

# **Operationalising the ECOWAS Protocol on Free Movement of Persons: Prospects for Sub-Regional Trade and Development**

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## **Abstract**

Within the West African migration circuit, much of the cross-border movement – involving female traders, farm labourers and unskilled workers, who pay little attention to what they see as arbitrary borders – has been essentially intra-regional. Indeed, West Africa is a region of intensive migration over wide areas and, historically, migrants have always considered this geographic space as an economic unit within which trade in goods and services naturally flow (Adepoju, 2005a).

The countries of West Africa share several common features: small scale of population, (except Nigeria), high population growth rates, small economies (except Nigeria and Côte d'Ivoire) and market size, migration both within and across national frontiers, low per capita income and deteriorating economic performance. Except for a few (most notably Nigeria and Côte d'Ivoire), these countries are not viable economic entities as producers, consumers or trading partners. Indeed, intra-regional trade remains miniscule, at 11 per cent of export trade. Markets are fragmented, and fiscal and monetary policies are distorted. Inter-country infrastructure facilities are weak, and transport networks, especially railways, have different track systems and rules and regulations that change across frontiers. All these factors limit trade of all sorts especially for land-locked countries, which must transport their goods to and from the coastal harbours for export and import (Adepoju, 2007). These problems are compounded by political instability and inter-state border disputes and conflicts, and the absence of peace and stability naturally discourages the very foundation of development as well as investment, and leads to capital flight.

## **1. Introduction**

West Africa encompasses countries of immigration and countries of emigration as well as countries that combine both, and countries that serve as migrant transit routes. The main traditional countries of immigration have been Côte d'Ivoire and Ghana, and in the early 1970s Nigeria also became a major migrant-receiving country as the oil boom generated ample employment in various sectors of the economy. The major sending countries, mainly labour-exporting, include Burkina Faso, Guinea, Mali, and Togo. Senegal has been both a labour-exporting and labour-receiving country. These migratory configurations have however changed somewhat in recent years. Senegal for example has taken on an additional role as a transit country for migrants seeking to enter the European Union; Ghana and, in later years, Nigeria, became labour-exporting as a result of the deteriorating economic conditions in Ghana in the late 1960s and in Nigeria in the mid-1980s (Adepoju, 1988). In recent years, Ghana has experienced a flow of return migrants as the economic situation there continues to improve.

This paper is structured in three parts: Part 1 focuses mainly on efforts to operationalise the ECOWAS Protocol on Free Movement of Persons, Residence and Establishment. Part 2 discusses the attempts to boost intra-regional trade. Part 3 is an overview of the challenges and prospects for intra-regional mobility, trade and development.

### **Part 1: The development of the ECOWAS ‘free movement’ protocol**

The leaders of West Africa recognised in the early 1970s that intra-regional integration could be an important step towards the sub-region’s collective integration into the global economy. In the long and tortuous process of establishing the African Common Market and African Economic Community, the Lagos Plan of Action and the Final Act of Lagos set out clearly a framework for establishing sub-regional cooperation unions – to serve as building blocks towards a continent-wide economic integration. The possibility, and indeed the necessity, of creating sub-regional and regional economic cooperation and integration organisations in West Africa – and in fact in all of Africa – was reinforced by the experiences both in developed countries, and in other developing countries (Adepoju, 2002). Among such organisations are the European Economic Community; the Latin America Free Trade Association (LAFTA); the Caribbean Community (CAICOM); the Association of South East Asian Nations (ASEAN); the Central American Common Market (CACM); cooperation agreements among African, Caribbean and Pacific (ACP) countries, and so on.

The treaty signed in Lagos on 28 May 1975 creating the Economic Community of West African States (ECOWAS) covered almost all fields of economic activity. Article 27 of the Treaty affirms a long-term objective of establishing a Community citizenship that could be acquired automatically by all nationals of the Member States. This reinforced the preamble to the treaty that outlined the key objective of removing obstacles to the free movement of goods, capital and people in the sub-region. Phase 1 of the Protocol on Free Movement of Persons and the Right of Residence and Establishment of May 1979, which guaranteed free entry of Community citizens without visa for 90 days, was ratified by Member States in 1980 and put into effect forthwith.

The formation of ECOWAS thus to a certain extent re-created the kind of pseudo-homogeneous society that had once existed in the sub-region. Hence, the Free Movement of Persons Protocol – the first to be ratified and operationalised – ushered in an era in which the free movement of ECOWAS citizens within member countries was once again possible (Adepoju2001).

The rights of entry, residence and establishment were scheduled to be progressively established within fifteen years from the date of entry into force of the Protocol. The implementation of the first phase, over the first five years, abolished the requirements for visas and entry permits within the ECOWAS region. Community citizens in possession of valid travel documents and an international health certificate could then enter Member States without visa, for up to 90 days. Any Member State can nevertheless refuse admission into its territory to immigrants characterised under its laws as ‘inadmissible’. In the case of expulsion (normally at the expense of the immigrants themselves), states guarantee the security of the citizen concerned, and that of his/her family and his/her property.

