes of acquisition, deprivation, renunciation, and reclamation.

## **Border Control and Security**

### Ports of Entry

60. Entry into Barbados is governed by the Immigration Act, which prescribes that whether by air or sea, it must be at an official port of entry, with the authorisation of an Immigration Officer. Entry may be denied to undesirable persons in specified circumstances as outlined in the First Schedule, "Prohibited Persons" of The Immigration Act, Cap. 190.

61. Barbados faces many challenges in attempting to maintain a reasonable balance between free movement and effective border security, as the former often provides opportunities for criminals to pursue illegal activities. This is exacerbated by the growing number of deportees to the region from Canada, the United Kingdom and, particularly, the United States of America<sup>7</sup> (USA), which has expanded the list of offences for which a person may be deported.

62. Additionally, the globalisation of transnational crime, human trafficking, money laundering, narco-trafficking and terrorism pose increasingly serious problems which threaten to undermine the stability, democracy and sustainable development of the country.

63. There are concerns over breaches arising from the relaxation of policies in the interest of facilitating tourism, as well as from airlines and shipping agents, which impact directly on security. Some of these relate to the -

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<sup>7</sup> In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, which allowed the deportation of any alien convicted of an aggravated felony, but also dramatically increased the list of offences that could be defined as such. These offences range from drunk driving and minor drug use to trafficking and murder.

- need for close monitoring of the crew of aircraft and vessels, including small pleasure craft on short stops to the island and
- Number of undocumented passengers entering the country by yacht.

64. The Immigration Act provides for the master of a vessel to furnish an Immigration Officer, upon request, with separate manifests containing names of passengers and crewmembers arriving in or departing from Barbados. Prevailing practice in many instances is that these lists are provided long after an aircraft has landed or departed.

65. Manifests in the prescribed form should be provided prior to arrival and departure to enable the Department to identify persons who are likely to be refused entry or departing passengers who might be wanted by legal authorities.

### **Recommendation:**

66. **In view of these security considerations, it should be mandated that passenger and crew manifests be provided to Immigration Officers prior to the arrival and departure of any vessel or aircraft.**

### **Terrorism**

67. The global war on terrorism has added another dimension to border control and security. Barbados has pledged full cooperation with the International Community and has supported all resolutions related to preventing, combating and eliminating terrorism on a global scale, emanating from the United Nations (UN) and the Organisation of American States (OAS). Resolution 1373 of 2001 of the UN Security Council requires States to:

- “prevent the movement of terrorists and terrorist groups by effective border controls and controls on the issuance of identity papers and travel documents;

- employ measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents; and,
- Find ways of intensifying and accelerating the exchange of information on terrorist activities, forged or falsified travel documents, trafficking in arms, explosives and sensitive materials, use of communications technologies by terrorist groups and the threat posed by the possession of weapons of mass destruction by such groups”.

68. The First Schedule of the Immigration Act contains comprehensive provisions to prevent entry of those persons who are likely to pose a threat to national security. Section 6 states that persons prohibited entry to Barbados include those “who are or have been at any time before or after 2<sup>nd</sup> February 1976 advocates of:

- the overthrow by force or violence of the Government of Barbados or any other country or of all forms of law
- the abolition of organised government, and,
- The assassination of any person or the unlawful destruction of property.”

69. Sections 7 and 8 extend this to persons who are members or affiliates of organisations teaching or supporting practices outlined in (a) to (c) above and saboteurs or persons likely to undermine the security of the country through subversive activities. In 2002, Section 7A was added, deeming as inadmissible persons convicted of the offence of terrorism or persons whom there are reasonable grounds for believing they have financed or facilitated acts of terrorism.

70. Since terrorism is a criminal offence, persons found to be guilty of terrorism would of course be deported from Barbados after completing the penalty determined by the courts.

## False Documentation

71. The Immigration Department has encountered several crude attempts, mainly by non-nationals, to forge the Barbados passport in order to enter certain developed countries. Many of them were thwarted by Immigration Officers and other frontline personnel and the culprits denied entry. Nevertheless, the Department has noted a significant upward trend in persons attempting to enter and exit with false documentation.

72. Immigration Authorities are empowered to take action against persons seeking to enter or who are entering Barbados with false documentation and an amendment to the Immigration Act, 2002-6 now makes it an offence to use or possess falsified or forged travel documentation when entering or leaving the country in accordance with subsection 29(g) of Cap. 190.

73. In the area of information exchange, the Department collaborates with counterparts in other friendly countries on the detection of forged or falsified travel documents and visas. It has implemented a system to validate the travel documents of other countries. Specimens are provided and security features are communicated to the Department by those countries. In addition when in doubt checks are made with the various Consulates or Embassies accredited to Barbados.

74. Strict security measures are employed in the production and supply of the Barbados passport, which is currently undertaken by an internationally recognised firm. In keeping with technological advances in this area, the Department introduced machine-readable passports in April 2004.

75. The Department will continue to monitor developments in the area of biometrics, particularly biometric identifiers for visas and passports as a means of reducing the use of fraudulent documents and improving the security features of the Barbados passport. These identifiers can also be used to track the overseas travel of persons suspected of engaging in criminal activity.

76. The shift to the issuance of machine-readable passports has gone a long way towards preventing the fraudulent use of the Barbados passport.

### Regional Security

77. Cooperation between regional law enforcement agencies is critical in view of the interconnection between terrorism, trans-national crime, illicit drug trafficking, money laundering and trafficking in illegal arms and persons.

78. It is essential that the CARICOM region builds upon existing regional security mechanisms and enhances collaboration and networking among regional law enforcement agencies. This would ensure that national and regional security is not compromised, given the porous nature of the borders of all CARICOM states. The Implementation Agency for Crime and Security (IMPACS) and the Joint Regional Communications Centre (JRCC), both legacies of Cricket World Cup, and, of course, the Regional Security System (RSS) have started the way forward.

### Deportation of Criminal Offenders

79. In managing the issue of deportation, the government of Barbados is aware not only of the security concerns arising from the increased number of criminal offenders in the society, but must also pay close attention to the large number of crime and security issues related to the forced repatriation of Barbadians who run afoul of the law in other jurisdictions, particularly the United States of America, Canada and the United Kingdom.

80. Mindful that the problem of deportation of criminal offenders is one that is of relevance to regional states as well, an appropriate response will require a coordinated effort at both the national and regional levels to effectively tackle this problem.

81. At its Thirteenth Special Meeting from the 4 -5 April, 2008 in Trinidad and Tobago, the Conference of Heads of Government of the Caribbean Community reached agreement on the establishment of a mandatory requirement for the enforcement of monitoring orders where persons are deported in relation to convictions for specified major offences. That agreement included the development of an information-sharing protocol to guide the transfer and dissemination of information related to deported persons between relevant law enforcement authorities throughout the Region. It addressed as well, the need for collaboration in the establishment of transition centres in each country to facilitate short-term stays for deported persons without shelter and/or familial support.

82. Community Heads also agreed to pursue the following: negotiations of standardised agreements/MOUs with Canada, the United Kingdom, the United States of America and other states with regard to deportees with the view that those agreements or MOUs should provide for adequate notification periods; the settlement of personal affairs prior to deportation of long-term residents; complete dossiers, including criminal antecedents and medical records where applicable; appropriate arrangements to reduce the financial burden on deported persons and on receiving countries and support for programmes designed to aid the rehabilitation and reintegration of deported persons in the Region.

83. With regard to intelligence and information sharing, agreement was reached on the conduct of a region-wide information campaign against crime to be facilitated by the CARICOM Secretariat; the retooling, retraining, and realignment of national and regional Intelligence Units to assist law enforcement agencies in the fight against crime, utilising current agencies such as the Regional Intelligence Fusion Centre (RIFC), the Joint Regional Communications Centre (JRCC), the Implementation Agency for Crime and Security (IMPACS), and the CARICOM Watch List. For security purposes it is imperative that the CARICOM Watch List is populated with the names of persons with serious criminal convictions returning to the region.

84. The implementation of full freedom of movement as one of the basic objectives of the CARICOM Single Market and Economy, requires that comprehensive security arrangements be put in place within the community so as to maintain a safe and secure environment for residents and visitors.

**Recommendation:**

**85. The Immigration Department should have an expanded role in these processes and suitable arrangements should be made to provide the basis for the effective functioning of Immigration Officers regionally and in collaboration with other law enforcement entities. Appropriate technology should be enhanced to enable the real-time sharing of information for intelligence purposes.**

**86. Existing security arrangements at the national and regional levels should be further enhanced so that free movement of CARICOM nationals can take place in a safe and secure environment.**

**Public Health**

87. The policy related to the health requirements for entry into Barbados has always been guided by the need to protect its citizens, residents and visitors against medical conditions which have a potentially negative impact. That policy and the legislation have always held as prohibited:

- persons who are likely to become charges on the public funds; and
- Persons suffering from communicable diseases within the meaning of any obligations relating to such diseases made under the Health Services Act.

88. In light of the swathe of new diseases and or medical/conditions, not least of which is HIV/AIDS, which might be burdensome on the health services of the

country, it is important that these two groups continue to be held as prohibited persons. However, the view of the Ministry of Health which stresses that being a person living with HIV/AIDS does not automatically cause a person to become a charge on public funds and that the mere presence of an HIV positive person is not a threat to public health, has been instrumental in formulating the Immigration policy on HIV/AIDS.

### HIV/AIDS

89. The country's policy with regard to HIV/AIDS should have the following objectives:

- avoiding the perpetuation of (either directly or indirectly) the stigmatisation of, or discrimination against persons living with HIV/AIDS
- respecting the basic human rights of persons living with HIV/AIDS, while protecting the rights of Barbadian citizens;
- Emphasising effective access to treatment and care and enhancing prevention efforts. This not only reinforces ongoing national programmes, but also aims to protect nationals.

90. Barbados is a signatory to international agreements that address both human rights and HIV/AIDS issues. Consequently, national policy should be consistent with these issues as far as possible (appropriate and practical). National policy also serves as an indicator by which Government is assessed internationally.

91. There is currently no legal basis on which the Immigration Department may question the HIV/AIDS status of any prospective immigrant and the question is whether the requirement for HIV/AIDS testing should be included on the standard Immigration medical form. The Department is cognizant that the granting of such status may allow access to free medical treatment, including treatment for HIV/AIDS, under government's health care system. Although there is a reduction in

the cost of treating this disease, it is still significant enough to place additional strain on the existing health and social services.

92. Cost considerations have to be weighed against the background of national as well as international policies, standards and best practices in this area. Many jurisdictions, with the exception of the USA, have dealt with this matter by seeking to ensure that HIV positive immigrants do not place excessive demands on the public purse, rather than by using danger to public health and public security arguments, although in Canada, the latter are part of the inadmissibility criteria. 'Excessive' is generally interpreted as being more than what is normal or necessary. The USA's approach is straightforward – entry of persons who have communicable diseases of public health significance, including the etiologic agent for AIDS, is prohibited.

93. In Australia, New Zealand and Canada, HIV testing is mandatory when applying for immigrant status. In 2002, Canada broadened this requirement to include all applicants 15 years and over, children who received blood and blood products and who have an HIV positive mother and potential adopters. In these countries, an HIV positive status is not sufficient for denial of entry. Applicants are required to demonstrate possession of adequate funds to support themselves, thus avoiding excessive demands on the public purse. Australia and New Zealand have developed baseline costs over a five-year period to guide the decision-making process. Assessments are carried out on a case-by-case basis and can result in an applicant's exclusion.

