

Annex A

ECOWAS Common Approach on Migration¹

Introduction

ECOWAS Member States launched a process to establish a regional economic zone. In 1979, they adopted a Protocol on Free Movement of Persons and the Right of Residence and Establishment. The protocol, along with the supplementary texts later added, testifies to member countries’ determination to place the free intra-regional movement of persons at the heart of the regional integration process.

West African citizens are among the world’s most mobile populations. Population censuses indicate that the region’s countries now harbour approximately 7.5 million migrants from other West African countries – i.e. almost 3% of the regional population.

From the West African viewpoint, the objective is to establish a link between migration and development, define its negative impacts and give priority to the following six questions:

- How can the gains of intra-regional mobility be promoted and how can free movement within the ECOWAS zone be guaranteed?
- How can mobility be supported and local development in departure zones and other potential host areas be encouraged?
- How can regular migration to third countries be optimised, notably in Africa, Europe, North America?
- How can irregular migration be brought under control effectively?
- How to protect migrant’s and asylum seekers rights?
- How to include the gender dimension in migration policies giving the growing number of women migrants?

Fully aware of the issues involved in migration, the 30th Ordinary Summit of ECOWAS Heads of State and Government, held in Abuja in June 2006, mandated the ECOWAS Commission to define a common regional approach on migration. Meeting in Ouagadougou on 20 December 2006, the ECOWAS Mediation and Security Council reaffirmed this priority,

requesting the Commission President to: «pursue the consultative process for the definition of a common approach to the management of intra-regional migration and migration to Europe in all its dimensions».

In executing this mandate, the ECOWAS Commission initiated a strategic thinking process with a view to defining a common regional approach on migration.

I. ECOWAS Common Approach on Migration

1.1 The Legal Framework

ECOWAS member States carry out their actions within the framework of the revised ECOWAS Treaty and more particularly Article 59: «Citizens of the community shall have the right of entry, residence and establishment and Member States undertake to recognise these rights of Community citizens in their territories in accordance with the provisions of the Protocols relating thereto».

Member States also adhere to:

- The United Nations General Assembly Resolution No.60/277 on International Migration and Development of 7 April 2006;
- The International Convention on the Protection of the Rights of All Migrant Workers and members of their families which entered into force in July 2003;
- The political dialogue between the EU and ACP countries as set out in Articles 8 and 13 of the Cotonou Agreement of June 2000;
- The Rabat Action Plan and Declaration of July 2006;
- The ECOWAS General convention on Social Security;
- The high level dialogue on migration and development initiated in New York in September 2006;
- The Tripoli Declaration of November 2006;
- The 1951 Geneva Convention and its additional protocol of 1967 on the status of refugees;
- The 1969 OAU Convention on the status of refugees in Africa.

1.2. The principles

1) Free movement of persons within the ECOWAS zone is one of the fundamental priorities of the integration policy of ECOWAS Member States.

Mobility with the ECOWAS zone is a vital component of regional integration, which is itself a prerequisite for the West African economy's successful integration into the globalisation process.

Furthermore, there is a well-defined relationship between freer movement within the ECOWAS regional area and migratory pressure. In fact,

it is establish that the free movement within the region has contributed to the reduction in the migratory pressures beyond ECOWAS borders.

2) Legal migration towards other regions of the world contributes to ECOWAS Member States’ development

ECOWAS Member countries reaffirmed the principle put forward during the Rabat and Tripoli Conferences, according to which international migration impacts positively on both the host and home country when they are well-managed. They reiterated that within every region of the world, at one time or another in their history, resorting to migration was an integral part of their development process. In 2005, 56% of West Africa’s population was below 20 years of age and 65% under 25 years old, while in Europe these shares represented 23% and 30% respectively. In this context, ECOWAS member countries believe that a joint management of migratory flows should enable West African migrants have access to labour markets based on opportunities available in these countries.

3) Combating human trafficking is a moral and humanitarian imperative

ECOWAS Member States reaffirmed their willingness to combat all entities, in the North and South, which promote the recruitment, transportation and exploitation of irregular migrants, particularly women and children.

ECOWAS Member States reaffirm the need to ratify the United Nations Convention on the Protection of Migrant Workers’ Rights and their Family member’s rights and are calling on EU countries to do the same.