The delayed second phase (Right of Residence) of the Protocol came into force in July 1986, when all Member States ratified it, but up till now the Right of Establishment has not yet been implemented (Adepoju et al, 2007). The major features of the Protocol on Free Movement of Persons, and four supplementary protocols, are reproduced in Annexe 1.

The coming into force of the Protocol on Free Movement of Persons coincided with a period of economic recession in most of West Africa, especially in the countries bordering Nigeria, which at that time was itself booming economically, fuelled by the huge oil sector

earnings. As well as attracting all types of skilled migrants, the oil-led employment opportunities in Nigeria were a magnet especially to unskilled workers, who came in their droves from Ghana, Togo, Chad, Mali and Cameroon to work in the construction and services sectors. The short-lived oil boom resulted in a rapid deterioration in living and working conditions within the country. In early 1983 and in mid-1985, the Nigerian Government revoked, respectively, Articles 4 and 27 of the Protocol, and expelled between 0.9 and 1.3 million illegal aliens, mostly Ghanaians (Adepoju, 2009).

The ratification of the second phase of the ECOWAS Protocol, on Right of Residence, which came into force in July 1986, coincided with the implementation of the structural adjustment programme in Nigeria. In June 1985, about 200 000 illegal aliens were again expelled as the economic crisis deepened. This development created a crisis of confidence that rocked the Community to its very foundations.

Most countries of the sub-region have enacted, or retained a series of laws which in effect restrict 'foreigners', including nationals of community states, from participating in certain kinds of economic activities, and the expulsion of aliens from some Member States is negating the whole *raison d'être* of the establishment of ECOWAS.

Nonetheless, the 1992 revised Treaty of ECOWAS affirmed the right of citizens of the Community to entry, residence and settlement, and enjoined Member States to recognise these rights in their respective territories. It also called on Member States to take all necessary steps at the national level to ensure that the provisions are duly implemented.

In response to the challenges inherent in promoting and supporting such an approach, the ECOWAS 30<sup>th</sup> Ordinary Session of the Authority of Heads of State and Government, held in Abuja in June 2006, mandated the Executive Secretariat to take the initiative in defining an ECOWAS Common Approach on Migration. This was adopted in January 2008 at the 33<sup>rd</sup> Summit of Heads of State and Government in Ouagadougou, with a focus on the following: promoting free movement within the ECOWAS zone; promoting the management of regular migration; policy harmonisation; controlling irregular migration and human trafficking, particularly of women and children; protecting the rights of migrants, asylum seekers and refugees, taking into account the gender and migration dynamics dimension. The primary objective of the 'Common Approach' is to enhance the management of migration through the development of a harmonised system and a comprehensive, balanced approach as a basis upon which member states would develop, strengthen, implement and coordinate migration policies and programmes in cooperation and partnership with the international community (ECOWAS 2003; 2008). There is however a general lack of information on the framework document at national level, even among national officials.

#### *Creating a borderless sub-region*

Worried about the slow progress in fully implementing the protocol, the heads of state and government focused on renewed efforts to create a borderless ECOWAS territory when they met in Abuja in March 2000. It was decided that regional infrastructure should be boosted to foster economic integration. As a first step in this direction, an economic feasibility study was to be commissioned within six months for the establishment of two rail links: a coastal route from Lagos to Cotonou, Lomé and Accra, and a second Sahelian route linking Lagos to Niamey and Ouagadougou. This decision recognised the inadequacy of the poorly-maintained transport and communication facilities which were constituting a major hindrance to cross-border trade, economic activities and movements (Adepoju, 2007; ECOWAS 200a).

Several other aspects of closer economic integration were deliberated upon during the meeting. These included the creation of a free trade area and private sector involvement; adherence to the principle of 90 days entry without visa, and free movement of persons; the dismantling within ECOWAS of all check points on international highways (these check

points constituted a menace to free movement of persons and goods); the manning of the many border posts only by essential agents (customs and immigration officials); and the elimination of rigid border formalities, together with the modernisation of border procedures through the use of passport-scanning machines (ECOWAS, 2000b)

To operationalise these directives, it was decided that border patrols would be installed by the neighbouring countries of Niger, Nigeria, Benin, Togo, Ghana, Burkina Faso and Mali, to monitor and police national borders. This would also reinforce closer collaboration between the police and internal security agents on the exchange of information and on staff training. Other far-reaching decisions included the need for the effective use of ECOWAS travel certificates, the introduction of ECOWAS Brown Card travel certificates and a multi-country Schengen-type visa, and the adoption of a single ECOWAS passport. Proposals were made on how to harmonise and update shipping laws to promote the liberalisation of maritime services. To facilitate the effective establishment of a free trade zone, zero per cent rate of duty would be applied on approved industrial products, goods and traditional handicrafts. Mandatory residency permits were to be abolished, and immigration officials would accord the maximum 90-day period of stay to ECOWAS citizens at entry points with effect from 15 April 2000. Member States are still expected to ratify the extradition convention that was signed in Abuja in August 1994 but which has remained largely in the archives.