94. In the United Kingdom and France, testing is not mandatory, but can be stipulated if the situation warrants – for example, if an applicant shows clinical signs of infection.

95. In the context of the CSME, current practice in the EU is noteworthy. Mandatory testing is not enforced for citizens of the Union, but Member States are allowed to exercise discretion in setting policy for non-Union countries.

96. Generally speaking, all countries require prospective immigrants to demonstrate that they can support themselves and any dependants without recourse to public funds.

97. The development of a policy on the treatment of prospective immigrants living with HIV/AIDS will be guided by the Ministry of Health. The advice from that Ministry is as follows:

The mere presence of an HIV + (HIV positive) person is not a threat to public health because HIV is not easily transmitted. HIV transmission can be reduced by the prevention practices of both HIV+ and HIV- persons. Instead of trying to keep HIV+ people away from HIV- people, which is an unrealistic goal, the appropriate public health strategy is to provide HIV prevention services to everyone who might either have or be at risk for acquiring HIV.

98. The Ministry of Health also advises that:

Immigration restrictions based on HIV status fosters stigma and discrimination by sending the message that people with HIV status are dangerous and that their movement needs to be controlled by authorities. This contributes to a climate of fear and hostility, which deters nationals and non-nationals from coming forward to utilize HIV prevention, treatment and care/support services.

99. The Ministry of Health is of the view that there is no public health justification for requiring HIV/AIDS testing to be included on the standard medical Immigration form. It is therefore recommended that the current policy remains unchanged.

## **Public Policy**

100. Government is committed to protecting the interests of all Barbadians, at home and abroad, as it reforms and modernizes its agencies and services. It already provides generous access to state benefits, services and subsidies. Proposed policies will continue to be cognisant of the difficulties caused by geographic and natural resource constraints, labour market dynamics and population density. Issues such as migration patterns and the country's carrying capacity will be closely monitored, given the pressures they can exert on established social services, social safety nets and overall development. The public policy option must always be available to the Minister to justify denial of entry to the country and refusal of permanent status in Barbados.

## **Section II**

### **Role of the Immigration Department in National Development** **Institutional Development and Administrative Reform**

1. The Immigration Department recognizes the need to adopt a more strategic approach to enable it to contribute to Government's economic growth and security targets. This is reflected in the Department's Vision which highlights facilitator roles in tourism, business development and foreign investment, while seeking to give effect to an:

*"Immigration policy through a modern, efficient and professional Immigration service, in a manner designed to promote, sustain and enhance the future of our social and economic development, while protecting the national interest."*

2. Initial reform efforts have enabled the Department to identify areas which need to be strengthened as it re-orientes its operations to effectively respond to the freer movement of people and the challenges this brings especially in the maintenance of national security. Already the Department has witnessed a noticeable increase in demand for services, which is placing a strain on existing manpower (see Table 1). This trend is expected to continue as Barbados implements regional and international agreements and obligations related to the free movement of capital, goods and services.

		1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>A</b>	<b>Citizenship</b>	900	935	941	878	1,133	982	1,264	1,134	972	737
	Permanent Residence	158	134	97	76	123	55	39	140	20	17
	Immigrant Status	142	199	155	105	210	255	187	146	90	21
	Reside and Work	261	238	357	152	213	301	266	211	146	102
<b>B</b>	<b>Work Permits Total</b>	1,816	2,507	4,066	3,563	4,014	2,344	3,315	6,661	8,679	7,335
	Short Term	0	0	0	3,133	3,468	1,969	2,381	6,183	8,195	6,903
	Long Term	0	0	0	430	546	375	934	478	484	432
	<b>Caricom Skilled National</b>	124	105	124	64	129	166	134	123	144	184
	<b>Extensions (Stay Variations)</b>	5,042	7,873	8,838	8,438	9,338	8,111	10,200	10,550	8,108	8,169
<b>F</b>	<b>Arrivals</b>	1,240,884	1,403,216	1,393,869	1,386,636	1,461,354	1,442,131	1,211,120	1,578,361	1,620,771	1,495,661
	Airport	768,772	818,306	799,241	806,503	837,096	891,600	567,338	942,779	900,115	882,881
	Seaports	472,112	584,910	594,628	580,133	624,258	550,531	643,782	635,582	720,656	612,780
	Passengers Landed	39,795	50,245	66,955	56,855	65,058	57,273	83,454	96,400	104,251	106,543
	Passengers Intransit	432,317	534,665	527,673	523,278	559,200	493,258	560,328	539,182	616,405	506,237

**Table 1:** Summary of Statistics of Immigration Services 1999 - 2008

3. The internal realignment of policies, systems and procedures to fulfil its changing role in the implementation and enforcement of new programmes will place additional burdens on the Department in the short to medium term. While some of these pressures can be alleviated by the increased use of information technology and a revamping of existing human resource management and development practices, an acceptable level of personnel is a prerequisite.

### **Revenue Earning Capacity**

4. The Immigration Department has become a significant contributor to Government's revenue, as evidenced by earnings over the last nine years:

<b><i>2000-01</i></b>	<b><i>2001-02</i></b>	<b><i>2002-03</i></b>	<b><i>2003-04</i></b>
<b><i>\$</i></b>	<b><i>\$</i></b>	<b><i>\$</i></b>	<b><i>\$</i></b>
<b>5,088,916.63</b>	4,893,135.73	4,876,916.85	5,520,382.14

<b><i>2004-05</i></b>	<b><i>2005-06</i></b>	<b><i>2006-07</i></b>	<b><i>2007-08</i></b>	<b><i>2008-09</i></b>
<b><i>\$</i></b>	<b><i>\$</i></b>	<b><i>\$</i></b>	<b><i>\$</i></b>	<b><i>\$</i></b>
6,049,659.75	9,225,808.79	10,632,895.22	10,946,053.84	11,135,864.64

The scope for increasing its revenue earning capacity is evident and new fees and charges<sup>8</sup> with respect to all services, with the exception of passports and other travel documents became effective from March 2005 with a view to maximising potential earnings. New fees in respect of passports and other travel documents became effective in June 2005. The goal is to make the Immigration Department a net contributor to the Consolidated Fund.

<sup>8</sup> Fees for all other services but work permits had not been increased since 1993. Fees for work permits had not been increased since 1982.

5. National development objectives and sectoral strategies have an impact on the range of services offered by the Department and highlight the constant balancing act it is required to perform. In facilitating sectoral needs, where viability is enhanced by rapid response times and progressive approaches, the Department also has to maintain its primary responsibility of protecting the public's interest.

### **Financial Services/Foreign Investment**

6. Along with tourism, the offshore sector generates significant foreign exchange receipts. Increasing market access, as a result of trade liberalisation, is providing Barbados with new and exciting opportunities to be the premier regional producer of services. This affords the Immigration Department the opportunity to become a strategic partner in the process, while simultaneously undertaking systemic and operational reforms to improve efficiency and effectiveness. Critical success factors include an overarching policy which:

- is consistent, but flexible enough to meet the changing demands of the sector and shifts in Government's national development priorities
- allows the removal of administrative barriers to prompt service without compromising the integrity of the system, and
- encourages the design and implementation of innovative programmes targeting business, foreign investment and suitably qualified and skilled immigrants in areas critical for accelerating national development but where manpower shortages exist.

7. It is recognized that procedures and operational practices must be simplified, for example, processing work permits must be timely and responsive. Underpinning this will also be the expanded use of information technology.

8. Specific functions and responsibilities of the Immigration Department include:

- monitoring the entry and departure of persons via the ports of entry
- processing applications for citizenship, permanent residence, immigrant status, CARICOM Skilled Nationals, CARICOM nationals moving under the right of establishment, CARICOM service providers, work permits, training attachments, special entry permits, single and multiple entry visas, student visas, and extensions of stay
- issuing passports and other travel documents
- collecting revenue in relation to the services rendered
- investigating violations of the Immigration laws
- enforcing measures related to illegal immigrants
- Acting as the first line of defence against the infiltration of suspected criminals and/or terrorists.

### **Human Resource Development and Management**

9. The importance of Human Resource Development and Management (HRD&M) cannot be overstated if the Department is to respond effectively to its changing mandate, which clearly requires the development of new competencies and skill sets. As a start, the assignment and deployment policy will continually be reviewed as a matter of course to ensure optimal utilisation of available Human Resources. This must be accompanied by the elaboration of a Human Resource policy that enables the Department to achieve its strategic objectives, and ultimately fulfil its Mission. While this policy should build on ongoing efforts to improve standards and customer service, it needs to take a broad view of the current and proposed role of Immigration and the Department in meeting national development objectives.

10. This policy should be informed by a rigorous review of recruitment strategies, including entry-level qualifications and the growing need for basic computer literacy. It must also consider issues such as:

- the appropriateness of the existing organisational structure and staffing levels based on current and emerging functions
- staff retention and succession planning
- the need to attract a more diverse set of skills and competencies, and
- the importance of continuous training and staff development.

### **Recommendation:**

**11. Given the importance of HRD&M and the size of the staff, it is recommended that a qualified HR practitioner be recruited for the Department.**

### **Assignment and Deployment**

12. The current staff complement is 217 persons, which figure includes data entry operators, deployed over five locations.

- There are eighty-five officers and twenty-nine support staff at the Grantley Adams International Airport, working a 24-hour, 3 shift-system, 8:00 am – 3:00 pm; 3:00 pm – 10:00 pm and 10:00 pm – 8:00 am.
- Four officers at the Barbados Port and two at Port St. Charles whose hours of work are 6:00 am – 2:00 pm and 2:00pm to 10:00pm. (In collaboration with the Health Authorities, Customs and Shipping Agents procedures have been put in place for overtime charges to be paid by ships arriving outside normal working hours).
- Sixty Officers and thirty support staff at Headquarters who work a standard forty hour week, some of whom are called upon to assist in processing passengers arriving on cruise liners.

13. The Department was granted an increase of 17 posts in November 2004. Prior to this, i.e. since 1982, additional staff granted included the creation of ten posts at Immigration Officer II/III in 1990, and ten years later five were added for special projects, such as Port St. Charles and the now defunct Joint National Headquarters, (JNHQ).

14. In 2001, the reassignment of Officers to the Departures Section of the Grantley Adams International Airport, without any replacements being provided, further exacerbated an already untenable situation as the Department continued to be faced with an increase in the volume of work, and found itself hard pressed to meet current and expected demands for services. In 2006 an additional 15 officers were added to the staff complement and assigned to the Grantley Adams International Airport, to ease the extraordinary pressure there and in preparation for Cricket World Cup. Currently, 3 of the officers allocated to GAIA are assigned to the Jet Centre, which is operated by International Aircraft Management. In addition officers are reassigned on a needs basis from GAIA to the hangar operated by Simpson Inc.

### **Structural Reform**

15. The emerging issues and new policies discussed earlier and the means to address them highlight the urgent need for upgrading the Immigration Department.

16. The previous job evaluation exercise would have considered the unfavourable situation in the Department vis-à-vis the required numbers as well as the levels/grades of personnel, given the Department's increasing responsibilities. However the review resulted in upgrading of the posts of Chief Immigration Officer and Deputy Chief Immigration Officer but recommendations for upgrading of the remaining posts will be pursued.

17. Provided that the recommendations are accepted by the Government, it is anticipated that the necessary improvements will be made in the Department's

institutional capacity. Failure to do so could have an impact on the Department's ability to fulfil its new mandate and on staff morale.

