

# Ignore the Haitian migration crisis at the community's peril



Haitians wait to cross the border between Dominican Republic and Haiti in Dajabon, Dominican Republic. (AP Photo/Matias Delacroix, File)

## REFLECTIONS ON THE PERMISSIBILITY OF THE ACTIONS BY THE GRENADIAN & BELIZEAN GOVERNMENT WITH RESPECT TO HAITIANS AND JAMAICANS

The recent decisions emanating from the governments of Belize & Grenada need not only be looked at through the confines of whether they are permissible under the Revised Treaty of Chaguaramas (RTC). They also need to be looked at through the lens of whether the Caribbean and International Community through impositions such as these, are merely exerting a nationalistic knee-jerk reaction to the situation and by extension ignoring the socio-economic morass of Haiti, which if ignored will continue to have negative implications for the Caribbean region. This is not to suggest that Caribbean countries must not 'protect' their nationals, but there must be a balance struck and attempts made to remedy situations which have significant implications for our safety and progress.

However, even before one attempts to focus on the broader concerns about policies by countries such as Grenada, Belize, and others in the future, it is important to elucidate upon the permissibility of their actions under the RTC. There seems to be a view that the actions of Belize and Grenada may contravene articles of Caribbean Community Law. However, the actions of Grenada in February 2023, where 15 Haitian nationals were deported due to being a charge on public funds, as reported by various sources, are indeed permissible under Caribbean Community Law.

All CARICOM nationals, inclusive of Haitians are, according to the 2007 Conference Decision of CARICOM, "allowed an automatic stay of six months 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 entry to undesirable persons and to prevent persons from becoming a charge on public funds."

Being a charge on public funds, as per the landmark decision in *Shanique Myrie v Barbados*, is where an individual does not possess the necessary finances for their stay within another member state. This does not require that one possesses enough finances for the entire six months, but enough to show that they will not be dependent on the state during their stay. This can come through the possession of credit cards, and debit cards, among other forms of evidence which must satisfy the immigration officers.

In this instance, according to news outlets, it seemed as though immigration officers were able to determine that they would not be able to sustain their visit financially because of the amount of money they possessed at their time of arrival. Therefore, the immigration officers operated within the four corners of Caribbean Community Law in denying entry.

However, it is not unreasonable to assume that individuals who may be fleeing from the political instability in Haiti, would not have enough money to sustain themselves financially, and are not concerned with their financial capacity as they are attempting to make a better life for themselves because of the economic, political, and social turmoil. Therefore, their 'migration', albeit under the six-months right, may be unwise because it does not contemplate or accommodate possible refugees or migrants, but rather it is a tourist right. But, when

persons may be fleeing from turmoil in search of a better life, they are not concerned with what the law permits, as desperation is their law, and they hope to be allowed entry to pursue a better life for themselves. For these individuals, desperate times may call for desperate measures.

Moreover, where there is an absence of a regulatory environment in the 'receiving state' and the lack of a plan to deal with the impacts, we run the risk of increased unsanctioned and unsafe migration. The Caribbean Community and International Community continue to ignore this at their own peril!

Belize, on the other hand, has imposed, according to various news outlets, a VISA requirement for Haitians wishing to visit Belize and to require Jamaican nationals to provide evidence of fully paid non-refundable hotel reservations before boarding flights to Belize. This was done because of the view that many individuals are using Belize as a transit country to reach the United States of America illegally through Mexico. This, according to them, came after 2,000 Haitian nationals entered Belize between March 2022 and April 2023, and over 1,900 vanished without a trace, presumably crossing over into Mexico illegally en route to the United States of America. Therefore, they invoked Article 226 (a) of the RTC, which allows member states to take measures to protect public morals and maintain public order and safety.

The restrictions on Jamaican nationals may be problematic because of its inflexibility, as it inadvertently allows for the denial of entry of individuals who may not be living in a hotel during their stay. There is nothing to suggest that individuals who are coming to vacation in Belize and making use of the right under Article 45 and the Conference Decision are not using alternative forms of accommodation beyond the hotels.

Belize did not need to impose this narrow hurdle, as the interpretation of denial based on being a charge on public funds was wide enough already to capture all forms of accommodation. If an individual was staying with a friend, and they did not have enough finances, they can be denied, as opposed to someone who must reside at a hotel now.