The Brown Card had been mooted in 1982 (and started up in 1985) to ensure rapid and equitable compensation in case of accidents to vehicles from one ECOWAS state occurring in a different Member State. An audit in 2000 resulted in a call for a new vision of how the system was managed. During the meetings of the Ministers of ECOWAS in Ouagadougou in February 2002, some crucial decisions were made. Amongst these was that the 'certificate' for travelling within Community countries would become an ECOWAS passport. It was also decided that ECOWAS travellers' cheques, in the West African Unit of Account (WAUA) in units of 100, 50, 20, 10 and 5 would be used to facilitate cross-border and other transactions. It was proposed that a common currency and airline for ECOWAS would take off by 2004 (ECOWAS 2003). These have not as yet materialised.

### *Challenges*

ECOWAS faced several obstacles, key among which were weak political support and rivalry along language lines (francophone versus anglophone), poor funding by member states and the non-ratification and non-implementation of protocols. The non-convertibility of currencies has also hindered financial settlements and the harmonisation of macro-economic policies and procedures.

The multiplicity of the regional economic groupings has constrained effective integration in the sub-region. (Annexe 2 shows the membership of sub-regional organisations in West Africa.) These include the Senegal River Development Organization (OMVS<sup>1</sup>), the Mano River Union, the Lake Chad Basin Commission, and the West African Economic Community (CEAO<sup>2</sup>) – all embraced by ECOWAS. The composition, objectives, population size, market size and political structures of these organisations are as diverse as are their memberships. In addition, the dual membership of states in economic groupings that have conflicting objectives exacerbates the difficulties faced by countries in meeting financial obligations – especially as the economic crisis deepens. This is also reflected in the inability by member states to implement the protocols (Ojo, 1999). A lack of political will, political instability and inter-state border disputes and wars, and the reluctance of countries to

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<sup>1</sup> Organisation pour la Mise en Valeur du Fleuve Senegal.

<sup>2</sup> Communauté Économique de l'Afrique de l'Ouest.

surrender national sovereignty to a sub-regional organ, render the economic groupings a toothless lion.

In the ECOWAS region, countries with small populations are juxtaposed to those with large populations and land areas; some are resource-poor while others are endowed with human and natural resources. The smaller and economically less prosperous countries are often suspicious of the demographic and economic giants – Nigeria and Côte d'Ivoire – in the Community. In addition, sentiments against non-nationals have risen in recent years as a result of the economic downturn, increasing unemployment among young nationals, and political instability. The Protocol on Establishment and Residence has not been fully implemented, in spite of its close link to the right of free movement, integration of trade, tariff regimes and promotion of labour mobility in the sub-region.

As already mentioned, the ECOWAS common passport was adopted by the Heads of States and Government during the Summit in Abuja in 2000. It was scheduled to replace national passports within five years, and is to progressively replace national passports in circulation over a transitional period of ten years. However, only eleven countries are currently issuing the passport. Harmonised Immigration and Emigration Forms have not yet been implemented (see Annexe 3).

### *Progress made*

The free movement of persons without visa within West Africa has been a major achievement of ECOWAS. Associated with this development has been the progress – albeit limited – made in the area of monetary policy, communication, trade and related matters. These include the introduction of ECOWAS travellers' cheques – the aforementioned West African Unit of Account – to harmonise the sub-region's monetary policy; the proposed adoption of a common currency to facilitate cross-border trade transactions and, with it, the introduction of Brown Card travel certificates as ECOWAS passports.

In its functioning, ECOWAS has adopted a variable-speed approach whereby sets of common objectives are mutually agreed upon, but component countries move at different rates towards their implementation – some rapidly and some more slowly. It seems that the smaller and more homogenous a community is, the more easily it can function cohesively. For example, WAEMU members share a common currency and colonial history and the French language and thus find it easier to implement joint programmes – rather than the larger ECOWAS, which re-groups former colonial francophone, anglophone and lusophone countries.

A turning point in the process of external interference, often cited as a bottleneck in the creation of a sub-region-wide monetary policy in West Africa – especially in the CFA<sup>3</sup> franc zone<sup>4</sup> – occurred in 1994 with the devaluation of the CFA franc and its de-linking from the French franc. This development no doubt prompted the more inward-looking strategy adopted at the meeting of heads of states of the West African Economic and Monetary Union (WAEMU)<sup>5</sup> in 1996.

One major prerequisite for effective integration within the community is improvement in the communication and transportation network – for instance the construction of highways and railroads to link the various countries in the community and to facilitate the movement of people and goods. Adverse situations in the area have limited intra-regional trade, especially affecting the land-locked countries that must transport goods to and from coastal ports for export and import. Nevertheless, much of the regional infrastructure has been rehabilitated

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<sup>3</sup> Communauté Financière Africaine.