### **Recommendation**

**18. An evaluation of all technical posts is recommended, as the Department was not included in the 1988 Service wide reclassification exercise. The new roles, levels of responsibility and outputs envisaged for Immigration Officers, demand that better and more suitably qualified persons are encouraged to join the Department. These factors must be examined in any such exercise.**

### **Staff Development and Training**

19. Over the years, training has been carried out in an ad hoc manner, primarily on-the-job and by attendance at courses and seminars organised by the Government's Training Administration Division and the Office of Public Sector Reform. While this approach has reaped some success, it is now time to develop a systematic and comprehensive training and development plan, which will support the achievement of departmental objectives and upgrade the skills and competencies of staff. As a companion to the plan, a competency framework should be designed which sets out the skills, competencies and qualifications for each grade. This will have the benefit of:

- making the performance appraisal system more transparent, objective and useful for staff as they will see what range of skills and competencies as well as educational requirements are necessary for consideration for promotion
- making succession planning easier, and
- increasing accountability for individual performance.

20. This Training and Development Plan should be updated annually responding to emerging needs. Currently, the basic qualifications for recruitment and

assignment of each grade of Immigration Officer are set out in the Civil Establishment (Qualifications) (Amendment) Order, 1974. Specialised training is provided when persons join the Department. Once the above plan has been agreed upon, and the competency framework developed, suggestions for changes to the existing requirements will be made. Comprehensive training in change management and customer service should also continue to form an integral part of the Department's ongoing training programme.

### **Commitment to Improved Standards**

21. The Department is cognisant of the need to continually improve standards and is pursuing initiatives in this direction. So far these include:

- Enhanced Customer Service

A draft Customer Charter has been prepared clearly stating the processing times once completed forms, and **all** supporting documentation have been submitted. The proposed times are as follows:

<b><u>Type of Application</u></b>	<b><u>Processing Time</u></b>
<b>Barbados Passports</b>	
Issue of new passport	10 working days
Emergency passport	1 working day
<b>Work permits</b>	
Short Term	4 weeks
Long Term	6-8 weeks
Entry Visas	14 working days
Student Visas	6-8 weeks
Endorsement of Foreign Passports	10 working days
Extensions of Stay	2 working days
CARICOM Skilled National Certificate	2 weeks

It is anticipated that the Customer Charter will shortly be issued and widely publicized.

- Operations Manual

In an effort to streamline procedures and provide timely and consistent service, an operations manual has been prepared and will be updated. This manual will provide staff with a better appreciation of the nature of the Department's work, the functions of the various sections, individual responsibilities and authorities and detailed procedures to be followed.

- Code of Conduct

A Code of Conduct has been published and disseminated to staff. This Code is intended to provide guidance to officers and aims to ensure that transparency, uniformity and impartiality are brought to bear in the decisions made by staff while performing their duties. The Code will be reviewed and revised as the need arises.

22. It is expected that these measures will:

- assist in maintaining public trust and confidence in the integrity of the system, while managing public expectations
- ensure consistency of service
- provide a degree of predictability in decision making, and
- Inculcate a positive performance culture.

### Enforcement and Investigation

23. Immigration Officers are often the first line of defence in national security and the importance of this role has grown with the globalization of narco-trafficking,

transnational crime, terrorism and human trafficking. It is critical, therefore, that the Department is able to strengthen its enforcement and investigative capabilities and mechanisms in order to:

- more effectively prevent undesirable persons from entering the country
- speedily remove such persons once they have entered the country
- perform thorough background checks on persons applying for all forms of status and recognition as CARICOM Skilled Nationals
- detain and remove illegal immigrants
- undertake risk assessments and implement programmes to minimise all forms of risk related to immigration
- aggressively deal with instances of false documentation and identity theft, and
- monitor entry under the right of establishment as per the Revised Treaty of Chaguaramas.

24. This means that Immigration Officers will have to strengthen their networks with other law enforcement agencies locally (Customs and Police), regionally and internationally, and will also have to develop new ways of working, such as forging partnerships with the local private sector and other government departments such as the Department of Labour, National Insurance Department and the Electoral Office.

25. The Department proposes to strengthen the Enforcement Section of the Immigration Department, to counter the increasing incidence of persons remaining in the country illegally. Training with other law enforcement agencies will continue.

### **Role of Information and Communications Technology (ICT)**

26. Around the world, computers and the Internet have become basic “tools of the trade” for facilitating the work of governments, and assisting them in engaging with citizens as a means of strengthening their participation in governance

processes. The Immigration Department's ICT capability will be enhanced to allow it to:

- inform citizens, residents, visitors, prospective immigrants and investors of the following: policy, the criteria to be met for entry to Barbados, programmes, procedures, departmental response times, and fees charged
- respond to on-line requests for information, enable on-line applications and allow for the initial processing of these forms in an attempt to shorten turn around times
- allow for speedier communications between the Department and other government ministries and agencies, and
- facilitate real-time recording of arrivals and departures at all ports of entry which will allow the Police to have improved access to up to date information which is critical to better management of any security challenges.

27. Increased use of ICT will necessitate the development of a secure intranet for internal use as well as a well-designed, user-friendly website for external customers. The development of the intranet in particular must be compatible with the proposed Integrated Justice Information System (IJIS), being funded under the Administration of Justice Programme<sup>9</sup>. The integration of the Immigration Department in this system should be undertaken as a matter of priority, given its expanded role in national security and the need to have accurate, up-to-date information on suspected criminals and terrorists, to undertake risk assessments and focus on enforcement efforts.

28. The Immigration Department will seek to work with the Data Processing Department in its Portal Project to facilitate greater usage of the internet for applications and processing.

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<sup>9</sup> Co-funded by the Government of Barbados and the Inter-American Development Bank

## **Section III**

### **Proposals for Legislative Reform**

1. Most of the functions carried out and services offered by the Department are governed by the following legislation:

- The Constitution of Barbados
- Barbados Citizenship Act, Cap. 186 and Regulations
- Immigration Act, Cap. 190 and Regulations
- Caribbean Community (Movement of Skilled Nationals) Act 2004-13
- Passports and Travel Documents (Fees) Act, Cap. 81

2. In executing these functions, the Department has identified gaps in the legislation that need to be closed, specific provisions that require revision and procedures to be strengthened and/or streamlined. These actions are required in order to provide a coherent and cohesive framework to guide its work, while increasing transparency and accountability and allowing for the standardization of procedures generally. Once these deficiencies have been remedied, the Department will be better able to deal with ingrained abuses of the system, examples of which include:

- continued violation of laws governing applications for work permits, which more often than not are sought after arrival in country;
- numerous requests for changes in status by persons who have entered as visitors;
- overstaying
- marriages of convenience; and,
- harbouring, which has been critical in the current accumulation of illegal persons.

3. Gaps in the legislation lead to the frequent exercise of Ministerial discretion in the granting of certain forms of status, for example:

- permission to reside and work, granted in instances where attempts are being made to regularize status, often after remaining illegally;
- special entry permits granted to persons retired and owning property on the island.

It is envisaged that the mandate resulting from the strengthened legislative infrastructure will allow for an expanded role for the Department in:

- National security
- Facilitating the further growth and expansion of the services sector and overall economic activity
- Enhancing revenue earning capacity;
- Complying with relevant international and regional obligations, particularly those under the Revised Treaty of Chaguaramas.

4. In view of the foregoing, the Government undertook a comprehensive review of the legislation and proposes the following amendments:

### **Citizenship**

5. This is the highest form of status held by anyone in Barbados, whether acquired through birth, descent, registration or naturalization. The Barbados Citizenship Act, Cap. 186, provides for ministerial discretion in the granting of citizenship to persons who qualify by virtue of satisfying specified requirements. The Act also provides for deprivation and renunciation of citizenship. Renunciation is also provided for in the Barbados Constitution.

6. Chapter II of the Barbados Constitution and the Barbados Citizenship Act, Cap. 186 provide for the granting of citizenship. Before Barbados gained Independence, persons born or naturalized in Barbados under the British Nationality Act, were considered to be citizens of the United Kingdom and Colonies. After

Independence, these persons and those of their children born outside of the country who qualified were recognised as citizens of Barbados, in accordance with Chapter II of The Barbados Constitution. Chapter II also provided for the non-national spouses of Barbadian males and for persons ordinarily resident on the island for a specified period, to be registered as citizens of Barbados. Amended by The Constitution (Amendment) Act, 2000-18, the Barbados Constitution now also provides for the spouses of Barbadian females to be recognized as citizens of Barbados, removing any discrimination that might have existed.

### **The Barbados Citizenship Act, Cap. 186**

7. In order to correct inconsistencies between the various pieces of legislation, the following amendments are proposed for the Barbados Citizenship Act, Cap 186.

#### Section 2 – Interpretation

#### **Recommendation**

**8. The term “Economic Citizenship” should be defined in the Citizenship Act and in all Immigration legislation.**

**9. A clause should be added to the Constitution and all Immigration legislation to state that in the interest of public policy, the term “ordinarily resident” does not include persons who reside in Barbados illegally.**

#### Subsections to be Repealed

10. The following subsections have outlived their purpose and should be removed from the legislation:

## **Recommendation**

11. **Subsection 2(9) of Cap 186 provides for the recognition of children born outside Barbados to Barbadian citizens serving in a diplomatic or consular capacity. However, section 4A of the Constitution as amended by the Constitution (Amendment) Act, 2000 – 18 now provides for these persons to be recognized as citizens by birth. Subsection 2(9) should therefore be repealed subject to an opinion from the Solicitor General’s Chambers.**

12. **Subsection 2(10) which qualifies subsection 2(9) should also be repealed, subject to an opinion from the Solicitor General’s Chambers.**

### National Security and Public Policy Interests

13. Sections 4(8) and 4(9) of Cap. 186 list persons whom the Minister responsible for Immigration may refuse to register as Barbadian citizens on national security and public policy grounds. While subsections 3(2) and 3(3) of the Constitution are listed here, subsection 3(1) and Section 6 are not included. This is unfortunate, since it means that persons who may have committed serious crimes, but are married to Barbadian citizens, may still be registered as citizens. This is not the intention of the legislation since Section 3 of the Constitution is qualified by subsection 3(5), and subsection 6(1) is qualified by 6(2). Subsections 3(5) and 6(2) read as follows:

*"The right to be registered as a citizen of Barbados under this section shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy;"*

14. The intention for such exemptions and qualifications to be prescribed in the Citizenship Act is clear. In addition, The Constitution of Barbados was amended by the Constitution Amendment Act, 2000-18 to add subsection 3A(1)(b) which now provides for persons married to citizens of Barbados. Subsection 3A (4) qualifies 3A

(1) (b) and also calls for “exceptions or qualifications” to be prescribed in the interests of national security or public policy.

### **Recommendation**

**15. It is recommended that in the interest of national security and public policy, subsections 4(8) and 4(9) of the Citizenship Act, Cap. 186 be amended in order to include subsections 3(1), and Section 6 of the Constitution, (unless they are repealed), as well as Section 3A of the Constitution – all dealing with the grant of citizenship. This will provide authority for the refusal to register as citizens, spouses of Barbadian citizens, who are criminally or otherwise seriously inadmissible.**

### **Deprivation of Citizenship**

16. Section 9 (1) of Cap. 186 empowers the Minister to deprive of his citizenship, any citizen who obtained a certificate of citizenship by fraudulent means. However, not all sections of the Constitution or Cap. 186 are included. An amendment should be made to ensure the inclusion of all sections of both the Constitution and Cap. 186 through which citizenship is conferred.