It notes at paragraph 75 of the *Shanique Myrie* Case, that the "authorities must assess whether the visitor has funds available and whether these funds would suffice during the time they intend to stay, considering factors such as credit cards, debit cards and whether the visitor is staying with a private person or at an establishment as a paying guest. Community nationals are also required to show a return ticket on arrival."

Therefore, the requirement to show a return ticket is permissible, but permitting the movement subject to showing a non-refundable hotel reservation is problematic, as it ignores other forms of accommodation, albeit the data might suggest that hotels are the main forms of accommodation for tourists in Belize.

Belize could have kept the pronouncement by the court as their restriction and assessed it on a case-by-case basis as opposed to making a carte blanche restriction, which makes the right of free movement less attractive to Jamaicans alone. While exceptions such as these are permissible under Article 226 (a), it requires that these restrictions are not discriminatory among member states, and it would be interesting to see whether restrictions which apply only to Jamaicans are discriminatory in nature on the grounds of nationality as it makes the right of free movement less attractive.

Moreover, freedom of movement in CARICOM mandates that travel must be hassle-free, without harassment or the imposition of impediments. It would not be wrong if one were to construe these restrictions as an imposition of impediments and not being hassle-free.

Belize's restrictions on Haiti may be even more problematic, as one can deny entry to a national of another member state if they are deemed undesirable. This is where, according to *Shanique Myrie v Barbados*, the individual poses a genuine, present, and sufficiently serious threat to national security, public morals, and public health, among other instances.

It should be assessed, however, on a case-by-case basis. Therefore, not only does the VISA imposition run counter to travel being hassle-free and without the imposition of impediments, but it also does not allow for a case-by-case assessment of whether these individuals pose genuine, serious, and immediate threats. Instead, it provides a carte blanche discriminatory treatment and makes the right to free movement less attractive. It is on the basis that all or many Haitians are utilising Belize to gain entry to Mexico and to the USA and that to determine the culprits, one must ensure that they create a VISA requirement. However, the right is less attractive, and everyone is now being proven guilty before innocent and must prove their innocence.

It is a manifestation of the underlying stereotype that all Haitians are 'serious threats' who need to be scrutinised more seriously than nationals of other member states. If one claims discrimination on the grounds of nationality, it would not be a wrong assumption, as this separate additional regime exists only for Haitians.

Time will show how many Haitians are now allowed into Belize as visitors or if they can even successfully navigate the VISA process, far less get a VISA interview or whether the VISA process is all a front to ensure that Haitians are not able to feel a sense of belonging within the Caribbean. Patriots of this Community must be eternally vigilant during these developments to assess the sincerity of this policy by the government.

Belize, Grenada, and other countries in the future, however, are only taking nationalistic knee-jerk reactions such as these, as a response to their inability to assist in fighting the breakdown of the state in Haiti. Therefore, restricting the six-months right under Article 45 is a slippery band-aid and developing a strategy to deal with the inflow is what is required, as ignoring it will be to the peril of this community.

Individuals from Haiti may well be migrating in the thousands because of the increased poverty, marginalisation, corruption, violence, political instability, sexual violence, and the collapse of the state with the control residing in the hands of the gangs. The state has been unable to deal with the socio-economic morass in Haiti, by and large, because of the requirements to pay reparations to the French, natural disasters, cholera outbreaks, and fuel shortages among other things which have crippled their economic prospects. It is for this reason that Haiti's Ambassador to the US called for international support to return to normalcy within Haiti. However, one can imagine why this may be problematic because of the negative impacts foreign intervention has had on Haiti in the past.

The complexity of the situation is whether foreign intervention, a home-grown solution, or a combination of both will resolve the issues being faced in Haiti. As for the contribution of the Caribbean region, beyond our moral leadership in the international sphere, Trinidad's model for the treatment of Venezuelans may find resonance. There is a requirement for states within the Caribbean to first accede to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol which is meant to protect refugees and ensure the creation of a system where there is a regularisation for undocumented migrants with the possibility of offering residence and work permits for fixed periods of time.

There may be a requirement to amend Immigration Acts to protect these individuals and ensure that children who are caught up in the legal lacuna, are provided with access to education, housing among other benefits, all while providing continued pressure to the international community to assist in the resolution of this matter.

If we continue to ignore this crisis, we do so at our peril. Patriots of the Caribbean rise and check out the plan by the West Indian politician as Mighty Gabby reminds us all!

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