<sup>4</sup> The term 'CFA franc' refers to the West African CFA franc (as here) and the Central African CFA franc, both of which are guaranteed by the French treasury.

<sup>5</sup> Also known UEMOA: Union Économique et Monétaire Ouest-Africaine.

and expanded to foster economic integration. Firm proposals have been made to boost transport and telecommunication links among Member States, especially through the establishment of the trans-coastal, trans-Sahelian and trans-coastal/Sahelian rail links.

A zone for the circulation of goods, free of custom duties, was set up, effective from the start of 2000. The Lomé Protocol on the Mechanism for Conflict Prevention, Management, Resolution, Peacekeeping and Security was signed in December 1999 and the free movement of goods and persons across the borders of ECOWAS Member States was scheduled to begin by the end of April 2000. Nigeria and Ghana have been taking the lead in implementing the scheme, ahead of other countries.

Private sector development, trade promotion (including regional advocacy and negotiations for better terms of trade for West Africa primary products), viable macro and micro economic policies, and support for effective implementation are all vital for economic growth and development (ECOWAS, 2001). The Abuja 2000 proposals for harmonising and updating customs policies, the liberalisation of maritime services, and the zero per cent duty on approved industrial products, goods and traditional handicrafts were all designed to facilitate the effective establishment of a free trade zone, while the introduction of travellers' cheques was aimed at facilitating cross-border and other transactions.

In addition, the 33<sup>rd</sup> Summit of Heads of State and Government held in Ouagadougou, in January 2008 targeted programmes and activities that would place a particular focus on infrastructural and regional economic territorial development – such as the ECOWAS Integration Programme's 'Border Countries' concept, which aims to capitalise on cross-border dynamics and thereby enhance the harmonious integration of the regional economy and facilitate the free movement of people, investment and other socio-economic activities.

The adoption of the 'Border Countries/Cross Border/Local Integration' concept by the Heads of State and Government in January 2006 provided the basis for a Community Legal Framework, and the creation of a Cross-Border Initiative Programme to accelerate regional integration through practicable joint social, economic and cultural development projects. The regional strategic document 'Regional Integration, Growth and Poverty Reduction in West Africa: Strategies and Action Plan' drafted jointly in 2006 by ECOWAS and WAEMU acknowledges the contribution of migration to economic transformation, growth and poverty reduction (ECOWAS website).

An ECOWAS Common Investment Market Vision has been developed and a Supplementary Act on Community Rules on Investment was adopted in 2008. Within this framework, a Community Investment Code is being in the process of being prepared, to harmonise national investment codes, in line with the provisions of ECOWAS protocols on the right of establishment.

Finally, it must be acknowledged that the persisting economic downturn has crippled the ability of states to pursue consistent macro-economic policies and has resulted, in part, in poor funding of cooperation unions. In addition, the non-convertibility of currencies continues to hinder financial settlements and the harmonisation of macro-economic policies and procedures.

## **Part 2. Operationalising intra-regional trade protocols**

Intra-regional trade within West Africa remains an abysmally low fraction of total trade: 11 per cent of the total volume from among ECOWAS countries. This figure is suspect, however, because a high proportion of cross-border trade in the sub-region is informal and unrecorded. The discrepancy is largely due to avoidance of customs and other barriers, especially the ubiquitous roadblocks across frontiers, which involve lengthy and costly formalities at border posts, and is facilitated by the corruption of officials. The communality

of language networks also aids this type of informal, clandestine communication across boundaries. In many cases, the price of transported goods from one country of the sub-region to another is increased by up to a quarter as a result of illegal collection at roadblocks.

The treaty that established ECOWAS is explicit on trade promotion, the elimination of tariff and other barriers between Member States, and the establishment of a customs union (ECOWAS, 1999). Yet intra-community trade has not been stimulated, partly because the liberalisation of trade has not progressed as fast as initially intended. Uncoordinated economic reform programmes have hampered the implementation of trade liberalisation and of privatisation programmes which could have opened up domestic markets to foreign direct investment. As yet, the establishment of a free trade zone exists largely only on the drawing board.

One immediate result of the renewed efforts at creating a borderless West Africa is that goods from member countries no longer attract tariffs; those from third (i.e. non-EU) countries outside of ECOWAS attract duties of only 0.05 per cent of total value. The ECOWAS Trade Liberalisation Scheme (ETLS), which came into force in January 1990, was designed to progressively establish a customs union among member states over the fifteen-year period from its inception. Its aim was the total elimination of customs duties and taxes of equivalent effect, the removal of non-tariff barriers and the establishment of a Common Customs External Tariff to protect goods produced in Member States. As previously mentioned, the goods protected by this protocol fall into the category of 'unprocessed goods' such as livestock, mineral products, traditional handicrafts and industrial products of community origin (see Annexe 4).