### **Recommendation**

**17. It is recommended that this subsection 9(1) of Cap. 186 should be amended to include all sections in both the Constitution of Barbados and the Citizenship Act, Cap.186 through which citizenship may be gained.**

### **Reclamation of Citizenship after Renunciation**

18. Barbadian citizens are allowed to reclaim citizenship without penalty or restriction. However there are different requirements for the varying categories.

This needs to be changed to ensure equal treatment of all applicants. None of the existing legislation deals specifically with reclamation, resulting in a differing set of rules and fees for persons born in Barbados, and those who acquire citizenship by registration as opposed to those who acquire citizenship by descent. Reclamation is cheaper and simpler for citizens by descent than for citizens by birth, registration or naturalization. For example:

- Citizens by descent pay a single fee of \$25.00
- Citizens by registration pay an application fee of \$200.00 and a final fee of \$800.00
- Citizens by birth pay an application fee of \$200.00 and a final fee of \$800.00

**Recommendation:**

19. **It is recommended that the legislation be amended to provide for the following:**

- **a specific policy for all persons who have renounced citizenship and wish to reclaim it;**
- **that the granting of citizenship to persons who have previously renounced it should not be automatic except in cases where the applicant was born in Barbados or was a citizen by descent;**
- **that conditions, such as the residency requirement (except in cases of birth or descent) should be prescribed in the legislation;**
- **that there should be standard fees for all applicants reclaiming citizenship. A single fee of \$500.00 is recommended.**

Children Adopted by Citizens of Barbados

20. Persons born in Barbados are entitled to pass citizenship by descent on to their children born abroad. The Citizenship Act, Cap. 186, at subsection 5(3) provides for children adopted in Barbados to become citizens from the date of the

adoption order. However, no provision is made for those children adopted while the parents are residing abroad.

### **Recommendation:**

**21. It is recommended that provision should be made in the Citizenship Act, Cap. 186, for minor children to be entitled to be registered as citizens of Barbados, if they are adopted by citizens of Barbados by birth, while they are residing abroad. The adopted child should be a minor at the time of the citizenship application.**

### **The Constitution of Barbados**

#### Citizenship by Virtue of Marriage

22. The Department is particularly concerned about the number of obvious marriages of convenience, where non-nationals marry Barbadians in order to gain entitlement to citizenship or permanent residence. This problem manifests itself in the following ways: either the non-national spouse leaves the marriage before consummation or having divorced, applies for some form of status for a new (non-national) spouse. There are strong suspicions that some Barbadian nationals are being paid to participate in these marriages of convenience.

23. There are several examples of non-nationals who obtain a divorce from their non-national spouses in order to get married to a Barbadian and at the earliest opportunity obtain a divorce from the Barbadian in order to remarry their previous spouse. They are then entitled to pass citizenship on to that spouse and can obtain status for any non-Barbadian children from that union. Subsection 3(4) of Constitution of Barbados states that: "*The right to be registered as a citizen of Barbados under this section shall be subject to such exceptions or qualifications as may be prescribed in the interests of national security or public policy:*" The legislation should therefore be amended to allow for the inclusion of such exceptions and qualifications to ensure that citizenship is not fraudulently obtained.

## **Recommendation**

**24. It is recommended that the legislation should be amended to stipulate that such persons should not benefit from this fraudulent act, and that citizenship will be refused in such cases.**

25. Prior to the Constitution (Amendment) Act, 2000-18, non-national women married to Barbadian men were entitled to citizenship by virtue of marriage, whereas non-national males married to Barbadian females by birth or descent were only entitled to permanent residence. The passage of the Constitution (Amendment) Act, 2000-18, changed this, and now non-national men are entitled to citizenship by virtue of marriage to any Barbadian citizen, whether by birth, descent, registration or naturalization, in accordance with subsection 3A(1)(b).

26. The original problem, therefore, has been compounded by the sheer increase in numbers and needs to be addressed immediately, by prescribing in the Citizenship Act, the requirement that persons married to Barbadian citizens must cohabit with that citizen for a two-year period before being granted citizenship. Subsection 3A(1)(b) reads:

*A person who has been married to a citizen of Barbados, and has co-habited with that citizen for such period as may be prescribed immediately preceding that person's application.*

In order to minimise abuse of the system through marriages of convenience, it is essential for the Department to follow up on the qualification offered in subsection 3A(1)(b) through prescription in the Barbados Citizenship Act.

## **Recommendation:**

**27. It is recommended that the period to be prescribed in the Citizenship Act, Cap. 186 should be two years. In cases where persons have been married for more than two years but are only now applying for citizenship, the time already spent together would satisfy this stipulation. Persons should be granted permission to reside and work during the two-year**

**period on payment of the required fee, so that in cases of genuine marriage, those persons are not unnecessarily placed at a disadvantage. Where it is evident that the marriage is not genuine but clearly arranged with the sole purpose of gaining status in Barbados, the application should be refused forthwith and the legislation should reflect this.**

#### Sections to be Repealed

28. Subsection 3A(1)(b) of the Constitution now provides for the grant of citizenship to spouses of Barbadian born men as well as those of Barbadian born women, eliminating the gender bias that was created by subsections 3(1), and 3(3) and section 6 of the Constitution. Retention of these subsections leads to the adoption of two different standards for male and female applicants which is precisely what the Constitution (Amendment) Act, 2000-18 was intended to prevent.

#### **Recommendation:**

29. **Sections 3(1), 3(3) and 6 of the Constitution should be repealed, since citizenship by virtue of marriage (regardless of gender or date of marriage) is provided for in subsection 3A(1)(b) of the Barbados Constitution as amended by the Constitution (Amendment) Act, 2000-18.**

30. **Subsection 3A(1)(a) which deals with persons ordinarily resident should be repealed since it could be considered to strike at the heart of Immigration policy if ordinarily resident included persons who are illegal in Barbados. An alternative to repealing this section would be to prescribe in the Citizenship Act, Cap. 186, qualifications and exceptions in the interest of national security or public policy as stipulated in subsection 3(A)(4). One qualification or exception could be the proviso that for purposes of this section, "ordinarily resident" will not include persons who have resided illegally in Barbados.**

### Citizenship by Birth

31. It is the Department's view that the legislation should be amended to stipulate that (as in the United Kingdom and the Bahamas) children born in Barbados will not be deemed to be citizens of Barbados, unless at least one parent at the time of the birth, has permanent status in Barbados. In addition persons born in Barbados should not be deemed to be citizens where the parents are residing illegally in Barbados.

### **Recommendation:**

**32. It is recommended that the legislation should be amended to stipulate that children born in Barbados shall *not* be deemed to be citizens of Barbados, where neither parent enjoys the status of immigrant, permanent resident, or citizen, nor qualifies under the Caribbean Community Act, 2003-8 which makes provision for matters arising out of the Revised Treaty of Chaguaramas. However, that child should be allowed to reside if their parent is on a valid, long-term work permit, or has permission to reside and work.**

### Citizenship by Descent

33. Section 5(2) of the Constitution as amended by the Constitution (Amendment) Act, 2000-18 addresses citizenship by descent, by providing for all those persons born to Barbadians by birth, outside Barbados after 29<sup>th</sup> November 1966, but does not take into account those born outside Barbados prior to that date. Citizenship by descent for persons born prior to Independence is still provided for by subsection 2(2) and section 5 of the Constitution. This discriminates against a small group of persons who were born, either out of wedlock to Barbadian-born males or in wedlock to Barbadian-born females married to non-Barbadian males. This small group of persons are still subject to the inequity which the Constitution (Amendment) Act, 2000-18 was intended to resolve.

### **Recommendation:**

34. **It is recommended that this oversight be rectified so that this group, is treated in the same way as those born after Independence, so that they are entitled to citizenship by descent so long as one parent is a citizen of Barbados by birth.**

35. If the legislation is amended, removing any gender bias, to accommodate all persons born outside Barbados to a Barbadian born parent, whether born before or after independence; then subsection 2(2) and 5(1) of the Constitution of Barbados become redundant and should be repealed.

### **Recommendation**

36. **Subsection 2(2) and 5(1) of the Constitution of Barbados should be repealed.**

37. Since Section 5(2) of The Constitution of Barbados now provides for persons born outside Barbados after 29<sup>th</sup> November 1966 to acquire citizenship by descent through mother or father whether born in or out of wedlock, a difficulty has surfaced where persons are seeking citizenship by descent through fathers whose names are not recorded on their birth certificates. The Department has seen a sufficient number of doubtful cases where fathers' names have been added subsequent to registration, to suggest that there should be some clear policy defined.

### **Recommendation**

38. **It is recommended that unless the father's name is added at the time of registration of birth, there should be no claim to citizenship by descent, except where irrefutable DNA evidence is provided, in keeping with recent legal opinions received from the office of the Solicitor General.**

## The Oath of Allegiance

39. The Oath of Allegiance currently forms part of the prescribed application form for persons applying for citizenship of Barbados under sections 3(1), 3(3), 3(A)(i)(b), and 6 of the Constitution. This is both convenient and practical.

### **Recommendation:**

40. **It is recommended that the same should be done in every case where citizenship is being granted, so that all persons aged sixteen and over acquiring Barbadian citizenship, except in the case of citizenship by descent, are required to take the Oath of Allegiance.**

## **The Immigration Act, Cap.190: Permanent Residence**

41. Section 5 of the Immigration Act, Cap. 190, governs the granting of Permanent Residence by specifying those categories of persons eligible for such status. The following amendments are recommended:

### Non-national Spouse of Permanent Resident

42. While it is the policy to promote family reunification by offering some form of status to non-Barbadian spouses where there is no entitlement, the legislation should be amended to eliminate the possibility of flagrant abuses such as marriages of convenience. In this regard new legislation should specify that:

### **Recommendation:**

43. **Persons marrying permanent residents of Barbados should be required to complete a two-year qualifying residential period, during which time the couple must cohabit, prior to the granting of immigrant status. This is consistent with the position taken with respect to citizenship by marriage, which is an entitlement. The spouse should be granted permission to "reside and work" during the qualifying period before advancing to the permanent status of immigrant. As with**

**citizenship where there is evidence that the couple has cohabited for two years, and the marriage is subsisting, the requirement would be satisfied.**

**44. Where evidence suggests a clear abuse of the system, i.e. where the marriage is clearly not genuine, the applicant may be denied entry to Barbados, or may be asked to leave the country, where necessary, even prior to the completion of the qualifying period.**

**45. At the end of the qualifying period, each case will be assessed on its own merit rather than simply on the basis that a marriage has been contracted. The onus will be on the couple to satisfy Immigration authorities that they have been cohabiting in a validly subsisting marriage during the qualifying period.**

Subsection 5(2)(a)(ii) Permanent Residence by Virtue of Marriage to a Citizen

46. Prior to the passing of the Constitution (Amendment) Act, 2000-18, spouses of Barbadian men were entitled, after marriage, to Barbadian citizenship, but spouses of Barbadian women were not. The spouses of female citizens by birth or descent were instead entitled to permanent residence in accordance with subsection 5(2)(a)(ii) of The Immigration Act, Cap. 190. However, as a result of the passage of the Constitution (Amendment) Act, 2000-18 those persons are now entitled to citizenship in accordance with subsection 3A(1)(b) of the Barbados Constitution. Subsection 5(2)(a)(ii) of the Immigration Act has, therefore, become redundant since these spouses are now provided for in the Barbados Constitution. Should they opt to become permanent residents this can be covered by subsection 5(1) of Cap. 190, which is currently an option for women entitled to citizenship by virtue of marriage in accordance with Section 3 or 6 of the Constitution.