4) Harmonising policies

ECOWAS Member States are reaffirming their commitment to ensure policy coherence at three levels:

- In accordance with Article 84 of the Revised Treaty, harmonise bilateral agreements linking different ECOWAS Member States and third countries, with ECOWAS community texts and protocols; including agreements involving free movement.
- Harmonize economic, trade and development aid policies of the North with migration policies of said countries.
- Harmonize national migration management policies with sector development policies.

5) Protection of the rights of migrants, asylum seekers and refugees

Member States reaffirm their commitment to ensure the implementation of the Protocol on the Free Movement of Person within the ECOWAS zone and the International Convention on the Rights of Migrants and their Families.

Aware of the increasing movement of refugees in West Africa and in view of the difficulty in managing them and regularising their status after conflicts, Members undertake to put in place regional integration mechanisms.

6) Recognizing the gender dimension of migration

ECOWAS Member States recognize the increasing role of women migrant within and beyond ECOWAS border by providing gender disaggregated data on the profiles of migrants and ensuring the inclusion of gender dimensions in migration policies.

II. Migration and Development Action Plans

ECOWAS Member States, relying on the orientations of the Tripoli Declaration, establish a direct link between migration and development. Consequently, the link between migration and development should be conveyed in a parallel approach to these two components and by striving continuously to harmonise policies related to one another.

Suggestions set out in the action plan described below are indivisible from one another.

2.1. Actions to promote free movement within the ECOWAS zone

1) Implementation of the Protocol on Free Movement of Persons, the Right of Residence and Establishment

ECOWAS Member States are committed to taking the necessary measures to remove all obstacles to the free movement of persons.

- Ensuring the issuance and security of ECOWAS travel documents.
- Organising technical and administrative training programmes as well as awareness building and educational campaigns on the rights and obligations of the community's citizens among officials in charge of migration and populations.
- Ratifying the United Nations Convention on the Protection of Migrant Workers' Rights and their Family member's rights and are calling on EU countries to do the same.
- Harmonising labour laws related to professional occupations, in accordance with the Protocol's clauses on the right of establishment for professional purposes;
- Removing all forms of harassment along the road.

2) Making the regional fund to finance cross-border co-operation operational

In order to promote mobility within the ECOWAS zone, it is important to give particular attention to border and cross-border areas.

ECOWAS Member States thus recommend that the Regional Cross-border Co-operation Fund be made operational. The fund will help to:

- Facilitate free movement through concrete actions such as the setting up of joint border posts, border markets, joint health centres, shared schools, etc.
- Support border populations through development actions geared towards the poorest, most marginalized populations.
- Develop good neighbourly relations rooted in realities on the ground among ECOWAS Member countries and between the ECOWAS zone and its neighbours.

3) Defining a regional territorial planning strategy

West Africa is a very vast territory, with huge development potentials that are yet to be exploited. Many areas still remain relatively unpopulated, although they present considerable agricultural potential and a network of dynamic secondary towns; these zones could host a sizable population. Naturally disadvantaged areas are population departure zones where the potential could also be improved. All these zones are areas shared by several countries.

ECOWAS Member States are committed to defining a regional territorial planning strategy, both rural and urban. This strategy aims to develop new growth and development areas as well as provide more disadvantaged zones (in particular Sahelian and border zones) with well-developed equipment, infrastructure and other means for development.

Member States have mandated the ECOWAS Commission to define and implement this strategy.

2.2. Actions to promote the management of regular migration

1) Implementation of pilot experiments at the national and regional levels

- Create pilot centres for information, orientation and support for potential migrants, in accordance with employment opportunities in other migratory regions, especially Europe, in close collaboration with the diplomatic representatives of the concerned countries.
- Create pilot host, orientation, and support centres for returning migrants as well as reinsertion centres.
- Strengthen ECOWAS analytical capacities and sharing information on these pilot centres at the regional level.

2) Measures concerning students and young professionals

- Facilitate West African students' access to universities, institutes and African, North American European, Asian and other professional institutes;
- Facilitate students' return to their country of origin at the end of their studies;

- Conclude young professional exchange agreements in order to improve their linguistic and professional knowledge and acquire salaries work experience in another country, and define measures to ensure the return of these immigrants to their countries of origin at the end of their stay;
- Develop partnerships between West African scientific and technical institutions and the rest of the world;
- Broaden the range of university and technical courses offered, taking into account the labour market needs (public and private);
- Create or strengthen entrepreneurship training and excellence centres and business development support structures.