The Trade Liberalisation Scheme was designed to ensure the free movement of goods which satisfy the rules of origin of the Community. If fully implemented, the scheme has the potential to enlarge the market for exports within the sub-region, create jobs, reduce poverty and enhance foreign exchange earnings. Yet almost all the governments are dragging their feet in implementing it. Apart from a lack of political will, and the business community's ignorance of these protocols, as well as the corrupt practices of implementing officials, there is a fear, among the smaller countries concerned, of domination by the citizens of the larger ECOWAS countries – such as is currently shown in the growing concern of Ghanaians that aggressive Nigerian commercial operators are dominating Ghanaian markets.

In April 2002, the ECOWAS Council of Ministers approved a new procedure for ETLS which entitled manufacturers of approved products to exemption from customs duty within ECOWAS states. Under the new procedure, National Approval Committees, set up by member states, handle the approval of products granted exemption under the ETLS. This decision abrogated a 1988 trade agreement and brought ECOWAS in line with WAEMU.

The plan to move from a Free Trade Area to a Customs Union and eventually to a Monetary Union – allowing easier access to bigger markets, promoting economies of scale and creating jobs – remains largely unimplemented. The lacklustre attempts at implementation have been frustrated, as already explained, by the multiple check points and the imposition of unofficial tariffs at border posts (West Africa Insight, 2010). There is a need therefore to establish a common understanding of the Rules of Origin under the ETLS, as well as mechanisms for commercial conflict resolution, especially between exporters and customs officials

In practical terms, widespread non-compliance with the Protocol on Free Movement of Persons, Right of Residence and Establishment creates difficulties for economic operators in their attempts to move freely across borders, and hamper increased trade flows within ECOWAS countries. Compliance with the provisions of this protocol is thus extremely important, especially in the case of trade in services.

Despite efforts to introduce a common external tariff by 2008, traders still face high tariffs, product bans and import controls. Cumbersome regulations and administrative bureaucracy, bribery and corruption, the high cost of often-inefficient transportation and communications services have all hindered intra-ECOWAS trade (Ghana News Agency, 2011). The absence of any efficient and effective payment mechanism, particularly between anglophone and francophone countries, is another impediment to cross-border and intra-ECOWAS trade. Economic operators often have to resort to carrying huge sums of cash in US\$ or Euros, at great risk, in order to effect payment for goods and services in countries where they do business.

It is clear then, that the establishment of a common understanding between economic operators and the relevant government agencies and border officials (customs, immigration and police) is crucial to promote compliance with ECOWAS trade-related protocols and ease the flow of trade at land and sea border posts.

The ETLS does not provide any appropriate mechanism for economic operators to seek redress from molestation or extortion by customs or immigration officials at the many road blocks. In order to increase the awareness of trade operators, the EU was willing to fund a project for Non-State Actors to run sensitisation programmes for traders and paramilitary officials at Nigerian ports of entry and exit. The National Association of Nigerian Traders (NANTS), which is the umbrella organisation of (mostly women) traders in raw materials, industrial and finished goods, and, recently, of local manufacturers of garments, local farmers and local raw materials providers, was able to secure an EU grant for this purpose.

For intra-regional trade to thrive, governments have to proactively provide an enabling environment for the business corporate sector to engage in cross-border transactions and trade. The bottleneck in processing trading licences and permits to trade in foreign currency add to the already high cost of doing business in many countries. This is especially true in Nigeria where the energy deficit, dilapidated road infrastructure, tariff irregularities and ambiguous import prohibition lists are forcing businesses to relocate to Ghana. Instances of unilateral imposition of product ban and corresponding retaliatory measures on import by Member States (most recently between Nigeria and Ghana) are counterproductive in the promotion of intra-regional trade.

Other aspects include the need to train border officials (customs, immigration and police) to communicate in the two major ECOWAS languages (French and English); enhancing the access of small and medium enterprises to microfinance facilities; reviewing restrictive foreign exchange and related government policies, and eliminating bottlenecks and reducing costs in the settlement of international financial transactions. These issues are critical since there are about eight different currencies and monetary policies in ECOWAS countries, (the CFA franc in the eight francophone countries in the WAEMU zone, together with another six anglophone countries, and one lusophone).

Any attempt to create a West African Monetary Zone (WAMZ) must involve many transformations: the harmonisation of laws governing financial institutions in the member countries; the design of an exchange rate mechanism; the creation of a foreign exchange reserve management system; a viable non-cash payment system; the design of a common currency, and the technical preparation for its introduction. In addition there is the establishment of a common central bank, working through the West Africa Monetary Institute, leading to the introduction of a common currency, the ECO. This was scheduled for December 2009 but has not yet happened. The ultimate goal is to unite the WAEMU and the WAMZ to form a West African Monetary Zone. (This was billed for 2007, after the integration of ECOWAS and WAEMU by 2005. Neither has taken place.) Sustained sensitisation activities have to be accelerated in order to create awareness in the private sector and the general population about the Single Monetary Zone (WAMZ) concept.