**Recommendation:**

**47. Subsection 5(2)(a)(ii) of Cap. 190 should therefore be repealed, subject to an opinion from the Solicitor General’s Chambers.**

Subsection 5(2)(b) Permanent Residence Under 32(1) of Previous Act

48. Subsection 5(2)(b) refers to subsection 32(1) which no longer exists in Cap. 190 and should be repealed.

**Recommendation**

**49. Subsection 5(2)(b) of Cap. 190 should be repealed subject to an opinion from the Solicitor General’s Chambers.**

Subsection 5(2)(c) Permanent Residence – Child of Barbadian Born Mother

50. Prior to the Constitution (Amendment) Act, 2000-18 persons were only entitled to citizenship by descent if they were born outside of Barbados,

- in wedlock to a father who was a Barbadian citizen by birth, or
- out of wedlock to a mother who was Barbadian citizen by birth.

A Child born outside Barbados, in wedlock, to a Barbadian-born woman was, therefore, not entitled to citizenship by descent unless his/her father was also Barbadian-born.

51. These children were instead entitled to permanent residence pursuant to subsection 5(2)(c) of Cap 190. With the passage of the Constitution (Amendment) Act, 2000-18 persons born outside Barbados after 29 November 1966 became entitled to Barbadian citizenship in accordance with subsection 5 (2) of the

Constitution of Barbados at the date of birth if at least one parent was a Barbadian citizen by birth.

52. However those born before 29 November 1966, are discriminated against in the legislation and a recommendation has been made at paragraph 8 III, "Citizenship by Descent" to have this situation rectified. Once this amendment to the Constitution is made, all persons presently entitled to permanent residence under Subsection 5(2)(c) will then be entitled to citizenship by descent, provided for in the Constitution.

**Recommendation:**

53. **It is recommended, however, that Subsection 5(2)(c) of the Immigration Act, Cap. 190) be retained and amended so that it includes all persons entitled to citizenship by descent so that such persons might opt to become permanent residents rather than citizens of Barbados where necessary. For example, this might be necessary in cases where countries do not permit dual citizenship. There is presently no legislative provision to accommodate this. 5(2)(c) might be amended to permit this**

- **by removing the word "woman" from subsection (i), and**
- **by removing subsection (ii) in its entirety.**

Renunciation of Permanent Residence

54. There is no legislative provision for persons to renounce permanent residence and although few such cases come before the Department it should be provided for in the legislation.

**Recommendation:**

55. **It is recommended that the legislation be amended to add such a clause to Section 5 of Cap. 190, as in the case of citizenship.**

## **Immigrant Status**

56. Section 6 of the Immigration Act, Cap. 190, establishes the conditions for immigrant status, which is usually granted to persons seeking to establish themselves permanently in Barbados. It is the first rung in the incremental process towards citizenship. The following legislative amendments are recommended:

### **Recommendation**

#### Business Investor Established in Barbados 6(1)(a)(ii)

57. **A business investor seeking immigrant status pursuant to subsection 6(1)(a)(ii), that is, having established himself in Barbados in a business, should be required to show**

- **that he made a substantial investment in the country, and**
- **that he employs a number of Barbadians or other CARICOM skilled nationals**

#### Person Likely to Establish Himself in Barbados 6(1)(a)(iii)

58. **The legislation should be amended to allow those deemed likely to establish themselves in Barbados in accordance with subsection 6(1)(a)(iii) of Cap. 190, to be granted permission to reside and work for a period of three years in the first instance where necessary. They would be required to prove that they are established by the end of that period before being granted Immigrant Status. In addition persons deemed likely to establish themselves in a business pursuant to this Section should be required to provide audited accounts and to show at the end of the three year qualifying period, that they:**

- **made a substantial investment, and**

- **employ a number of Barbadians or other CARICOM skilled nationals.**

**59. There should be a built in option, articulated in the legislation, to refuse immigrant status in cases where proof is not forthcoming, and immigrant status should be revoked in cases where already granted.**

#### Non-National Spouse of an Immigrant

**60. In order to be consistent with the citizenship and permanent residence provisions, spouses of persons holding immigrant status should be required to complete a two-year qualifying period prior to the grant of immigrant status in order that the bona fides of the marriage can be assessed. At the end of the qualifying period, the couple would then be required to prove that they have been cohabitating in Barbados in a valid and subsisting marriage over the two years, unless proof could be provided of cohabitation for two years prior to the application.**

#### Minor Children of Immigrants

**61. Minor children of immigrants to be accorded the same status as their parents provided that at the time of the application they have satisfied the qualifying two-year residential requirement and continue to reside with their parents. Subsection 6(2) of The Immigration Act, Cap. 190 should be amended to add the residential qualification.**

#### Renunciation of Immigrant Status

**62. There is no legislative provision for persons to renounce immigrant status.**

#### **Recommendation:**

**63. As with permanent residence, it is recommended that the legislation**

**be amended to include such a clause.**

#### Loss of Status – Permanent Residence and Immigrant Status

64. There are a growing number of cases where persons who were granted immigrant status, permanent residence and citizenship, are themselves found to be engaged in activities that are in breach of the legislation. Many of them are assisting persons without status:

- to enter the country illegally, e.g. by presenting false documents
- to remain in the country illegally and
- to bring their families into Barbados in order to obtain medical attention and
- to go to school without permission and without paying for such services and,
- to work without obtaining work permits.

#### Harbouring

65. Harbouring is already recognized as an offence at 29 (d) of The Immigration Act, Cap. 190. A person who is found guilty of harbouring is liable on summary conviction to a fine of \$5,000.00 or imprisonment for 12 months or both. However it is clear that a more permanent form of penalty is required in order to reduce this activity that has added significantly to the number of persons who overstay and engage in employment illegally.

#### **Recommendation**

**66. It is recommended that the legislation be amended to reflect the seriousness of these violations, so that permanent residents, immigrants, those CARICOM Community nationals moving as per the Revised Treaty, and persons granted work permits, who engage in the above-mentioned activities lose their status, unless they are (in the case of permanent**

**residents) entitled to citizenship by marriage or descent but opted for permanent residence.**

**67. Sections 7 and 7A outline how permanent residents and immigrants, if found guilty of certain offences, may lose their status. Both sections should be amended to include persons convicted of the offence of terrorism as per 7A of the First Schedule of Cap. 190 as amended in 1999. They should also be amended to include persons found to be trafficking in persons. Both sections should be amended to include persons found to be harbouring illegal persons.**

68. Subsection 6(1)(a)(iii) provides for the grant of immigrant status where persons are likely to establish themselves successfully in Barbados in a profession, trade, business or agricultural enterprise.

**Recommendation:**

**69. The Department recommends that a subsection be added to 7A to provide for the revocation of immigrant status in cases of failure to meet the required terms and conditions. Alternatively, this class of persons might be granted work permits for a period of three years; or permission to “reside and work” for three years in order to allow them to provide evidence of establishment.**

**70. It is recommended that in the case of international investors, where expedited processing is encouraged, revocation could be a legal option where persons granted immigrant status fail to satisfy the requirements or conditions of that status.**

**71. Again, an alternative might be for this class of person to be granted work permits for a period of three years, or “reside and work” for three**

**years” in order to allow them to provide evidence of establishment. The key though is to be consistent.**

### The Right of Establishment and Provision of Services

72. The CARICOM Single market and Economy (Implementation) (Miscellaneous Provisions) Act 2004-24 amended Section 17 of the Immigration Act, Cap. 190 to provide for the free movement of persons who wish to:

- Provide services in Barbados referred to in Articles 37 and 38 of the Caribbean Community Act, 2003-4 which in Barbados, makes provision for matters arising out of the Revised Treaty of Chaguaramas Establishing the Caribbean Community
- Provide for persons who wish to move to Barbados under the right of establishment referred to in Articles 32, 33, 34, 36 of the Caribbean Community Act, 2003-4.

These sections refer to persons moving under the right of establishment, their managerial, technical and supervisory staff, and service providers.

73. However the Immigration Act, Cap. 190 should be further amended as follows:

### **Recommendation**

74. **Definitions should be provided for the following:**

- **managerial staff**
- **technical staff**
- **supervisory staff**
- **service providers**

**75. Cap. 190 should be amended to state as the Caribbean Community (Movement of Skilled Nationals) Act. 2004-13 states at subsection 4(3) that:**

- A dependant of a Community national establishing a business in Barbados is permitted to remain in Barbados only on the condition that the Community national resides in Barbados.**
- A dependent of a Community national moving as managerial, supervisory or technical staff is permitted to remain in Barbados only for the period, which that staff is permitted to remain in Barbados.**

**76. Cap 190 should be amended to state specifically with respect to persons establishing a business, as the Caribbean Community (Movement of Skilled Nationals) Act. 2004-13 states at 8(1), that:**

- An immigration officer shall not permit a Community national or any dependant of that national to enter or remain in Barbados where the Community national is a person described in the First Schedule (Prohibited Persons) of Cap. 190.**

**77. Cap 190 should be amended to state as follows:**

- Permission granted under this Act to a Community national establishing a business in Barbados to enter and remain in Barbados and the rights conferred on that person may be revoked by the Minister where the Minister has reasonable grounds for believing that the Community national is a person mentioned in the First Schedule.**

- **Any decision of the Minister to revoke permission as above shall be made in the interest of national security, public order and public safety.**

78. **Cap. 190 should be amended to state that persons exercising the right of establishment are not permitted to seek employment in Barbados.**

79. **Cap 190 should be amended to state that managerial, supervisory and technical staff moving under the right of establishment are not allowed to seek employment in Barbados, but must remain employed with the business established in Barbados with whom they had a contract permitting them to move to Barbados.**

Loss of Status – Right of Establishment / Service Provider

80. Specific provision for the revocation of those two forms of status should be included in the legislation. The section could be modeled after sections 7 and 7A of Cap. 190, (amended as outlined at 64 above) which provide for the loss of permanent residence and immigrant status. Subsections 7(1) and 7A(1) are not pertinent since they provide for the loss of status if a person resides voluntarily outside Barbados for a continuous period of one year. This does not apply to persons moving under the right of establishment.

**Recommendation:**

81. **It is recommended that a section should be added to Cap. 190 replicating where applicable, sections 7 and 7A of Cap. 190 and including the amendments outlined at paragraph 64 above.**

## Certificates of Absence

82. According to Subsections 7(1) and 7A(1) a person loses the status of permanent resident or immigrant respectively, if he voluntarily resides outside Barbados for a continuous period of one year. A certificate of absence is required where a permanent resident or immigrant of Barbados intends to reside outside Barbados for a continuous period of 1 year, but wishes to retain his/her status.

### **Recommendation:**

**83. It is recommended that certificates of absence be granted for a maximum of one year, except where the applicant is pursuing a course of study, at the end of which time the circumstances will be subject to review. If there are compelling reasons, applicants may be granted a second year. It should be specified that emigrating to another country is not a compelling reason. Where an applicant is pursuing a course of study, the certificate may be granted for the duration of the course for up to a maximum of four years.**

## Reside and Work

84. It is the Government's policy not to grant permanent status to first-time applicants, where there is no entitlement and where the applicants do not meet the requirements for immigrant status as set out in Section 6 of Cap. 190. In the majority of cases, these applicants are persons who entered the county as visitors and resided illegally for a number of years after the expiry of the time granted on entry. If the circumstances merit, they are granted the status of "*reside and work*", for an initial three-year period. However, the existing legislation does not provide for this status. It is granted, usually to CARICOM nationals, by ministerial discretion pursuant to subsection 13(7) of Cap. 190.