3) Measures concerning Diasporas

ECOWAS Member States mandate the Commission to carry out strategic thinking on the development of expertise and financial resources of West African Diasporas with a view to contributing to the development of their countries of origin and effectively combating brain drain.

This consultation should take into account best practices and propose joint measures notably with regard to the facilitation of financial transfers and investments in the region as well as supporting the Diaspora's involvement in development projects.

Member States are committed to strengthening solidarity between the Diaspora and countries of origin.

2.3. Actions for policy harmonisation

1) Setting up a system for monitoring migration and migration policies

Setting up of information and monitoring system on migration. Monitoring should cover:

- Migratory flows inside and outside the ECOWAS region.
- Factors triggering migration to other regions and intra-regional mobility.
- The evolution of socio-economic indicators within the different ECOWAS zones in order to enable the formulation of specific investment policies.
- The establishment of migrants' profiles.

2) Harmonising policies related to migration and development

ECOWAS Member States are convinced of the need to jointly define with their partners the following measures:

- Broaden the capacities of mechanisms for monitoring and combating irregular migration by sea to include the protection and conservation of fisheries resources in West African territorial waters. Ensure media coverage of this initiative establishing the complementarity between combating clandestine migration and combating irregular fishing.

- Establish the link between exporting subsidized or used products to West Africa, and the rise in unemployment and underemployment in the region.

2.4. Actions for controlling irregular migration and human trafficking particularly of women and children

1) Fight against irregular migrations and human trafficking

- Information and awareness campaigns for potential migrants on the dangers of irregular migration and smuggling networks ;
- Co-operation between ECOWAS Member States with regard to controlling clandestine migration and dismantling the mafia-like networks ;
- Co-operation between ECOWAS Member States with a view to combating clandestine migration and in collaboration with host countries ;
- Co-operation with host countries to provide logistics and funding for voluntarily returning migrants in transit countries and countries of origin ;
- Affirmation of the principle of the return of clandestine migrants respecting their dignity and fundamental human rights ;
- Implementation by ECOWAS Member States, of measures enabling the reinsertion of irregular migrants upon their return ;
- Development of technical and financial co-operation with ECOWAS Member States in the area of managing emergency situations with regards to irregular migration.
- Compliance with international commitments made by Member States regarding migration.

2) Strengthening the dialogue framework between ECOWAS, host countries and transit countries

In view of the numerous challenges related to irregular migration, especially the turning back of migrants often in difficult conditions, human trafficking and irregular migration, human rights of migrants, forced or voluntary returns, it is clear that bilateral agreements concluded by some ECOWAS Member States with host countries are not sufficient to address these multi-dimensional problems. ECOWAS Member States undertake to strengthen their co-operation with regard to controlling irregular migration within the ECOWAS framework.

3) Strengthening Migration Management capacities

- Improving the training of ECOWAS Member States' immigration departments and providing modern ECOWAS travel documents checking equipment;

- Setting up a shared digitized database in ECOWAS Member States' immigration departments to effectively combat irregular immigration;
- Establishing an ECOWAS early warning system with a view for it to be a tool enabling the precursory signs warning of potential irregular immigration as well as activities by criminal trafficking organizations.

4) Strengthening the protection and assistance system for victims of human trafficking

Strengthening co-operation between ECOWAS Member States in the judicial and police sectors against human trafficking particularly of women and children and clandestine immigration channels:

- Identifying and strengthening co-operation mechanisms and, if necessary, joint action between countries of origin, transit and destination, including maritime, land and air co-operation for dismantling criminal organizations in order to check trafficking across national borders ;
- Encouraging ECOWAS Member States to ratify and increasingly resort to the mechanisms stipulated by the United Nations Convention against Transnational Organized Crime (Palermo, Italy, December 2000) and its Protocols ;
- Setting up project to help and promote the rehabilitation of human trafficking victims in collaboration with external partners ;
- Promoting at the national level a solidarity fund to support victims of human trafficking ;
- Harmonizing national legislation on combating human trafficking in line with international standards;
- Strengthening co-operation within the framework of providing humanitarian assistance to migrants in distress.