### **Part 3. Challenges and prospects for intra-regional mobility, trade and development**

This section summarises the problems discussed above and puts forward suggestions for dealing with these issues.

ECOWAS was established to create an economic and monetary union for promoting economic growth, cooperation, integration and development in West Africa. Its objectives are to generate self-sustaining economic growth through collective action in all fields of social and economic activity and to create a fully-integrated and internationally competitive region within which goods, services, capital, labour and persons can move freely. Indeed, the free movement of persons is linked to the general objective of regional economic integration, to be achieved through a liberalisation of movements of persons, goods, services and capital.

As indicated in Annexe 3, ECOWAS has achieved some measure of progress in respect of the free movement of persons; the abolition of visas and entry permits; the introduction of the ECOWAS Travel Certificate; the introduction of harmonised immigration and emigration forms; the establishment of national committees to monitor ECOWAS programmes on the free movement of persons and vehicles; the introduction of the Brown Card motor vehicle insurance scheme; the free movement of goods; the introduction of harmonised customs documents; a common currency, and the harmonisation of economic and financial policies.

Yet several obstacles need to be resolved. The protocol on Establishment and Residence, explicitly recognised in the 1992 revision of ECOWAS Treaty, has not been implemented, in spite of the dire need for an effective integration of trade, tariff regimes and labour mobility in the sub-region. The challenges encountered in the process include political instability, the multiplicity of organisations, fractured national economies, poor infrastructure and uncoordinated economic programmes and fiscal policies.

Free movements are still hampered by the absence of harmonised travel documents, harassment and corruption at borders, the lack of cooperation between operatives at border posts and extortion at road security check points widespread on all the road corridors. These have resulted in unjustified costs and unnecessary loss of time by travellers and commercial operators who pass the increased cost of transactions on to final consumers. All these obstacles constrain intra-regional transport and trade, hence the need to drastically reduce border clearance time and formalities. A shortened transit time at borders, and a reduction of transportation cost would correspondingly increase trade volumes and improve competitiveness (Lamy, 2011). In this context, the Border Information Centres between Ghana and Togo, and the planned centre between Mali and Senegal, initiated and sponsored by USAID's West Africa Trade Hub is a welcome development designed to support the private sector, reduce supply chain costs for exporters and increase national governments' competitiveness for job creation and poverty reduction.

The Community's policy makers set targets for a Community Passport to take effect by 2005, a Common External Tariff billed for 2005, the Single Monetary Zone in 2007 and the integration of ECOWAS and WAEMU by 2005 (ECOWAS, 2004). All indications are that these ambitious targets have, as yet, not been fully realised.

In that context, West African countries need first to identify areas of agreement which they can progressively implement, most notably free movement of persons, travel cards, travellers' cheques, tariff regime integration, customs and immigration formalities which enhance intra-regional labour mobility and cross-border trade. They should then implement these and other agreements using the variable speed approach, whereby sets of common objectives are agreed upon but component countries move at different rates towards implementation, some rapidly and others slowly.

The ECOWAS governments should also revise national employment codes in line with ECOWAS protocols and ensure that the rights of migrant workers in host countries are protected. They need, in addition, to harmonise national laws which conflict with regional

and sub-regional treaties, and address the issue of right of residence and establishment of migrants, and normalise the obligations of host countries by amending national laws and investment codes that restrict ‘foreigners’, including nationals of Community States, from participating in certain kinds of economic activities.

Nationals, especially potential migrants, should be provided with adequate information on the full provisions of the Protocol on Free Movement of Persons and the rules and regulations guiding entry, residence and employment in Member States, especially regarding the need for valid travel documents.

Formal intra-regional trade transaction of about 11 to 13 per cent is small indeed but this figure does not take into account the informal and unrecorded trade that permeates the sub-region. A high proportion of cross-border movement in the sub-region is unrecorded due to the ubiquitous roadblocks across frontiers, the lengthy and costly formalities at border posts, and the corruption of officials. Thus, for example, for a radius of ten kilometres along the Nigerian side of the Lagos-Seme border, there are no fewer twenty-five checkpoints during the daytime and many more at night, instead of the approved three checkpoints (West Africa Insight, 2010).

The ‘import substitution development’ strategy adopted by African governments has overprotected local markets rather than encouraged export trade. The low productivity and under-utilisation of productive capacity is a manifestation of these distorted policy measures. In the process, the sub-region has not been optimally inserted into the global economy, a situation that has impacted negatively on capital inflows, with adverse effects on job creation and labour migration.

An integrated transportation network is required for the region, and must be maintained, to facilitate the smooth movement of persons and the distribution of goods and services. The infrastructural deficits in many Member States must be addressed and road networks upgraded and maintained. ECOWAS needs to harmonise and implement the intertwined policies of trade, investment, transport and movement of persons in an integrated manner. Indeed, the success of the ECOWAS Agricultural, Trade and Economic Development Programmes is dependent on the full implementation of the free movement protocol.