85. It is anticipated that there will be a reduced need for this status, for the following significant reasons:

- Government has recently instituted a new policy for undocumented persons providing for an amnesty for those who qualify. This is expected to reduce considerably the number of undocumented persons in Barbados.
- CARICOM nationals now have the right to move freely in several categories of employment. The addition of artisans and more recently domestics to the list of skilled nationals will allow for the free movement of a larger number of community nationals.
- CARICOM nationals have the right of establishment.
- The proposed Guest Workers' Programme is expected to reduce the number of undocumented persons in Barbados.
- The amendments coming out of this Comprehensive Review of Immigration Policy and Proposals for Legislative Reform are expected to further empower immigration officers in the enforcement of the legislation.

86. However, there are still occasions when the grant of this status will be necessary, and it is recommended that the status of "reside and work" should be added to the Immigration act, Cap 190 to be used specifically to grant status to the following persons:

- Non-Barbadian spouses of citizens who are required to satisfy the two-year residence requirement
- Non-Barbadian spouses of permanent-residents of Barbados
- Non-Barbadian spouses of immigrants of Barbados
- Non-CARICOM persons wishing to establish themselves and invest in Barbados, and who might qualify for immigrant status in accordance with Section 6 of Cap. 190 at a later date.

## **Recommendation:**

**87. It is recommended that the appropriate amendment should be made to the legislation, to provide for this status.**

**88. It is also recommended that provision be made for the revocation of this status in a section reflecting 7 and 7A of Cap. 190.**

### Special Entry Permits

89. These permits are currently granted to non-nationals who own residential property in Barbados, in order to facilitate their movement in and out of the country. They are normally issued to retirees who wish to remain in the country for three to five years without working and who can satisfy the Department that they can support themselves fully.

90. Currently, subsection 6(1)(d) provides for immigrant status in retirement. This status is granted to retirees on the grounds that they are unlikely to become a burden on the country's social services. Since graduation to a higher status automatically entitles them to free health care, and in some cases, non-contributory (old age) pension, it is clear that this is not the intention of the legislation. As it stands, however, it is not transparent to the public that persons granted immigrant status in retirement do not qualify for higher status.

91. Graduation to higher status also enables such persons to engage in employment in Barbados in contradiction of Subsection 17(6) of Cap. 190. The intent of the legislation is clear from Section 17, of Cap. 190 the section authorizing work permits to be specific. This section clearly distinguishes between persons granted immigrant status in retirement and those granted immigrant status through other subsections of Section 6. Subsection 17 (6) states that for the purposes of working in Barbados, the term "immigrant" does not include persons granted

immigrant status in retirement. A work permit is therefore required before immigrants in retirement can engage in employment.

92. It is proposed therefore, that subsection 6(1)(d) should be repealed. Instead of immigrant status in retirement, in order to remove any uncertainty that may currently exist, a "special entry permit" should be granted to persons wishing to retire in Barbados. That permit would provide for the holder to reside in Barbados indefinitely.

93. The grant of the Special Entry Permit rather than immigrant status in retirement, although bearing the same entitlement would also make clear from the outset that these persons may not engage in employment in Barbados. The retired person who intends to invest money or operate an approved business in Barbados could still qualify for immigrant status under Section 6 of Cap. 190.

94. It is recommended that specific provision should be made for this status in the legislation with the terms and conditions clearly defined. It should be made clear that persons granted this status:

- will not be permitted to work in Barbados
- must be over the age of 60
- must have retired
- must own a property in Barbados
- must provide evidence of adequate pension or other funds
- should be in good mental and physical health
- must provide evidence of adequate health insurance
- must be a person without any dependants except a spouse who is also retired, and who would be granted a similar status on application.

95. Subsection 6(1)(c) allows for the parent or grandparent of a Barbadian citizen to be granted immigrant status. This subsection stipulates that the citizen must be willing and able to provide for the care and maintenance of the parent or

grandparent. It is neither intended to be an avenue for persons seeking employment to immigrate to Barbados; nor is it meant to be a facility for persons with dependents who might also immigrate to Barbados. It is recommended that subsection 6(1)(c) should be repealed and the parent or grandparent of a citizen of Barbados can be provided for with an indefinite Special Entry Permit. The following should apply:

- The parent or grandparent must be a retiree
- Must not engage in employment in Barbados
- Must be unaccompanied by dependants
- Must provide evidence of adequate health insurance
- The sponsoring citizen must provide evidence of their ability to provide for the applicant so that the parent/grandparent does not become a burden on the state.

96. Any form of permanent status should be reserved mainly for persons who have contributed to the development of the country by paying taxes, unless there is an entitlement. Staff of regional and international organizations would therefore not qualify for immigrant status while they are so employed.

97. However, staff of regional and international organisations may be granted a special entry permit in retirement, providing that they have spent ten years in Barbados with the organisation. Ministerial discretion will be retained in the granting of such status.

### **Recommendation**

**98. The following persons would then qualify for the Special Entry Permit, allowing them to reside indefinitely in Barbados:**

- **Property owner, retired, 60 years of age or over**
- **Parent of a citizen of Barbados, retired, 60 years of age or over**

- **Grandparent of a citizen of Barbados retired, 60 years of age or over**
- **Retired staff of regional and international organizations, retired 60 years of age or over who have spent at least ten years in Barbados with the organization**
- **The special entry permit could also be used where persons have not reached the age of 60, but are retired, own property in Barbados and can provide evidence of health insurance and their ability to support themselves. This permit would not be issued for an indefinite period but could be granted for three to five years until the age of 60 is reached.**

**99. The legislation should be amended to establish the fee for the indefinite special entry permit, which is recommended for \$200.00 on application and \$1000.00 on approval. The 3 to 5 year Special Entry Permit should be \$200.00 on application and \$150.00 for each year granted.**

### **Work Permits**

100. Section III (Section 17) of the Immigration Act, Cap. 190, provides for the administration of work permits. Work permits are intended to be issued to persons who possess skills and/or qualifications which are scarce or non-existent in the Barbados labour market; or who intend to make a significant financial and/or technical investment in businesses employing Barbadians or other CARICOM skilled nationals. The law provides for the payment of fees on a monthly basis for each category of employment. Set out below are recommendations for legislative change, some of which already form part of Immigration policy but could be made more effective by incorporation into the legislation.

### **Recommendation:**

**101. It is recommended that legislative amendments include:**

- **The requirement that applications must be submitted at least three months in advance of when the applicant wishes to commence employment in Barbados and the work permit obtained before the applicant enters Barbados, unless the applicant is specifically granted permission to enter and remain by the Minister. The legislation once in place should be strictly adhered to.**
  
- **The legislation already states that any person, employer or employee contravening the legislation is guilty of an offence. However the introduction of additional penalties is recommended, applicable to both employee and employer, which may include mandatory departure from the island, and refusing to grant further work permits to the employer for:**
  - **infringing the requirement that work permits be secured before arrival in-country;**
  - **entering the island as a visitor and working illegally;**
  - **transferring from working with the employer of original approval to another without obtaining the Department’s permission. However this does not apply to International Business Companies.**
  
- **Stipulation that the employer satisfies the Immigration Department that there is a genuine scarcity of suitably qualified applicants in Barbados before a work permit is issued**
  
- **requirement that the Reserved List of Occupations<sup>10</sup>, prepared by the Ministry of Labour, should be published at least annually. This list should also be posted on the Immigration Department’s website where it can easily be updated**

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<sup>10</sup> This list is mainly for persons outside the CARICOM Community.

- stipulation that where a permit is granted with conditions for the inclusion of a training element, quarterly reports on the progress of that element must be submitted to the Department. These reports should contain details on the appointment of local counterparts (understudies), persons trained or being trained, and the success of the training in terms of recruitment of local staff and projections for future employment possibilities and new skills needed.
- requirement for government agencies and departments to provide the Immigration Department with a list of all non-national contract employees prior to the commencement of employment.

102. It is further recommended that Regulations are developed in accordance with subsection 31(1)(e) which:

- place the onus on employers (including employers of farm workers) to keep the Department informed of the:
  - cessation of employment before the expiration of work permits, or immediately after
  - departure of workers on the expiration of their work permits
  - failure of employees to leave the country if they are aware.
- stipulate that employers' failure to comply with the above may result in their being denied new work permits for at least two years
- require the employer to lodge a surety with the Department, equivalent to the cost of a return ticket to the applicant's homeland and to cover any related expenses. This surety would be refunded on departure of the employee to his homeland

- **specify that holders of work permits, as well as those on training attachments, will be required to leave the country on completion of employment and training**
- **mandate that the penalties prescribed in Section 30 be applied to both employers and employees who contravene the legislation**
- **provide that foreign businesses other than those approved by the Central Bank or the Ministry responsible for International Business, must specify the level of their investment in their application, providing documentary evidence of fixed assets, or funds brought into the country.**
- **Subsection 17(6) of Cap. 190 refers to subsection 6(d). This should be amended to read 6(1)(d) unless that section is repealed as recommended at paragraph 92 above.**

**Economic Partnership Agreement Between CARIFORUM States and the European Community and its Member States**

103. This agreement was reached in October 2008. Under this agreement, in the areas of services and investment the two parties permit access to each others market. Barbados has granted permission for EU service suppliers in the following sectors to perform services on a temporary basis:

- Key personnel comprised of "business visitors" and "intra-corporate transfers"
- Graduate trainees - up to 1 year
- Business services suppliers - 90 days in any 12 month period
- Short-term business visitors - 90 days in any 12 month period
- Contractual service suppliers and independent professionals - 6 months in a 12 month period

104. The following definitions, taken from Article 80 of the Economic Partnership Agreement, are to be added to Cap. 190 in order to give effect to Barbados's commitment under that agreement:

**Recommendation:**

105. **It is recommended that in Section 2 of Cap. 190 the following definitions be inserted as taken from Article 80 of the Economic Partnership Agreement:**

a. **'Key personnel' means natural persons employed within a juridical person of the EC Party or of the Signatory CARIFORUM States other than a non-profit organisation and who are responsible for the setting-up or the proper control, administration and operation of a commercial presence;**

- **"business visitors" means natural persons working in a senior position who are responsible for setting up a commercial presence. They do not engage in direct transactions with the general public and do not receive remuneration from a source located within the host EC Party or Signatory CARIFORUM State respectively;**

- **"intra-corporate transfers": mean natural persons of the EC Party or of the Signatory CARIFORM States who have been employed by a juridical person or have been partners in it for at least one year and who are temporarily transferred to a commercial presence in the territory of the other Party. The natural person concerned must belong to one of the following categories:**

**1. Managers:**

**Persons working in a senior position within a juridical person, who primarily direct the management of the commercial presence, receiving general supervision or**

**direction principally from the board of directors or stockholders of the business or their equivalent, including:**

- (i) directing the commercial presence or a department or sub-division thereof;**
- (ii) supervising and controlling the work of other supervisory, professional or managerial employees;**
- (iii) having the authority personally to recruit and dismiss or recommend recruiting, dismissing or other personnel actions.**

**2. Specialists:**

**Persons working within a juridical person who possess uncommon knowledge essential to the commercial presence's production, research equipment, techniques or management. In assessing such knowledge, account will be taken not only of knowledge specific to the commercial presence, but also of whether the person has a high level of qualification referring to a type of work or trade requiring specific technical knowledge, including membership of an accredited profession.**