2.5. *Actions to protect the rights of migrants, asylum seekers and refugees*

1) Protection of the rights of migrants

- Formulate an active integration policy for migrants from ECOWAS Member States and combat exclusion and xenophobia.
- Encourage Member States and their EU partners to ratify the UN Convention on the rights on migrants.
- Put in place regional mechanism to monitor the UN Convention on the Rights of Migrants.

2) Protection of asylum seekers and refugees

- Put in place mechanisms for granting rights of residence and establishment to refugees from ECOWAS countries.

2.6. Actions aiming to take into account the Gender and Migration dimension

Women account for 47% of the 17 million immigrants in Africa and are mostly from the West African sub region. In view of the growing number of women who migrate and their crucial role in the economic and social development process in our countries, ECOWAS Member States undertake to implement the following actions and measures:

- Include gender dimensions in migration policies ;
- Establish and strengthen support institutions for entrepreneurship training for female migrants ;
- Remove all illegal trade barriers which stifle the entrepreneurs potential of women when they migrate.

NOTE

1 ECOWAS Commission, 33rd ordinary Session of the Head of State and Government, Ouagadougou, 18 January 2008.

Glossary¹

Alien: A person who is not a citizen of the country in which he/she lives. A “legal alien” is someone who lives in a foreign country with the legal approval of that country. An “illegal alien” (or undocumented alien) is someone who lives in a foreign country without having legal status in that country. A distinction is made between illegal immigrants and illegal aliens; the former being someone who wishes to settle permanently in the new country. A distinction is made between illegal immigrants and illegal aliens – the former being someone who wishes to settle permanently in the new country.

Arrest Warrant: An order give by the examining judge to the police to seek and arrest someone for indictment then take them to a correction centre.

Circular migrant: One who moves regularly between his/her home country and a foreign country for employment-related reasons. Typically, though not exclusively, circular migrants do agricultural or construction work, returning home when employment opportunities wane, or when they have saved a bit of money. The term “circular migrant” is not entirely synonymous with guest worker, because the latter term implies that the individual fits into a specific employment-visa category of the host country; a circular migrant can be in a host country illegally or legally. Further, a guest worker may come to a host country for a set period of time and only return home when the visa expires – in other words, there is no back-and-forth and hence no circularity

Economic migrant: *Sometimes used as an equivalent to the term labour migrant or migrant worker. However, the two concepts may cover different categories. The term “labour migrant” can be used restrictively to only cover movement for the purpose of employment while “economic migrant” can be used either in a narrow sense, which includes only movement for the purpose of employment, or in a broader sense that includes persons entering a State to perform other types of economic activities such as investors or business travellers.*

Expulsion: A measure undertaken by the police by which an alien is ordered to leave the country. There is a tendency to systematically use the word “expulsion” every time an alien is forced to leave a country. There are several expulsion measures:

- Arrested and sent to the border: on the basis that the alien is in an irregular situation.
- Deportation order: ordered if the alien constitutes a threat to public order (sentenced to a long prison term, for example).
- Legal exclusion from the country: often goes along with a prison term whereas at the end of the term, the alien is deported from the country as a result of a judge-ruled exclusion. It can be used in cases of irregular situations, for certain offences or crimes.
- Surrendered to another country: can only take place in application of an agreement between two countries to which the alien is surrendered.

There are cases of protection from expulsion measures following the individual situation and the alien’s country of origin: protection from being led to the border, protection from expulsion, protection and guarantee from judicial banning from the country

Flagrante delicto: Delicto or offence in process of being committed or which was just committed and registered by the police. When the crime is punishable by a prison term, the Prosecution can quickly present the suspect before the judge for a hearing called an immediate appearance for a decision to be made.

Flow: The term used for the unstable and changing portion of an overall population figure

Forced departure: So as to avoid using the word “expulsion” (a legal-technical term in State immigration law), we speak of “forced departure” of an alien in cases in which authorities enforcing the decision of expulsion have used physical or other pressure to force an alien to leave his former country of residence.

Illegal migrant: A person who comes to settle in a country without the correct legal documentation, or who lives there using false identification or no documentation at all (“sans papiers” – without papers), or who otherwise resides in a country without formal permission. E.g., a person who enters a country on a tourist or student visa and then overstays his or her visa becomes an illegal immigrant.

Intergovernmental method: Negotiation sessions between representatives of national governments

Irregular migration: As defined by the Global Commission on International Migration, it is a complex and diverse phenomenon in which the main focus is irregular flows and entries, rather, for example, than the various challenges posed by stocks or irregular migrants such as undocumented work.