Many West Africans are not aware of the existence of the ECOWAS Green Card. Indeed many nationals do not have access to passports. Each government should mount a public information campaign on the ECOWAS Passport, which is expected to progressively replace national passports. The ECOWAS passport should result in the decentralising of the issuance of passports – from national capitals to provincial and district headquarters – to facilitate access of rural dwellers, and increase the incentive to obtain such a passport. This decentralisation recommendation also applies to national passports, which remain out of reach of many citizens. One other major public education activity that is still needed is the sensitising of the general public to the ECOWAS Common Approach on Migration – including its principles and action plans – and a stimulation of open debate on this matter.

In this context, the ECOWAS Commission recently organised the zonal meeting of ECOWAS regional media network on free movement of persons and goods in Cotonou (July 2011) to discuss the establishment of the media centres and for the journalists to sensitize travellers on the need to travel with genuine documents. Besides, the media network is expected to be a whistle blower, exposing various security agencies at the borders that frustrate the free movement of people and goods across the sub-region. Information centres are to be established at various West African borders beginning with Seme, Togo and Aflao border areas to help genuine travellers at the borders, as well as to provide avenues for victims of harassment to lodge their complaints. In addition, the centres would help

journalists to gather information on rights violation and impediments to free movement of persons and goods.

A sustained sensitisation activity is required to create awareness in the private sector and among the general population regarding the Single Monetary Zone concept and the Trade Liberalisation Scheme, leading to the creation of a Custom Union and a single regional market, and the proposed adoption of a single ECO currency. These are facilitative factors that, if fully implemented, could considerably enhance intra-community trade, and especially the movement of persons, goods and services.

Capacity building of immigration officials is most critical as well as urgent. Presently functioning as border control and security officials, their role has to be transformed into that of migration management, helping to facilitate rather than restrict migration, both in regular situations and in the context of the sub-regional integration agenda. There is a need to retrain and inform officials about national laws and treaties, as well as ECOWAS Protocols, to ensure that, at their level, they foster rather than frustrate the objectives, modalities and procedures for free mobility of Community citizens. Indeed, capacity building of customs, immigration, police and security officials to deal efficiently and fairly regarding the free movement of persons and goods, and to keep them up to date on the rights and obligations of migrants, should be a continuing process. This is key to operationalising the trade liberalisation scheme and zero tariff regime adopted by ECOWAS. The training of officials, exchange of information, and building and maintenance of networks should thus be institutionalised.

The absence of peace and stability in several parts of the sub-region discourages investment, the very foundation of development; it leads to capital flight, stalled sustainable development and a decrease in employment generation. Orderly, well-managed migration can be a veritable instrument for economic, social and political integration in the sub-region. But such an orderly movement can blossom only in situations of peace and stability – hence the need for sustainable development, employment creation, conflict prevention, management and resolution mechanisms, all of which will promote stability. The situation also calls for closer cooperation and coordination among member countries to harmonise their employment and investment policies.

Above all, governments must institute effective mechanisms for monitoring the implementation of decisions, especially national laws and ECOWAS decisions which relate to migration. This would help correct the continued hindering of the achievements of ECOWAS by a persistent unwillingness to implement ECOWAS decisions, domesticate its protocols and incorporate its treaties appropriately into national laws.

## **Annexe 1. Major features of the Protocol on Free Movement of Persons and four Supplementary Protocols**

### 1979 Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment

- Sets out right of Community citizens to enter, reside and establish in territory of member states (Article 2(1))
- Establishes three-phased approach over 15 years to implementation of (I) right of entry and abolition of visas, (II) residence and (III) establishment (Article 2)
- Conditions entitlement to enter territory of member state on possession of valid travel document and international health certificate (Article 3(1))
- Reserves right of member states to refuse admission into territory of Community citizens deemed inadmissible under domestic law (Article 4)
- Establishes some requirements for expulsion (Article 11)
- Confirms that Protocol does not operate to detriment of more favourable provisions in other agreements concluded by member states (Article 12)

### 1985 Supplementary Protocol A/SP.1/7/85 on the Code of Conduct for the Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment

- Obliges member states to provide valid travel documents to their citizens (Article 2(1))
- Establishes additional (to Article 11 of Protocol) requirements for treatment of persons being expelled (Article 4)
- Enumerates protections for illegal immigrants (Articles 5 and 7)

### 1986 Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence)

- Requires states to grant to Community citizens who are nationals of other member states 'the right of residence in its territory for the purpose of seeking and carrying out income earning employment' (Article 2)
- Conditions entitlement to residence (and thus seeking and carrying out of income earning employment) on possession of an ECOWAS Residence Card or Permit (Article 5) and harmonization by member states of rules pertaining to the issuance of such cards and permits (Article 9)
- Prohibits expulsion en masse (Article 13) and limits grounds for individual expulsion to national security, public order or morality, public health, non-fulfilment of essential conditions of residence (Article 14)
- Stipulates equal treatment with nationals for migrant workers complying with the rules and regulations governing their residence in areas such as security of employment,

participation in social and cultural activities, re-employment in certain cases of job loss and training (Article 23)