- b. "graduate trainees" means natural persons of the EC Party or of the Signatory CARIFORUM States who have been employed by a juridical person of that EC Party or Signatory CARIFORUM State for at least one year, possess a university degree and are temporarily transferred to a commercial presence or to the parent company of the juridical person in the territory of the other Party, for career development purposes or to obtain training in business techniques or methods.**
- c. "business services sellers" means natural persons of the EC Party or of the Signatory CARIFORUM States who are representatives of a service supplier of that EC Party or signatory CARIFORUM State seeking temporary entry into the territory of the other Party for the purpose of negotiating the sale of services or entering into agreements to sell services for that service supplier. They do not engage in making direct**

**sales to the general public and do not receive remuneration from a source located within the host EC Party or Signatory CARIFORUM State respectively;**

**d. "Contractual services suppliers" means natural persons of the EC Party or of the Signatory CARIFORUM States employed by a juridical person of that EC Party or Signatory CARIFORUM State which has no commercial presence in the territory of the other Party and which has concluded a bona fide contract (other than through an agency as defined by CPC 87 2) to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services;**

**e. "independent professionals" means natural persons of the EC Party or of the Signatory CARIFORUM States engaged in the supply of a service and established as self-employed in the territory of that EC Party or Signatory CARIFORUM State who have no commercial presence in the territory of the other Party and who have concluded a bona fide contract (other than through an agency as defined by CPC 87 2) to supply services with a final consumer in the latter Party requiring their presence on a temporary basis in that Party in order to fulfil the contract to provide services.**

**f. "qualifications" means diplomas, certificates and other evidence (of formal qualification) issued by an authority designated pursuant to legislative, regulatory or administrative provisions and certifying successful completion of professional training.**

**106. Cap. 190 should be amended to identify the CARIFORUM States and the European Union States that are signatories to the Economic Partnership Agreement. It is to be noted that the CARIFORM States include the Dominican Republic, which is not part of the CARICOM agreement arising out of the Revised Treaty of Chaguaramas; the Commonwealth of the Bahamas, which is a CARICOM state but is not part of the agreement for freedom of movement of CARICOM nationals; and**

**the Republic of Haiti which, although a CARICOM state, and part of the freedom of movement agreement, is not yet taking part in the movement.**

**107. Section 2 Of Cap. 190 should also include definitions of the following: "Juridical person", "natural person of the EC Party" and "natural person of the Signatory CARIFORUM States" as defined in Article 61 of the Economic Partnership Agreement.**

**108. Section 17 of Cap 190 to be amended to insert "natural persons of the EC Party or of the Signatory CARIFORUM States" to whom Article 80 of the Economic Partnership Agreement applies.**

#### **Controlling Migratory Flows: Guest Workers Programme**

109. It has been the Department's experience that a small number of work permit applications are submitted prior to the entry of persons seeking employment. Most applications are submitted on behalf of persons who have entered the country on the pretext of vacationing, but who have in fact remained illegally to seek and engage in employment. The Department has already attempted to put a stop to this by refusing to entertain most first-time, short-term applications except in agriculture, animal husbandry, and poultry farming. It is now time for the Department to go a step further by taking a proactive approach in controlling migratory flows, outlining a strategy initiative rather than responding to situations as they arise.

110. Such an approach, in addition to regulating labour, has the added capability of reducing the number of persons who accumulate time on short-term work permits and then apply for status with the expectation of bringing entire families to Barbados. It also enables the Department to try to ensure, as much as is possible, that the human rights of the guest workers are protected and to put measures in place to prevent abuse by a few unscrupulous employers.

#### **Visible Effects**

111. As it stands the social services of Barbados stand to suffer from this upsurge of illegal immigration, along with a policy that facilitates migration. The schools, for

example, are overflowing with the number of non-national children seeking entry. In addition the Ministry of Education has advised the Department of many cases where school fees are not being paid. There is a limit to the suitable housing available in this country as can be evidenced by numerous examples of squatting, and sometimes in protected, water zones. The hospital too is seeing an increase in cases where money is owed for services rendered and a general abuse of the system is on the increase.

#### Towards a Regulatory System:

112. The system proposed would on the one hand, allow for, and even encourage, the movement of genuine skilled labour in the region. On the other it would serve as a means of protecting the social services of the country. Such a scheme would:

- Provide a policy on legal migration with clearly outlined admission procedures
- Simplify the process of work permit administration
- Reduce the need for such persons to remain illegally in the country
- Reduce the number of undocumented workers
- Minimize the administrative burden of attempting to find and remove such persons
- Provide a means of prompt response to the fluctuating demands of the labour market so that workers are recruited on a needs basis
- Provide the assurance to applicants that so long as they satisfy the outlined requirements they will be granted permission to work for the specified term
- Provide the assurance that so long as they abide by the rules by remaining in the country for the specified period and leaving for the minimum specified period, they are permitted to seek reemployment
- Encourage "brain circulation" as apposed to "brain drain" where the country of origin does not permanently lose all of its skilled persons
- Provide a means of integrating a larger number of migrant workers into the formal economy, thus allowing them to participate in the payment of income tax and national insurance and thereby boosting the economy
- Ensure that the workers are protected in case of illness and injury through payment of national insurance

- The social services of the country would benefit since spouses and children would not be permitted to accompany the guest worker
- Immigration would have greater control of the numbers
- A larger number of non-nationals would benefit. The time limit specified would allow opportunities to be more wide spread for persons wishing to work and return home; and for persons who wish to alternate working between countries
- The presence of a CARICOM agreement could be effective in creating partners in the situation where the policies of the sending and the receiving state could be clearly defined so that the rights of the short term work permit holder are protected from both sides
- There would be fewer opportunities for an employee to be exploited by an unscrupulous employer, since that employee would have permission to engage in employment where there is guarantee of a fair wage.

#### Categories to be Considered

113. It is recommended that the following categories of workers be allowed on the pilot scheme, all of which are presently eligible for short term work permits:

- Carpenters
- Masons
- Steel benders
- Welders
- Electricians
- Painters
- Agricultural workers, including those engaged in animal husbandry and poultry farming

114. It is recognized that artisans already have the right to move as CARICOM skilled nationals, and domestics will have that right in January 2010. However, because of the difficulty in acquiring National Vocational Qualifications or CARICOM

Vocational Qualifications these groups remain at a disadvantage. The Guest Worker Programme would be instrumental in regulating the movement of these and other groups until all categories of workers are free to move. It could then remain in place for extra-regional workers. Other groups, for example landscapers, could be added in the future.

### Fees

115. It is recommended that the fee structure should be similar to the existing fee structure where an application fee of \$200.00 is payable and a final fee calculated on a monthly basis.

### Conditions

116. The following conditions are recommended:

- As is done with the Canadian/US farm labour programme, applications should be submitted to the Immigration Department and approved *before* the applicant enters Barbados.
- The applicant must be a CARICOM national, (except in special circumstances) eighteen years of age or older.
- Current police certificates would be submitted.
- Persons considered should have had no previous infractions of immigration legislation and should not have run afoul of the law.
- Spouses and children would not be permitted to accompany applicants.
- Applicants could apply as many times as desired providing that they satisfy the requirement of absence from Barbados for the specified period of time.
- On re-application evidence of payment of income tax should be submitted.
- Employers who do not comply with Immigration requirements would be refused further access to the programme.
- The guest worker should be advised in writing that time spent on the programme will not be taken into consideration for the purpose of assessing any application for permanent status.

- The employer would be required to lodge a surety with the Department, equivalent to the cost of a return ticket to the applicant's homeland and to cover any related expenses. This surety would be refunded on departure of the employee to his homeland.
- A contract between the guest worker and the employer would provide details about the position offered, such as the number of hours of work per week, the weekly or hourly wage and a listing of deductions to be taken from the guest worker's pay.

Protecting the Human Rights of Guest Workers:

117. The establishment of the guest worker programme, where applicants are encouraged to register rather than work unlawfully, is intended to ensure that the human rights of guest workers are protected. The programme is intended as a means of ensuring the observance of basic human rights in accordance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which entered into force on 1 July 2003. In accordance with the above-named convention, the programme will go a long way towards ensuring the following:

- The right to freedom from discrimination on the basis of sex, race, colour, language, religion, political opinion, nationality or ethnicity
- The right to life; liberty and security of the person
- The right to protection from the state against arbitrary arrest and detention
- The right to liberty of movement in the country
- The right to freedom of movement to and from country of origin
- The right to freedom from torture or cruel, inhuman or degrading treatment or punishment
- The right to protection from the State against violence or physical injury, threats and intimidation
- The right to freedom from slavery, servitude or the performance of forced compulsory labour
- The right to equal treatment with nationals in respect to remuneration and other conditions of work

- The right to join any trade union
- The right to emergency medical care
- The right to avoid confiscation of passport or identity documents without delivery of a detailed receipt
- The right to a reasonable opportunity, before departure, to settle any claims for wages and other entitlements due to him/her and any pending liabilities
- The right to treatment not less favourable in respect of dismissal than that which applies to employees who are nationals of Barbados
- The right to the same benefits as nationals with respect to national insurance; or non-payment of contributions for any benefit for which they do not qualify
- The right to transfer earnings and savings to their country of origin on termination of their employment
- The right to be fully informed before admission, of all conditions applicable to their admission, and particularly those concerning their stay and the remunerated activities in which they may engage as well as the requirements they must satisfy, and the authority to which they must address themselves for any modification of those conditions.

118. It is anticipated; therefore, that establishment of the guest worker registration programme will, in short, achieve the following

- Regulate labour, providing a prompt response to the demands of the labour market;
- Reduce the number of undocumented workers;
- Protect the human rights of the guest workers;
- Minimize the administrative burden of attempting to remove undocumented workers;
- Remove some strain from the social services of the country.

## Other Sections of Cap. 190 Requiring Amendment

### Section 21 – Deportation Orders

119. The present legislation makes no specific provision for the deportation of persons convicted of narco-trafficking and other serious offences. Subsections 13(6) and Section 16(a) of the Immigration Act, Cap. 190 have been used in the past to invoke deportation, but are patently inadequate where serious convictions are concerned.

120. Part IV of The Immigration Act, Cap 190 is intended to address issues pertaining to the removal, detention and deportation of persons prohibited from entering Barbados. However more emphasis is placed on the steps taken against masters of vessels, their owners and agents and their liability under the law. Amendment is required in order to make the legislation more effective and to ensure that deportation is addressed more comprehensively.

### **Recommendation:**

121. **It is recommended that the legislation be amended to specify that deportation will be immediate in the following circumstances:**

- **where persons listed in the First Schedule are found to be already in Barbados and who have been convicted of serious crimes either in or outside of Barbados**
- **habitual criminals, persons convicted of violent crimes such as armed robbery, wounding and sexual assault**
- **where persons have been asked to leave but fail to do so; or have been asked to leave, do so but have returned to Barbados without permission in less than the specified year;**

### **Recommendation**

122. **The legislation governing removal from Barbados should be amended to provide that persons who are asked to leave Barbados (as distinct from those deported) do so immediately and remain outside Barbados for a minimum of two years, so that re-entry prior to that date without the Minister's permission should constitute an offence. Such an offence would be punishable by deportation, or a fine or imprisonment in addition to deportation. An order (document) similar to the deportation order should be prepared so that the applicant is given fair notice of the requirement to leave, remain outside of Barbados, and the consequences if the law is contravened. It is recommended that this be reflected in the Immigration Regulations.**

### **Recommendation**

123. **It is recommended that applicants who have been refused status and have had the benefit of the review process, should be required to remain outside Barbados for a period of at least two years, unless the Minister's permission is granted. Here also a removal order should be prepared clearly outlining the conditions.**

124. Each case should be assessed individually in the event that there are extenuating circumstances (medical or family emergency) that might influence a return before the mandatory year. The legislation should state explicitly that persons seeking unreasonably to obtain lengthy extensions or who are detained after further periods of unauthorized residence will be formally asked to leave or, if the circumstances warrant, deported. Persons asked to leave the country will be expected to do so immediately. In exceptional cases, the applicant may apply to the Minister for a short extension.