Immediate appearance²: A procedure which makes it possible to make judge quickly somebody following the police custody.

Labour migration: Movement of persons from their home State to another State for the purpose of employment.

Migrant smuggling; smuggling of migrants: Defined in the relevant Protocol as follows: “Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident. Trafficking victims can be, at least in the beginning, consenting and candidates for emigration, unlike those described by the expression “human trade.”

Naturalization: In law, refers to an act whereby a person acquires a citizenship different from that person’s citizenship at birth. Naturalization is most commonly associated with economic migrants or refugees who have immigrated to a country and resided there as aliens, and who have voluntarily and actively chosen to become citizens of that country after meeting specific requirements. However, naturalization that is at least passive and often not voluntary, can take place upon annexation or border adjustments between countries. Unless resolved by denaturalization or renunciation of citizenship, naturalization can lead to multiple citizenship.

Non-refoulement: *A core principle of refugee law that prohibits States from returning refugees in any manner whatsoever to countries or territories in which their lives or freedom may be threatened. This principle is usually considered a part of customary international law and is therefore binding on all States, whether or not they are parties to the 1951 Convention relating to the Status of Refugees.*

Refugee: Defined under Article 1 of the Geneva Convention (28 July 1951) relating to the Status of Refugees as “any person who owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the

country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country”.

Return migration: I.e., migrants returning to their country of origin – going home.

Statutory Refugee: In France, refugee status is a legal status recognised by the Office français de protection des réfugiés et apatrides (OFPRA), in accordance with the Geneva Convention of 28 July 1951 as well as the law of 25 July 1952 (in its draft of the law of 11 May 1998) referring to two categories of persons: - anyone meeting the definitions set out in Article 1 of the Geneva Convention of 28 July 1951 related to the status of refugees; – “any person persecuted due to his/ her actions on behalf of freedom” (L. 11.5.1998, Article 29).

Stock: In migration statistics, used to describe the stable portion of an overall population figure.

Total population (Contribution by J.-M. Cour): as set out in the WALTPS women, the aged and children, “inactive” and “unemployed” included is comprised of three strata:

- The primary strata corresponds to the total population of urban and rural households who depend on most of their total revenue (including non-monetary) from a primary activity;
- The formal non primary strata corresponds to households having a formal private or public salaried employment and households involved in formal (officially registered businesses) non agricultural businesses (non primary); and
- The informal non primary strata corresponds to the total population of households not classified in the two other strata. The non-primary population is that of two non-primary strata, formal and informal.

This breakdown of the total population into three strata, which abolishes in fact the household entity and ignores the notions of activity and unemployment, can evidently be disputed, but it enables the aggregates and ratios to be calculated taking into account the totality of the population which is often the only known data and prevents disputes over the definition of active (over 7 or 15 years of age? Less than 60 or 90 years of age?) and the unemployed (concept which has no sense except in the formal and modern sector).

Primary value added (Contribution by J.-M. Cour): is that of the primary sector of the economy, agriculture, livestock rearing, fisheries and forestry.

Warrant of Committal: An order given by a magistrate or judge to enforce a judgment or order to receive and maintain an indicted person in detention pending trial.

NOTE //

- 1 *The text in italics has been translated based on the official source text. www.iom.int and United Nations Multilingual Terminology Database <http://157.150.197.21/dgaacs/unterm.nsf>*
- 2 *www.speedylook.com/Immediate_appearance.html*

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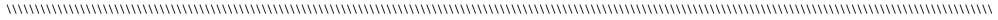
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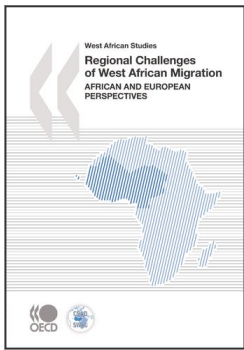
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From:
Regional Challenges of West African Migration
African and European Perspectives

Access the complete publication at:
<https://doi.org/10.1787/9789264056015-en>

Please cite this chapter as:

OECD/Sahel and West Africa Club (2009), "Annex A: ECOWAS Common Approach on Migration", in *Regional Challenges of West African Migration: African and European Perspectives*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264056015-15-en>

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