1989 Supplementary Protocol A/SP.1/6/89 amending and complementing the provisions of Article 7 of the Protocol on Free Movement, Right of Residence and Establishment

- Amends provisions of Article 7 of Protocol to confirm obligation on signatories to resolve amicably disputes regarding the interpretation and application of the Protocol (Article 2)

1990 Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right to Establishment)

- Defines the right of establishment emphasising non-discriminatory treatment of nationals and companies of other member states except as justified by exigencies of public order, security or health (Articles 2–4)
- Forbids the confiscation or expropriation of assets or capital on a discriminatory basis and requires fair and equitable compensation where such confiscation or expropriation (Article 7)

Source: Adepoju and others, 2007

**Annexe 2. Membership of sub-regional organisations in West Africa**

Country	UMA	ECOWAS	WAEMU	MRU
Benin		*	*	
Burkina Faso		*	*	
Cape Verde		*		
Côte d'Ivoire		*	*	
Gambia		*		
Ghana		*		
Guinea		*		*
Guinea Bissau		*		
Liberia		*		*
Mali		*	*	
Mauritania*	*	*		
Niger		*	*	
Nigeria		*		
Senegal		*	*	
Sierra Leone		*		*
Togo		*	*	

Source: Adepoju, 2002

Note: \* Mauritania opted out of ECOWAS in 2000

### Annexe 3. Status of implementation of selected ECOWAS initiatives

Key: ECOWAS initiatives    ● Implemented    ○ Not yet implemented

Country <i>Date of Ratification of 1979 Protocol</i>	Abolition of visa and entry requirements for 90-day stay	Introduction of ECOWAS travel certificate	Harmonised immigration and emigration forms	National committee for monitoring free movement of persons and vehicles	ECOWAS Brown Card scheme
Benin <i>4 Jan 1981</i>	●	○	○	●	●
Burkina Faso <i>6 April 1982</i>	●	●	○	●	●
Cape Verde <i>11 June 1984</i>	●	○	○	○	N/A (island state)
Côte d'Ivoire <i>19 Jan 1981</i>	●	○	○	○	●
The Gambia <i>30 Oct 1980</i>	●	●	○	○	●
Ghana <i>8 April 1980</i>	●	●	○	○	●
Guinea <i>17 Oct 1979</i>	●	●	○	○	●
Guinea Bissau <i>20 Aug 1979</i>	●	○	○	○	●
Liberia <i>1 April 1980</i>	●	○	○	○	○
Mali <i>5 June 1980</i>	●	○	○	●	●
Niger <i>11 Jan 1980</i>	●	●	○	●	●
Nigeria <i>12 Sept 1979</i>	●	●	○	●	●
Senegal <i>24 May 1980</i>	●	○	○	○	●
Sierra Leone <i>15 Sept 1982</i>	●	●	○	○	●
Togo <i>9 Dec 1979</i>	●	○	○	●	●

Source: Adepoju et al, 2007, updated

#### **Annexe 4. Groups of goods covered under the Trade Liberalization Scheme**

1. Unprocessed goods: These are livestock, fish, plant or mineral products that have not undergone any industrial transformation.
2. Traditional Handicraft Products: These articles made by hand with or without the help of tools, instruments or devices that are activated directly by the craftsman. Such include wooden cooking utensils, fancy goods, small cabinet work, mats, carpets, bed linen, footwear, headgear, prepared feathers, etc.
3. Industrial products of Community origin.

The three groups of goods mentioned above are granted the following concessions:

- Total exemption from import duties and taxes
- No quantitative restriction,
- Non-payment of compensation for loss of revenue for items (1) and (2) as a result of their importation.

Conditions to be fulfilled by the importer”

1. Goods must originate in member states of the Community.
  2. Goods must appear on the list of products annexed to the decisions liberalising trade in these products.
  3. Goods must be accompanied by a certificate of origin and an ECOWAS export declaration form.
  4. Such goods must be subjected to the import clearance procedure spelled out under Nigeria Import and Export Guidelines.
  5. Exemption from documentation of goods whose value is not above \$500.
  6. The beneficiary of the Scheme must be resident within the ECOWAS sub-region.
- All goods shall be covered by the Inter-State Road Transit Declaration.
  - The Inter-State Road Transit Declaration shall be either typewritten or hand-written but in the latter case it shall be in ink, legible and in printed characters.
  - The Inter-State Transit Declaration shall be signed by the principal obligee or by his/her authorised representative as well as the approved national guarantor.

The goods are to be transported under the cover of the ECOWAS ISRT Log Book and without being transferred to another means of transport between a Member State and the Office of Final Destination.

*Source:* ECOWAS website

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