125. A person's status should not be revoked without being given an opportunity to show cause to the Minister why that status should not be revoked.

126. The legislation should also be amended to specify that where a person is refused immigrant status and has exhausted all rights of appeal, such a person should not be permitted to submit another application where that person has remained in Barbados illegally, ignoring the requirement to leave and remain outside Barbados for a period of two years.

### Penalties

127. Persons guilty of an offence under the Immigration Act, Cap 190, are liable on summary conviction to either a fine of \$5,000 or imprisonment for one year or both, in accordance with Section 30, of that Act.

### Recommendation

**128. It is recommended that this fine be increased to a maximum of \$50,000.00 and the length of imprisonment be increased to five years. Moreover, it is recommended that the penalty for persons found guilty of the offence of terrorism should be substantially higher than that for Immigration infractions. There could be various tiers of penalties depending on the seriousness of the offence, with \$50,000.00 and five years being the base amount.**

129. Section 12 of Cap. 190 speaks of the duty of the master of a vessel arriving in Barbados to furnish to an immigration officer necessary lists on arrival and departure. However it does not speak of a penalty for failure to do so. The Department is regularly faced with the late submission of manifests. Passengers are also frequently brought to Barbados without having been supplied with Embarkation/Disembarkation cards, creating a logistical problem for the Department. They are sometimes brought without valid travel documents and without entry visas.

## **Recommendation**

**130. It is recommended that an amendment to the legislation should be made allowing for a forthwith fine of \$5000.00 to be imposed on the master of the vessel for non-compliance.**

### Constitution of Immigration Review Committee - Third Schedule

131. Although the Immigration Department is represented on this Committee, the role of the officer is that of Secretary to the Committee. Under this arrangement, the Committee is free to request clarification or information from the department. Often, however, the appellant admits additional evidence to which the Department should, in fairness, be allowed to respond.

## **Recommendation**

**132. An alternative arrangement is proposed which guarantees the Department the right to defend its original position and address any additional information presented. In this new dispensation it is recommended that:**

- **an Immigration Officer continues to perform the role of Secretary to the Board as stipulated in the legislation**
- **the Chief Immigration Officer or his representative should be allowed as of right to respond to any case presented by the appellant**
- **Terms of Reference and Rules of Procedure to be prepared for the Committee**
- **In addition, Cap. 190 makes provision for only one Immigration Review Committee. It is recommended that the legislation should be amended to allow for more than one Committee.**

- **It is recommended that the remit of the Committee be broadened to include:**
  - - **hearing of appeals in cases when applications for applications to move in accordance with the Revised Treaty of Chaguaramas or long-term work permits, are refused**
    - **hearing complaints made against the Department.**
- **the Chairman of each Committee to be a person other than a Minister of Government.**

#### Prohibited Persons

#### **Recommendation**

**133. It is recommended that First Schedule of the Immigration Act, Cap. and the Fifth Schedule of the Caribbean Community (Movement of Skilled Nationals) Act, 2004 be amended so that they are consistent with each other. While the language of the First Schedule needs to be modernized to reflect the language of the Fifth Schedule, various paragraphs from the First Schedule should be added to the Fifth Schedule.**

#### Terrorism

**134. Section 2 of the Immigration Act, Cap. 190 should be amended to define the offence of terrorism in accordance with the Anti-Terrorism Act, Cap. 158. Cap. 190 should also provide for deportation after completion of any penalty imposed where a person is found to be guilty of the offence of terrorism.**

## **Immigration Regulations**

### Immigration (Students) Regulations, 1979

135. Based on the Department's experience in processing Student Visa applications and the number of challenges facing the Department continually, amendments to these regulations are proposed to provide for the following:

#### **Recommendation:**

- **The term "*educational institution*" to be defined, consistent with the Education Act.**
- **The student visa regulations should be amended to make it the responsibility of the educational institution to inform the Immigration Department when students have terminated their studies prematurely or when class attendance is irregular.**
- **Regulation 8 stipulates that non-immigrant students must submit written notice of their address every three months, whether or not there is a change of address. This regulation should be amended to stipulate that non-immigrant students must submit written notice only where a change of address is involved.**
- **The Regulations to be amended to require all educational institutions to keep a register of all non-national students and for this register to be submitted to the Department electronically at the end of each school year.**

**These regulations should be updated generally.**

**136. All regulations are in need of amendment and modernization and in addition:**

- **The Immigration (Forms and Fees) Regulations should be amended to include the various forms proposed for application under the Right of Establishment and movement of CARICOM Community nationals and dependants. In addition application forms for the various categories of status should be amended where necessary. Although fees were increased in 2005 there is a need for a further increase in some areas such as the fee for extensions of stay. The fees for the recognition of citizenship by descent were not increased at the time of the general increases, and an increase should be considered at this time.**
- **The Immigration Regulations should be updated.**
- **The Citizenship Regulations should be updated.**

**1951 Convention and the 1967 Protocol Relating to the Status of Refugees**

137. Barbados is not a signatory to the 1951 Convention and 1967 Protocol Relating to the Status of Refugees. The country nevertheless recognizes its obligation to human rights concerns and its responsibility to carefully consider each refugee or asylum claim which it receives, to determine whether a person "outside the country of his nationality and unable or unwilling to avail himself of the protection of that country" has "a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion." Barbados is committed to the principle of "non-refoulement" to any country where a claimant expresses a well-founded fear of persecution.

138. Barbados does not have a history of receiving asylum seekers, but recognizes that a well-defined policy on refugee and asylum matters is vitally important. Steps

will be taken, with the Ministry of Foreign Affairs, to reach a determination in this matter.

### **Human Trafficking**

139. As far as the Government is aware, there are very few incidences of human trafficking in Barbados. It is common knowledge that persons who are trafficked are often forced into prostitution. Even though it is not uncommon to encounter non-national persons who are involved in prostitution in Barbados, for the most part they admit that they chose to become involved in the business in order to support families in their home countries. Indeed it is not unusual to see repeat offenders – persons who have previously been removed from Barbados, who return to the same line of business. The Department has heard from a few non-national workers who have claimed to be **underpaid** or **unpaid** by their local “employer”, but again it is doubtful that this is pervasive.

140. Nevertheless, the Government of Barbados is of the view that, given the prevalence of this phenomenon internationally, it is necessary for the legislation to be amended to enable the Department to address any such exigency that might occur.

### **Recommendation**

**141. It is recommended that the legislation be amended to provide a section dedicated to human trafficking. Such legislation should provide a definition of trafficking in accordance with international standards, including references to forced domestic servitude, debt bondage, forced labour and forced prostitution and the need for special protection of children.**

**142. It should provide that while the person found to be trafficked would not be penalized, the trafficker would be guilty of an offence under the**

**Immigration Act, Cap. 190. The person found guilty of trafficking, if holding the status of reside and work, immigrant, permanent resident or having permission to move under the Revised Treaty, should be deemed inadmissible and that status revoked.**

### **Caribbean Community (Movement of Skilled Nationals) Act, 2004-13**

#### Common-law Spouse

143. Most CARICOM countries do not include common-law-spouses in the definition of "spouse" outlined in their Caribbean Community (Movement of Skilled Nationals) Act. This means that while other CARICOM skilled nationals are free to have common-law spouses accompany them to reside in Barbados, Barbadian skilled nationals are not free to do the same.

#### **Recommendation**

**144. It is recommended, therefore, that the definition of "spouse" as defined in Section 2 of the Caribbean Community (Movement of Skilled Nationals) Act, 2004-13, be amended to state that for the purposes of this act the term "spouse" excludes any person not joined in marriage between a single man and a single woman.**

#### First Schedule – Categories Free to Move

145. The First Schedule of the Caribbean Community (Movement of Skilled Nationals) Act, 2004-13 lists the following persons as persons allowed to move as skilled community nationals: Graduates, sportspersons, musicians, artistes and media workers. It should be updated to include the other categories that have since been added.

## **Recommendation**

**146. The First Schedule should be amended to include the following: Teachers, nurses, artisans, holders of associate degrees and the most recent addition, domestics.**

### Changing the Status of CARICOM Skilled Nationals

147. With the implementation of the Immigration Amendment Act, 1996-9, university graduates became the first in a growing list of CARICOM Skilled Nationals (CSNs) who are free to seek and engage in employment in Barbados without the need for a work permit. With the implementation of the Caribbean Community (Movement of Skilled Nationals) Act, 2004 – 13, the list has grown to 9 groups and is expected to be expanded yet further in 2010. Arising out of the Revised Treaty of Chaguaramas, the legislation is intended to facilitate the free movement of skilled community nationals to engage in employment. It is not intended as a means of migrating to sister states. The Treaty is clear and the CARICOM Secretariat has agreed that freedom of movement of skills is not intended as a means of migrating to another country.

## **Recommendation**

**148. The legislation should be amended to make it clear that since CARICOM Skilled Nationals, and persons qualifying under the Right of Establishment and their dependants, are guaranteed indefinite residence as long the principle person resides and is employed in Barbados, it is not the intention of the Revised Treaty of Chaguaramas, and it is unnecessary, for such persons to seek to transfer to immigrant status or any other status. It should state that periods of residence spent in Barbados by such persons will not automatically be considered in applying for other forms of status. While this has been the policy of the Department, it has now become necessary to transform existing practice into law.**

**149. Ministerial discretion can be exercised in exceptional cases, for example, where an applicant has family ties to Barbados (through a grandparent who was Barbadian-born) but is not entitled to any form of status.**

### **The CARICOM Travel Card, CARIPASS**

150. At the 29th Meeting of the Conference of Heads of Government, in July 2008, the CARIPASS project was approved as a mechanism for facilitating hassle-free travel within the region. Plans for implementation are ongoing through the Implementation Agency for Crime and Security (IMPACS), with the Barbados Immigration Department being a member of the Core Group. Amendments to the legislation are required to facilitate the implementation of this card as a travel document, in particular the use of biometrics. The CARICOM Secretariat is in the process of preparing model legislation for amendment to the legislation of CARICOM member states. A draft is expected to be available by the end of 2009 and will be incorporated into this comprehensive review of the Department's legislation.

### **Capturing and Storing of Fingerprints and other Bio data**

151. The Government of Barbados is in the process of installing fingerprint scanners and readers at the ports of entry. It is expected that with time the Department will wish to obtain and store other bio data as a means of strengthening its border security system. However legislation is required to authorize the capturing and storing of bio data.

## **Recommendation**

**152. It is recommended that the legislation should be amended in order to authorize the capturing and storing of fingerprints and the eventual capturing and storing of other bio data.**

## **Conclusion**

153. The Government of Barbados is acutely aware of the challenges it faces in trying to implement a modern immigration regime which facilitates sustained and sustainable economic growth, while protecting the integrity of national borders and contributing to domestic safety and security. The discussion of the issues presented above and the recommended solutions seek to provide the legislative foundation to enhance Barbados' image as a destination of choice for visitors and investors alike, while assuring citizens that decisions will be taken in a climate of fairness, transparency and accountability.